



Federal Energy Regulatory Commission

**Audit of Regional Entity
Operations at Southwest
Power Pool (SPP) for
Compliance with its Bylaws,
Delegation Agreement,
Membership Agreement,
and its Independence as an
Regional Entity**

FINAL AUDIT REPORT

October 5, 2011

**Office of Enforcement
Division of Audits**

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I. Executive Summary

A. Overview

On November 2, 2010, the Division of Audits (DA) commenced an audit of Southwest Power Pool, Inc. (SPP, Inc.).¹ The audit addressed SPP, Inc.'s responsibilities and performance as a Regional Entity (RE). The audit determined SPP, Inc.'s compliance with: (1) the SPP Bylaws,² (2) the Delegation Agreement between the North American Electric Reliability Corporation (NERC) and SPP,³ and the conditions included in the Delegation Order, (3) the SPP Membership Agreement,⁴ and (4) other obligations and responsibilities that the Commission has approved. Also, the audit evaluated the RE's independence from SPP's function as a Regional Transmission Organization (RTO). The audit covered January 1, 2009 to the present. SPP staff cooperated in responding to audit staff's data and interview requests.

Following the Division's 2008 audit of SPP and a Commission order approving the Audit Report in Docket No. PA08-2-000 the Commission directed audit staff to conduct another audit of the RE's independence from the RTO during fiscal year 2011.⁵

As detailed below, audit staff found five issues relating to the RE's implementation of its Compliance Monitoring and Enforcement Program (CMEP). Audit staff identified weaknesses in the various processes and procedures used by

¹The Division of Audits uses the terms "RE" or "RTO" when referring to the functions and employees performing them. We use the term "SPP, Inc." when referring to the corporation, and its Board of Directors and officers. Because SPP, Inc. and the RE share responsibility for complying with the NERC delegation agreement and related Commission orders, we use the term "SPP" and "Company" when we are referring to SPP, Inc. and the RE collectively.

² *Southwest Power Pool*, 108 FERC ¶ 61,003 (2004), *North American Electric Reliability Council, et al.*, 119 FERC ¶ 61,060 (2007), *order on reh'g*, 120 FERC ¶ 61,260 (2007) (Delegation Order).

³ *Id.*

⁴ *Southwest Power Pool*, 108 FERC ¶ 61,003 (2004).

⁵ *Order Approving Audit Report, Determining Issue of Separation of Functions, and Directing Compliance and Other Corrective Actions*, 126 FERC 61,045 (2009), at P 23 (2008 Commission Audit).

the RE to carry out activities under the CMEP. Specifically, audit staff identified weaknesses in the policies and procedures used to process mitigation plans, technical feasibility exception requests, and conflicts of interests for contractors. Further, audit staff identified a backlog of open violations in the RE caseload and a lack of policies and procedures for RE employees responsible for detecting and reporting issues specific to the performance of CMEP activities by the RE.

The General Manager and other RE staff members conducted self-assessments in areas upon which the audit focused and were receptive to audit team suggestions for improved performance. The RE has already taken steps to remedy some of audit staff's concerns identified in this audit report. These steps included revising and implementing processes and procedures identified during the audit. The RE has taken specific corrective actions for three out of the five findings. While recognizing the improvements already accomplished, audit staff continues to believe that there is room for improvement in certain areas. These audit findings, recommended improvements, and SPP's compliance actions are summarized in Sections E, F, and G below and in full in Part III.

B. Southwest Power Pool Regional Entity

The Commission approved SPP, Inc. as an RE on April 19, 2007 in the Commission's order that, *inter alia*, approved NERC's Delegation Agreement with SPP, Inc. and NERC's Uniform CMEP.⁶ The Commission conditionally approved NERC's 2009 and 2010 budgets, including the budgets and business plans for the RE function, on October 16, 2008⁷ and October 15, 2009,⁸ respectively.

Under section 215(e)(4) of the Federal Power Act, the Commission may approve NERC's delegation of authority to REs to propose and enforce NERC reliability standards. As an Regional Entity, SPP oversees 129 Registered Entities

⁶ *North American Electric Reliability Corp.*, 119 FERC ¶ 61,060 (*April 19, 2007 Order*), *order on reh'g*, 120 FERC ¶ 61,260 (2007) (Delegation Agreements Rehearing Order).

⁷ *North American Electric Reliability Corp.*, 125 FERC ¶ 61,056 (2008) (2009 Business Plan and Budget Order).

⁸ *North American Electric Reliability Corp.*, 129 FERC ¶ 61,040 (2009) (2010 Business Plan and Budget Order).

in eight states in the southern and southwestern United States. Within SPP's operating footprint, NERC has delegated to SPP these major program elements:⁹

1. Development and proposal of reliability standards;
2. Enforcement of compliance with reliability standards;
3. Certification of Bulk-Power System (BPS) entities;
4. Registration of owners, operators, and users of the BPS as responsible for compliance with requirements of reliability standards;
5. Reliability assessment and performance analysis;
6. Event analysis and reliability improvement;
7. Training and education; and
8. Situational awareness and infrastructure security.

C. Commission Orders Addressing SPP's Independence

As an RTO, SPP manages transmission in seven states within the RE operating footprint.¹⁰ As such, SPP is an operator of the BPS besides serving as an RE. In Order No. 672, the Commission found that serving as both an RE and as an RTO in a region may have an inherent conflict of interest because the entity would be responsible for enforcing its own compliance with NERC's reliability standards. While the Commission did not prohibit an entity from serving in both roles, the Commission emphasized that SPP faced a heavy burden to demonstrate a strong separation of functions between the RTO and the RE.¹¹

In the April 19, 2007 order approving SPP's delegation agreement and its compliance monitoring and enforcement plan, the Commission stated that it was relying on SPP's assertion that:

[T]he ultimate authority to approve and enforce proposed reliability standards will reside with the SPP Regional Entity

⁹ *Amended and Restated Delegation Agreement Between North American Electric Reliability Corporation and Southwest Power Pool, Inc.* January 1, 2011.

¹⁰ SPP members serve more than 4.5 million customers throughout a 255,000-square-mile area. SPP's operating footprint includes 17 balancing authorities and 52,301 miles of transmission lines. Its footprint includes 451 generating plants with a capacity of 45,672 MW. Coal (43 percent) and natural gas (42 percent) dominate the fuel mix.

¹¹ *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards*, Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 698-99.

trustees, who will operate with a sufficient degree of independence from the SPP RTO. Specifically, SPP asserts that the SPP Regional Entity trustees will be the final arbiter regarding each of the reliability functions and duties delegated to SPP.¹²

However, the Commission expressed concern about the RE trustees' ability to act independently. The Commission stated it was not convinced of:

[T]he ability of the SPP RE trustees to act independently of the RTO in matters relating to their appointment, compensation, the preparation and control of budgets, the separation of personnel, the development of reliability standards and in other matters subject to the oversight and control of the SPP board.¹³

Similarly, in its March 21, 2008 order, the Commission said it “remain[ed] concerned regarding the adequacy of the separation of functions between the SPP RTO and SPP Regional Entity.”¹⁴ The Commission pointed out that the RE's organizational chart showed only four RE employees,¹⁵ including the executive director for compliance:

We are concerned whether the full time staff dedicated to Regional Entity functions can support adequate reliability oversight in the SPP region. Further, we are concerned about whether SPP Regional Entity's reliance on shared professional employees, including engineers and attorneys, and potentially management, allows for a strong separation of functions as contemplated by the Commission in Order No. 672.¹⁶

As a result of the March 21, 2008 order, NERC requested Commission approval of the CMEP Agreement (SERC-SPP Agreement), where the SERC Reliability Corporation (SERC) would act as the Compliance Enforcement

¹² *April 19, 2007 Order* at P 397.

¹³ *Id.*

¹⁴ *North American Electric Reliability Corp.*, 122 FERC ¶ 61,245 (March 21, 2008 Order).

¹⁵ The RE added a fifth full-time staffer in April 2008.

¹⁶ *March 21, Order* at P 212.

Authority for the registered entity functions SPP has performed within its respective region.¹⁷ In its July 1, 2010 order,¹⁸ the Commission conditionally accepted the SERC-SPP Agreement, subject to compliance filings, stating that SERC is both qualified and sufficiently independent to act as the Compliance Enforcement Authority for the registered functions SPP has performed.¹⁹

D. RE Organization

Governance

Audit staff obtained several organizational charts from SPP representatives to understand the RE's management structure and assess the adequacy of the separation of functions between the RTO and RE. Figure 1 on the next page displays the RE's organizational chart, last updated on February 17, 2011.

The RE General Manager is the primary contact between NERC and the RE, with responsibility for administering the RE's programs under the Delegation Agreement. The RE is governed by three independent trustees who operate separately from the SPP, Inc. Board. RE trustees have autonomy over decisions in fund allocation and approval of the RE budget, as well as oversight of RE decisions on regional standards, compliance enforcement actions, and penalties. Figure 1 shows the RE General Manager reporting directly to the RE trustees with a "dotted line" reporting relationship from shared resources within SPP, Inc. for statutory functions not related to compliance or enforcement. Only the RE trustees and certain RE staff members have the authority to make compliance and enforcement decisions. The RE's direct staff is independent of all BPS users, owners, and operators. RE governance, which has been approved by NERC and the Commission, meets the requirements of the Energy Policy Act of 2005.

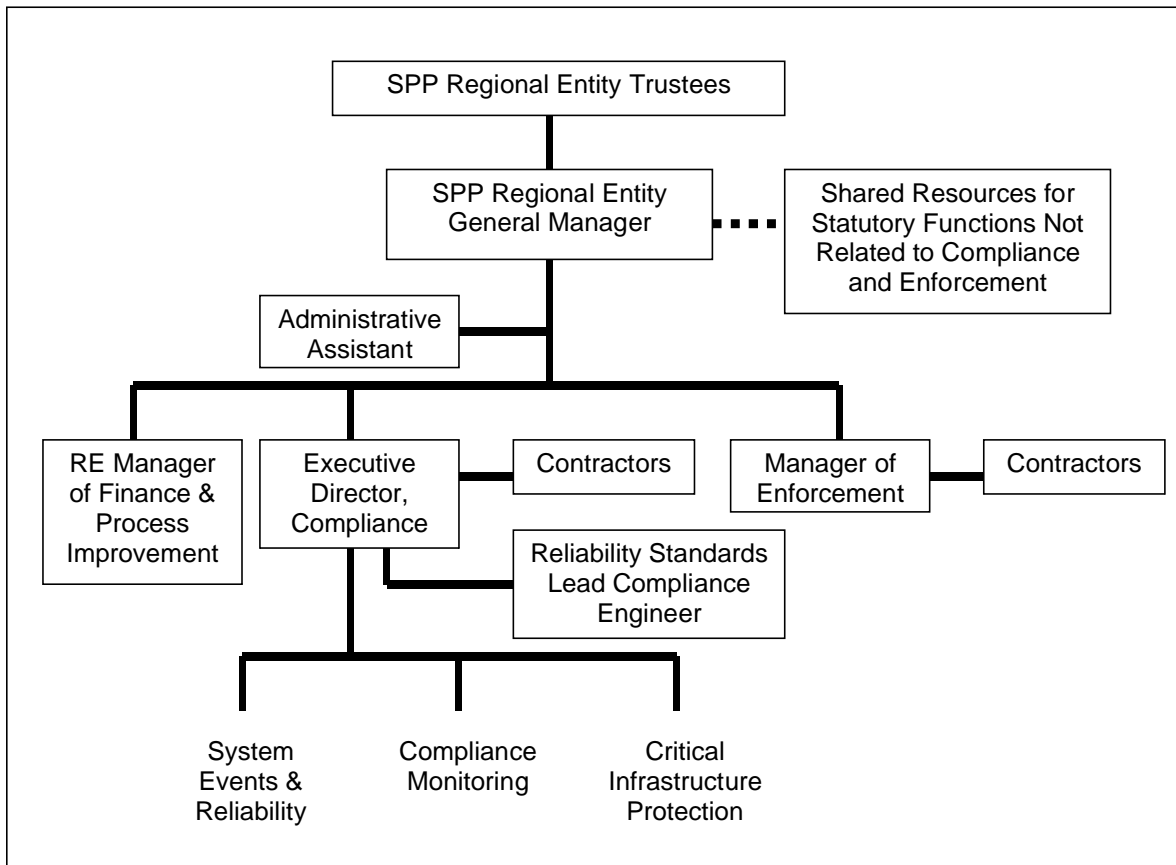
¹⁷ *North American Electric Reliability Corp.*, March 10, 2010 filing, Docket No. RR10-7-000.

¹⁸ *Order Conditionally Accepting Compliance Monitoring and Enforcement Program Agreements and Revised Delegation Agreements, and Ordering Compliance Filings*, 132 FERC ¶ 61,024 (2010) (July 12, 2010 Order), *See also Order Granting Rehearing and Accepting Filing*, 133 FERC ¶ 61,190 (2010).

¹⁹ SPP, Inc. is registered in the NERC compliance registry as a transmission service provider that supports other functions for its RTO operations. The SERC-SPP Agreement pertains to compliance and enforcement monitoring of SPP RTO-registered functions.

As Figure 1 shows, the RE's organizational structure makes the RE independent from the RTO in its performance of CMEP functions while linking with shared resources to use their expertise when performing delegated functions outside of the CMEP. Refer to the Appendix for the complete version of the RE organizational chart.

Figure 1-RE Organizational Chart



Independence/RE Separation from RTO

On April 29, 2010, SPP sent DA its final quarterly compliance report, attesting it had completed all 20 of the audit recommendations identified in the 2008 Commission Audit. Audit staff conducted testing of materials provided by SPP in its compliance filings and, on August 17, 2010, audit staff conducted a post-audit site visit at RE headquarters as ordered by the Commission in the 2008 Commission Audit.²⁰ During the site visit, audit staff reviewed documents,

²⁰ 2008 Commission Audit at P 23.

conducted additional testing, toured RE offices and interviewed the RE General Manager and five key employees. As part of this audit, audit staff verified that the RE had successfully implemented the processes and procedures to address audit staff's previous 20 recommendations.

The RE has taken additional steps to ensure its independence from the RTO. In 2009, RE full-time employees (FTEs) moved to a new facility separate from where RTO functions are performed. These facilities require card-key access and restrict RTO employees from access to the RE facility. Further, the RE is in its own Active Directory Group and access to RE network shares is controlled by group membership. Subsequent to the audit, the RE changed its e-mail addresses as a safeguard to prohibit RTO access to confidential RE information.

Audit staff also noted that the RE has reduced its reliance on shared staff and increased the number of its own employees since our 2008 audit. The table in Figure 2 shows the RE's budget from 2008 through 2011. The RE budgeted for 8.4 FTEs in 2008, including an attorney and four compliance employees, led by the Executive Director for Compliance. The remaining 3.4 FTEs represented shared employees who also performed RTO functions. The RE currently has 29.75 FTEs, including the RE General Manager, 11 compliance employees, 12 enforcement employees, one employee who manages finance and process improvement, and one administrative assistant. The remaining FTEs represent shared employees who also perform RTO functions.

Figure 2 – RE Budget, 2008-2011

Year	Budget	Number of Direct RE FTEs Budgeted	Number of Shared SPP Inc. FTEs Budgeted
2008*	\$3.3 million	5	3.4
2009*	\$5.4 million	9.5	5.1
2010	\$8.1 million	20	4.3
2011	\$9.8 million	26	3.75

*Excludes Training

Besides shared employees performing delegated functions, the RE pays the RTO for overhead services the RE received. They include payroll and accounts payable processing, human resources and benefits management, accounting, information technology, corporate affairs and communication, office costs, and

other support services and expenditures. The RE pays the RTO an overhead rate for each hour of direct staff labor and shared employee hours billed to the RE.

E. Summary of Compliance Findings

During the audit period, audit staff found these areas of noncompliance and program weaknesses:

1. Processing Mitigation Plans

During the audit period, the RE processes and procedures for processing mitigation plans contained weaknesses. These weaknesses combined with initial resource shortfalls as the RE was getting to full staffing levels led to:

- A failure to monitor and verify the completion of mitigation plan milestones;
- Poor recordkeeping for mitigation plan documentation;
- Delays in RE acceptance of proposed mitigation plans; and
- Delays in RE verification of completed mitigation plans.

These areas raise concerns to audit staff about the RE's enforcement program during the audit period and that these weaknesses could jeopardize the RE's ability to ensure registered entities correct violations. As a result, reliability could be compromised.

2. RE Management of Caseload

The RE has a backlog of 308 open violations that NERC has not received for final disposition. Audit staff determined that a backlog within the RE caseload could potentially inhibit the RE from properly monitoring and enforcing an entity's compliance with the NERC reliability standards, which could impact BPS reliability.

3. Notification of Technical Feasibility Exceptions

The RE did not properly notify NERC and the registered entity when the RE accepted Part A of a technical feasibility exception (TFE) request. This improper notification led to NERC not receiving timely acceptance notices for 96 TFE Part A requests. Since the RE timely processed Part B of the TFE requests,

this mitigated the risks of adverse impacts on reliability and possible registered entity noncompliance with NERC reliability standards.

4. Procedures to Prevent Conflicts of Interest with Contractors

The RE lacked enterprise-wide policies and procedures to prevent conflicts of interest when hiring and using contractors to perform CMEP activities. As a result, the RE did not have standardized procedures in place to address conflict of interest concerns nor did it maintain records to provide evidence that contractors were screened for conflict of interest compliance on 22 separate compliance audits in 2009.

5. Detecting and Reporting the Possible Failures to Comply with the NERC Rules of Procedure (ROP) and CMEP.

The RE does not have formal processes, procedures, or training in the area of detection and reporting infractions of the separation required between the RE and RTO functions regarding CMEP activities, nor the inappropriate sharing of confidential information between the RE and registered entities.

F. Recommendations

Audit staff's recommendations to the RE to remedy the findings are summarized below. Detailed recommendations are in Section III.

The RE should:

1. Mitigation Plan Recommendations

- Strengthen its procedures to ensure that it tracks all milestones within mitigation plans to completion and require registered entities to submit quarterly updates on the status of completion.
- Strengthen its procedures to ensure it maintains adequate and accurate documentation of its mitigation plan review process.
- Review current procedures for reviewing and accepting mitigation plans and determine methods to shorten the processing period between the time the RE receives the proposed mitigation plan and the time acceptance or rejection occurs.

- Strengthen its procedures to ensure RE staff properly obtain, review, and document evidence to support a registered entity's completion of its mitigation plan.
- Review current procedures and resource levels for processing verification of certifications and determine methods to expedite the processing period between the time the RE receives the certification and when verification is completed.

2. Caseload Management Recommendations

- Perform an internal review of its enforcement process to determine areas of improvement to streamline or expedite the processing of open violations. Submit the results of the review to DA and provide any corrective actions resulting from the review.
- Strengthen policies and procedures to encourage registered entities to make evidence supporting mitigation plans, settlements, and other matters more readily available to the RE.
- Review its compliance workbook, as previously submitted to NERC, and determine if any information the RE is required to record for each violation is accurate. Provide any revisions to NERC.

3. TFE Acceptance Notification Recommendations

- Strengthen its internal processes, procedures, and controls to ensure that the RE properly and timely notifies NERC and registered entities when it accepts/rejects or approves/disapproves TFE requests.
- Submit any required TFE notices to NERC and registered entities.

4. Conflicts of Interest Recommendations

- Review its policies, procedures, and controls to evaluate "best practices" for protecting against enterprise-wide conflicts of interest.

- Strengthen its policies, procedures, and controls by creating written documents for ensuring no conflicts of interest exist when using contractors to perform CMEP activities.
- 5. Detecting and Reporting Possible Failures to Comply with NERC ROP and CMEP**
- Develop and implement policies and procedures specific to RE employees to assist them in detecting and properly reporting infractions of the separation required between the RE and RTO functions regarding CMEP activities and any inappropriate sharing of confidential information between the RE and registered entities.
 - Conduct training for RE employees to ensure that they are aware of their responsibilities for complying with the NERC ROP and the procedures to follow if a violation is detected and how to report it. Training should include procedures for employees to follow if any RE employee inappropriately shares, or is asked to share, confidential information with RTO employees or any owners, operators, or users of the BPS.

G. Compliance and Implementation of Recommendations

During the audit, the RE made these corrective actions relating to the following areas of noncompliance:

Caseload Management

At the April 2011 RE Board of Trustees meeting, the RE trustees approved a performance matrix designed to create incentives to improve the RE's productivity and efficiency and reduce backlogs in the CMEP processes. In particular, the performance matrix aims to reduce the average number of days the RE takes to notify the registered entity and NERC of issuances of initial notices of alleged violation (INAV), Notice of Confirmed Violation and Proposed Penalty or Sanction (NOCV), settlements, dismissals, administrative citations, and verifications of mitigation plans. The RE has budgeted for additional enforcement staff and \$300,000 of contractor resources for 2012. The RE is actively involved in NERC and FERC activities to streamline the current enforcement process.

TFE Acceptance Notifications

During the audit, the RE reviewed its procedures for processing TFE requests and performed these actions:

- Issued “catch-up” acceptance notices in December 2010 for the 113 TFE requests that had not been previously issued.
- Developed a written process manual for the CIP Compliance team to use for the TFE requests.
- Implemented a quarterly review of all notices required in the TFE process and completed its first quarterly review on April 8, 2011. The first review included all TFE requests to date.

Conflicts of Interest

During the audit, the RE reviewed its procedures for ensuring conflicts of interest do not exist, and it performed these actions:

- Beginning in 2010, the RE’s reliability compliance group implemented a method for securing all conflict of interest forms. Rather than signing conflict of interest attestations on an engagement basis, each contractor must now sign a new conflict of interest form that lists scheduled compliance audit activities for the upcoming calendar year.
- The RE’s Process Improvement staff is formally documenting more detailed conflict of interest policies and procedures that will be incorporated into the RE’s internal procedures and policy documents.

Further Actions

Audit staff further recommends that SPP:

- Submit its plans for implementing audit staff’s recommendations for audit staff’s review. SPP should provide its plan to audit staff within 30 days of the issuance of the final audit report in this docket.
- Submit quarterly reports to the Division of Audits describing the Company’s progress in completing each corrective action recommended in the final audit report in this docket. SPP should make its quarterly

filings no later than 30 days after the end of each calendar quarter, beginning with the first quarter after the final audit report in this docket is issued, and continuing until SPP completes all recommended corrective actions.

- Submit copies of any written policies and procedures developed in response to the recommendations in the final audit report. These policies and procedures should be submitted for audit staff's review in the first quarterly filing after SPP completes these items.

II. Introduction

A. Objectives

In its order approving DA's 2008 audit of SPP, Inc., the Commission directed OE staff to conduct a follow-up audit of RE in fiscal year 2011.²¹ The objectives of this audit were to determine SPP's compliance with (1) the SPP Bylaws,²² (2) the Delegation Agreement between NERC and SPP, Inc.²³ and the conditions included in the Delegation Order, (3) the SPP Membership Agreement,²⁴ and (4) other obligations and responsibilities as approved by the Commission. Also, this audit evaluated the RE's independence from SPP's function as a Regional Transmission Organization.²⁵ The audit covered January 1, 2009 to the present. SPP staff cooperated in responding to audit staff's data and interview requests.

B. Scope and Methodology

The procedures audit staff performed to evaluate the adequacy of SPP's separation of functions between its RTO and RE operations included these actions:

- To familiarize itself with SPP operations and identify significant developments and events that arose during the audit period, audit staff reviewed publicly available materials, the Commission's eLibrary for Company filings, Commission orders and formal complaints, the Enforcement Hotline for complaints made against the Company, local newspapers, and trade and academic press.
- Attended the RE Board of Trustees open meeting and the RE trustees closed meeting session on January 21, 2011. Attendance at this meeting allowed audit staff to speak with registered entities, RE trustees, and other RE staff.

²¹ Order Approving Audit Report in Docket No. PA08-2-000, at P 23.

²² *Southwest Power Pool*, 108 FERC ¶ 61,003 (2004), *North American Electric Reliability Council, et al.*, 119 FERC ¶ 61,060 (2007), *order on reh'g*, 120 FERC ¶ 61,260 (2007) (Delegation Order).

²³ *Id.*

²⁴ *Southwest Power Pool*, 108 FERC ¶ 61,003 (2004).

²⁵ *Southwest Power Pool, Inc.*, 126 FERC ¶ 61,045 (2009), at P 23.

- Reviewed the RE Stakeholders Satisfaction surveys that sought comment from more than 30 registered entities within the SPP operating footprint.
- Conducted a site visit to RE facilities from January 31 to February 4, 2011, during which we interviewed RE management and staff to understand their job functions. Those interviewed included the:
 - RE General Manager;
 - Manager of Finance and Process Improvement;
 - Executive Director for Compliance (RE);
 - Manager of Enforcement;
 - System Events and Reliability Assessments Lead Engineer;
 - Lead Compliance Specialist; and
 - Director, Critical Infrastructure Protection.
- Issued multiple data requests and reviewed more than 230 emails and other records to test SPP's compliance with Commission orders and statutes. Audit staff also conducted many phone conferences to clarify data responses and seek additional information.

Audit staff performed specific procedures to evaluate the RE's compliance program as it applied to Commission regulatory requirements, with emphasis on our audit focus areas. Audit staff:

- Documented the RE's culture of compliance, including its relevant manuals, policies, procedures, and functions.
- Interviewed employees, particularly those working in audit focus areas, to understand processes and procedures, and how the RE complies with Commission regulations.
- Tested aspects of the RE's compliance program and associated procedures, such as enforcement of training programs, to determine whether the program adequately demonstrated a compliance culture.

Audit staff also undertook specific steps in order to audit the following topics.

Accounting for shared costs

- Interviewed both RTO and RE employees, specifically those with shared services and governance responsibilities.
- Observed and tested processes and methods for recording and allocating shared costs between the RE and RTO, including calculations of direct and indirect rates applied to shared services.

Independence/ RE separation of function from undue Member Influence

- Reviewed SPP's Standards Development Process Manual.²⁶ The manual allows any entity with a "direct and material interest in the Bulk Power System" to request that a standard be developed, modified, or withdrawn and to participate on a standards drafting team, provide comments on proposed standards, and vote on a proposed standard. SPP, Inc.'s Markets and Operations Policy Committee will assign standards to an SPP Working Group or Task Force to serve as the Standards Development Team. The process also calls for advisory votes by the SPP, Inc. Board of Directors and Members Committee. Ultimate authority to submit a proposed standard to NERC for approval resides with the RE trustees.
- Reviewed SPP committee meeting minutes and identified participants and affiliations involved with standard development to ensure that all registered entities were aware of standards in development.
- Reviewed the process of the one standard being developed (Under-frequency Load Shedding, PRC-00X-SPP-01).
- Reviewed the process for monitoring conflicts of interest for contractors performing compliance and enforcement functions.
- Obtained and reviewed contracts between the RE and contractors used to perform compliance and enforcement functions.

²⁶ Southwest Power Pool Regional Entity Standards Development Process Manual, October 2, 2007.

- Obtained and verified the existence of conflict of interest statements.
- Interviewed the RE General Manager and RE staff to determine interaction of RE employees with registered entities in working groups, member meetings, and other forums.

Independence/RE separation of function from RTO

- Reviewed RE and RTO processes and procedures related to delegated statutory activities.
- Reviewed more than 230 emails to and from RE staff and RTO employees to test separation of RE and RTO functions and ensure that the RTO did not receive any confidential compliance or enforcement information.
- Reviewed related filings and Commission orders approving the SERC-SPP Agreement, where the SERC acts as the Compliance Enforcement Authority for registered entity functions SPP performed.
- Toured RE facilities to identify shared areas and ensure RTO employees remained separate from the RE.

Situational awareness and event analyses

- Sampled documentation of event analyses to review the RE's involvement.
- Reviewed procedures for participation in event analyses.

RE compliance with CMEP

- Reviewed processes for monitoring mitigation plans.
- Reviewed audit process procedures to ensure that RE staff has the ability to modify or change conclusions of compliance staff's audits of registered entities.
- Reviewed a sample of mitigation plans from registered entities to document the RE's oversight and monitoring.
- Reviewed a sample of self-certifications, self-reports, and mitigation plans.

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- Reviewed the process used for TFE requests and sampled the requests to determine compliance with NERC's ROP for processing TFEs.
- Reviewed staffing levels to determine if the RE has adequate resources to assess registered entities' compliance with NERC reliability standards.

III. Findings and Recommendations

1. Processing Mitigation Plans

During the audit period, the RE processes and procedures for processing mitigation plans contained weaknesses. These weaknesses combined with the initial resource shortfalls as the RE was getting to full staffing levels led to:

- A failure to monitor and verify the completion of mitigation plan milestones;
- Poor recordkeeping for mitigation plan documentation;
- Delays in RE acceptance of proposed mitigation plans; and
- Delays in RE verification of completed mitigation plans.

These areas raise concerns to audit staff about the RE's enforcement program during the audit period and that these weaknesses could jeopardize the RE's ability to ensure registered entities correct violations. As a result, reliability could be compromised.

Pertinent Guidance

In its June 17, 2007 Order clarifying NERC procedures on mitigation plans, the Commission noted that “where a user, owner or operator of the Bulk-Power System is found by NERC to be in noncompliance with a Reliability Standard, NERC’s Rules of Procedure require that entity to submit to NERC for approval a mitigation plan with a timeline addressing how the noncompliance will be corrected.”²⁷

In its July 3, 2008 Guidance Order on Reliability Notices of Penalty, the Commission stated that the REs and NERC have responsibility for reviewing proposed mitigation plans to ensure that they will bring a registered entity back into compliance within a reasonable time. “The Commission believes that it is important for Regional Entities to document how they verify a registered entity’s certification that it has timely completed a mitigation plan and thereby attained compliance with the applicable Reliability Standard requirements. In future

²⁷ *North American Electric Reliability Corp.*, 119 FERC ¶ 61,274 at P 5 (2007).

filings, we expect Regional Entities to provide specific information on how they verified that registered entities completed on time mitigation plans to bring themselves into compliance.”²⁸

CMEP, Section 6.5 states that “Unless extended by the Compliance Enforcement Authority, it will complete its review of the Mitigation Plan, and will issue a written statement accepting or rejecting the Mitigation Plan, within thirty (30) days of receipt; otherwise the Mitigation Plan will be deemed accepted.”

CMEP, Section 6.6 states that the “Registered Entity shall provide updates at least quarterly to the Compliance Enforcement Authority on the progress of the mitigation plan” and that the “Compliance Enforcement Authority will track the Mitigation Plan to completion...” After a registered entity provides a certification of completion of its mitigation plan, the “Compliance Enforcement Authority shall request such data or information and conduct follow-up assessments, on-site or other Spot Checking, or Compliance Audits as it deems necessary to verify that all required actions in the Mitigation Plan have been completed and the Registered Entity is in compliance with the subject Reliability Standard.”

CMEP, Section 6.7 states that the Compliance Enforcement Authority will maintain a record containing the following information for each mitigation plan, including:

- Name of the Registered Entity.
- Date of the violation.
- Monitoring method by which the violation was detected.
- Date of notification of violation and sanction.
- Expected and Actual completion date of the Mitigation Plan and major milestones.
- Expected and actual completion date for each required action.
- Accepted changes to milestones, completion dates, or scope of Mitigation Plan.
- Registered Entity’s completion notice and data submitted as evidence of completion.

²⁸ *Guidance on Filing Reliability Notices of Penalty*, 124 FERC ¶ 61,015 at P 37 (2008).

Background

NERC requires registered entities found to be in noncompliance with a NERC reliability standard to file with the RE a: (1) proposed mitigation plan to correct the violation, or (2) a description of how the violation has been mitigated, and any requests for extensions of mitigation plans or a report of completed mitigation.²⁹ A mitigation plan provides specific actions or tasks that a registered entity proposes to implement to correct a violation. As such, it is favorable to the reliability of the BPS that registered entities act quickly to implement mitigation measures and comply with NERC reliability standards. The RE is responsible for reviewing and accepting proposed mitigation plans, as well as monitoring and, eventually, verifying their completion. Similar to registered entities, the BPS benefits when an RE acts promptly to ensure registered entities implement mitigation measures to comply with required NERC reliability standards.

Audit staff reviewed and tested the RE's processes, procedures, and controls for its compliance enforcement program.³⁰ This review tested the RE's compliance with the processes outlined in the CMEP for the mitigation of violations. Audit staff analyzed data for violations in open status during the audit period.³¹ Audit staff also sampled documentation for 37 mitigation plans submitted during the audit period (an 8.8 percent share of plans submitted for violations in open status during the audit period). Discovery of violations leading to mitigation plans, resulted from self-reports, self-certifications, compliance audits, and periodic data submittals, and included violations of Order No. 693 reliability standards and CIP reliability standards.

Audit staff reviewed mitigation plans and identified the registered entities' violations, proposed mitigation measures, and milestones for correcting violations.

²⁹ NERC requirements state that mitigation plans may be submitted at any time but a registered entity must submit a mitigation plan within 30 days after being served with a Notice of Alleged Violation, Penalty, or Sanction (NAVPS).

³⁰ Audit staff recognized that some open violations were initiated prior to the audit period. However, during the audit, audit staff included in its review violations initiated prior to the audit period because these violations were open or processed during the audit period.

³¹ Audit staff defines an open violation as a violation which has not yet been sent to NERC for final disposition.

Further, audit staff reviewed the RE's recordkeeping used to document the implementation of a mitigation plan from submittal through completion. Audit staff's review and analysis was performed to determine whether the RE properly reviewed, accepted, monitored, and obtained evidence to ensure registered entities took the necessary measures to mitigate their violations.

Audit staff determined that weaknesses existed in the processes by which the RE dealt with mitigation plans during the audit period. The audit team did not discover any adverse material impact on the reliability of the BPS arising from the weaknesses identified in the four areas described below. However, if not improved, audit staff believes that these practices raise concerns about the RE's enforcement program going forward.

1. Failure by the RE to Monitor and Verify Completion of Mitigation Plan Milestones

An RE-approved mitigation plan requires registered entities to detail the mitigation plan with specific actions or tasks to correct a violation, as well as a timetable for completion that outlines milestone activities and completion dates.

As part of the review, audit staff sampled documentation for 37 mitigation plans to determine whether the registered entities identified milestone activities and completion dates. Based on mitigation plan documentation, audit staff could not determine when registered entities completed certain milestones and whether the RE monitored and ensured their completion.

When audit staff asked about the RE's processes and controls related to the monitoring and completion of milestones, the RE stated that its case managers do not verify milestone completion. Further, the RE stated that it does not mandate registered entities to submit quarterly status reports, as NERC requires.³² The RE relies on its Compliance Data Management System (CDMS), or Web CDMS, to track mitigation milestones and completions. Web CDMS automatically sends emails to registered entities when milestones are coming due, past due, completed, or are verified complete. However, before fall 2010, Web CDMS had no tracking capability for milestones. The RE stated that it was unable to implement a consistent process for tracking milestones before fall 2010 due to the unanticipated number of incoming violations.

³² CMEP, Section 6.6.

Audit staff is concerned about the RE's failure to track and monitor completion of milestones. Mitigation plans are assembled to achieve timely compliance with reliability standards that have been violated. Details of the mitigation plans, which include milestones, provide a timetable for the registered entity to comply and ensure that the mitigation plan is completed without delay. Monitoring and verification of milestone completion is necessary to determine whether a registered entity has failed or will likely fail to meet implementation deadlines. Failure by registered entities to meet milestones will result in longer periods of noncompliance with NERC reliability standards.

2. Poor Recordkeeping for Mitigation Plan Documentation

Audit staff found that the RE failed to adequately document how it tracked the registered entities' mitigation plans to completion. Audit staff identified gaps in mitigation plan records that made it difficult or impossible to determine whether the RE routinely sufficiently reviewed, approved, and verified mitigation plans. These gaps included:

- Limited descriptions of the RE's review process for verifying completion;
- No lists of evidence obtained in the documentation record for mitigated measures performed;
- Records indicating that no evidence was provided to support the completion of a mitigation plan, although the RE still verified the plan as complete;
- Missing dates for administrative and corrective action milestones;
- Incorrect dates for acceptance of mitigation plans within CDMS; and
- Failure to identify RE personnel who reviewed evidence to verify mitigation plan completion.

Of 37 mitigation plans in audit staff's sample, audit staff found no gaps in documentation in only five. Therefore, audit staff was often unable to determine whether the RE properly reviewed milestones and evidence as CMEP procedures required. To complete its testing, audit staff could not rely upon the documentation evidence but needed to issue follow-up data requests about specific mitigation plans, collect and review additional supplemental evidence, and speak with RE management. By this process, the audit team was able to piece together a sufficient explanation or support for the gaps identified in the RE documentation.

Adequate recordkeeping is necessary for the RE to process violations sent to NERC and the Commission efficiently and successfully. The audit team

believes that its sample indicated that the RE must make efforts to improve its recordkeeping quality.

3. Delays in RE Acceptance/Rejection of Proposed Mitigation Plans

During the audit period, the RE's review and acceptance of 71 mitigation plans exceeded the allowable 30 day review period required by NERC. The RE is responsible for reviewing the mitigation plan and ensuring that the registered entity has proposed remedial actions that correct the violation. If accepted, the RE notifies NERC of acceptance and seeks NERC approval. The RE may reject a mitigation plan if it is incomplete or proposed mitigation measures do not address the violation of the NERC reliability standard. Ultimately, the registered entity is responsible for revising its mitigation plan and achieving RE acceptance.

As of May 31, 2011, the RE completed its initial review and accepted 71 mitigation plans at least 30 days after registered entities submitted their plans. The 71 mitigation plans account for about 16.9 percent of the total submitted for violations in open status between January 1, 2009 and May 31, 2011.

Figure 3 below details the 71 mitigations plans audit staff identified for which the RE had not completed its review to either accept or reject the plan within the required 30 days of submittal. The RE submitted this data to NERC in its May 31, 2011 Compliance Workbook. The Compliance Workbook is the RE's tool for maintaining records which are used by NERC to ensure compliance with the FERC-approved CMEP process.

Figure 3-Mitigation Plan Aging Table for Acceptance based on the RE May 31, 2011 Compliance Workbook Submitted to NERC

Year*	>300 Days	201-300 Days	101-200 Days	31-100 Days	Total
2008	0	0	31	4	35
2009	3	1	0	7	11
2010	0	1	1	19	21
2011	0	0	0	4	4
Total	3	2	32	34	71

*Year Mitigation Plan was submitted

The NERC CMEP requires the RE to complete its review of mitigation plans within 30 of receipt; otherwise, the mitigation plan will be deemed accepted by the RE. The RE stated that during 2010 it implemented new procedures to review and accept mitigation plans within the 30 day allowable period. These procedures helped to reduce the average processing period for reviewing and accepting mitigation plans. Audit staff calculated that, throughout the audit period, the RE's average processing time for review and acceptance of a mitigation plan was 28 days. However, audit staff identified mitigation plans with excessive gaps between their submittal dates and when the RE accepted or rejected them. The RE stated that delays in processing its initial review of mitigation plans often occur due to unanticipated increases in the RE's caseload.

Audit staff believes that it is beneficial for the RE to be more aggressively involved in the initial review of mitigation plans. Review and acceptance of mitigation plans within as compressed a timeframe as possible allows registered entities to make any necessary revisions to their plans in a timely manner and begin implementation. If an RE imposes an excessive time lapse before reviewing a proposed mitigation plan, there is a potential risk that effective mitigation may not occur in a timely manner. For example, the entity may embark on a mitigation plan that inadequately mitigates a violation thereby posing unnecessary risk on the BPS.

4. Delays in RE Verification of Completed Mitigation Plans.

The RE has internal procedures and guidelines to ensure that a timely verification of mitigation plan completion occurs. According to the RE's internal policies, the RE will verify the completion of a mitigation plan within 30 days of receipt.³³ Audit staff identified 138 mitigations plans for violations in open status during the audit period where the RE took longer than 30 days to verify the completion of the mitigation plan.

Figure 4 below details the 138 mitigations plans for which the RE had not verified mitigation plan completion within 30 days of receipt. The RE submitted this data to NERC in its Compliance Workbook.

³³ RE CMEP Mitigation Plan Review, Monitoring, and Verification Process Procedures. Effective date: July 30, 2009.

**Figure 4-Mitigation Plan Aging Table for Verification based on the RE
May 31, 2011 Compliance Workbook Submitted to NERC**

Year*	> 300 Days	201-300 Days	101-200 Days	31-100 Days	Total
2008	0	6	2	1	9
2009	4	3	9	9	25
2010	0	4	17	55	76
2011	0	0	5	23	28
Totals	4	13	33	88	138

*Year Mitigation Plan completion was verified.

For 50 of the 138 mitigation plans, the RE's verification of completeness exceeded 100 days from the submittal of the registered entity's certification of completion. Further, audit staff identified seven mitigations plans, for violations that were in open status during the audit period, which the RE had failed to verify over two years after the registered entities certified completion of the mitigation plans.³⁴ The RE stated that delays in verifying completion of mitigation plans often occur due to its inability to obtain supporting evidence from registered entities.

In addition to the RE's initial review of mitigation plans, audit staff believes that it is beneficial for the RE to verify completion of mitigation plans more aggressively. While audit staff notes that registered entities in the RE's region have a strong reputation for submitting sufficient mitigation plans for violations, audit staff believes that it is important for the RE to verify the completeness of

³⁴ According to the May 31, 2011 Compliance Workbook, these seven mitigation plans were submitted in 2007 and 2008 by two different registered entities, certified as complete, but not verified as complete by the RE. Six of the mitigation plans involved confirmed violations of requirements with a medium violation risk factor. In its initial review, the RE subjectively determined that one of the confirmed violations had a potential moderate impact the BPS while the other five confirmed violations had a minimum potential impact on the BPS. The remaining mitigation plan involved a possible violation of a low risk requirement that was later determined to not be a violation.

mitigation plans in a timely manner after certification.³⁵ If an RE does not verify completion in a timely manner, there is potential risk that the registered entity may not have performed measures necessary to mitigate risk to the BPS caused by the violation or possible future violations. While there is no CMEP requirement for the RE to certify the completion of mitigation plans within a particular timeframe, a timely review is beneficial to the reliability of the BPS.

Recommendations

We recommend the RE:

1. Strengthen its procedures to ensure that it tracks all milestones within mitigation plans to completion and require registered entities to submit quarterly updates on the status of completion.
2. Strengthen its procedures to ensure it maintains adequate and accurate documentation of its mitigation plan review process.
3. Review current procedures for reviewing and accepting mitigation plans and determine methods to shorten the processing period between the time the RE receives the proposed mitigation plan and the time acceptance or rejection occurs.
4. Strengthen its procedures to ensure RE staff properly obtain, review, and document evidence to support a registered entity's completion of its mitigation plan.
5. Review current procedures and resource adequacy for processing verification of certifications and determine methods to expedite the processing period between the time the RE receives the certification and when verification is completed.

³⁵ Audit staff notes that only approximately 4.6 percent of mitigation plans required revisions during the audit period.

2. RE Management of Caseload

As of May 31, 2011, the RE had a backlog of 308 open violations that NERC had not received for final disposition within the RE's caseload. Audit staff determined that a large backlog within the RE caseload could potentially inhibit the RE from properly monitoring and enforcing an entity's compliance with the NERC reliability standards, which could impact BPS reliability.

Pertinent Guidance

In its October 26, 2009 Order providing Further Guidance on Filing of Reliability Notices of Penalty, the Commission stated:

We recognize that NERC and the Regional Entities faced many challenges during the first few years of mandatory Reliability Standards, including the timely review of potential violations. We appreciate the work NERC and the Regional Entities did to reduce the current backlog of penalties and will rule on the omnibus filing in that proceeding. We also recognize that NERC, the Regional Entities, and the industry are working together to develop a plan to ensure that such a backlog does not occur in the future. While there will always be some accumulation of alleged violations that are outstanding, the Commission agrees with NERC and the industry that an excessive backlog may undermine the statutory goals of FPA section 215.³⁶

Background

Since mid-2010, NERC and the Regional Entities have been monitoring and actively seeking ways to reduce the enforcement caseload. The RE provided audit staff its caseload for all open violations during the audit period. The purpose of audit staff's review of the RE caseload was to assess how the RE processes violations. Further, audit staff evaluated whether the RE's process efficiently and effectively monitors and enforces a registered entity's compliance with the required NERC reliability standards.

³⁶ *North American Electric Reliability Corp.*, 129 FERC ¶ 61,069 (2009).

The RE Enforcement group is responsible for reviewing the Compliance group's findings of noncompliance, notifying registered entities and NERC of possible violations, reviewing and verifying the registered entities' mitigation plans, determining proposed monetary penalties and nonmonetary sanctions, and participating in settlement negotiations. After the Enforcement group issues an initial notice of alleged violation (INAV), the INAV becomes an open violation within the Enforcement group's queue. The enforcement process begins and will remain open until the RE settles with the registered entity, completes the penalty, or dismisses the violation.

As of May 31, 2011, the RE caseload contained 308 open violations, involving 18 registered entities, that have not been sent to NERC for final disposition.³⁷ The statuses of the open violations are in various stages. They include: (1) under RE review and investigation (164 violations), (2) processing for settlement (140 violations), or (3) under the administrative citation process (4 violations). Regardless of the stage of the violation, it is imperative the RE endeavors to quickly process violations with the goals of mitigation and compliance with NERC reliability standards. Delays in enforcement that cause backlogs or increases in processing periods for open violations hinder the RE's ability to ensure that registered entities comply with NERC reliability standards.

During the audit period, the RE underwent efforts to reduce its backlog of open violations occurring both before and during the audit. Specifically, during the fourth quarter of 2009, the RE reorganized to form its Enforcement group and began increasing staffing to reduce the backlog of violations (Refer to the RE Organization Chart on page 6). In 2010, the Enforcement group grew from an average of 2.7 full-time equivalents (FTEs) to 6.9 FTEs. Also, in 2011, enforcement began using consultants to help verify the completion of registered entity mitigation plans. When reviewing RE processes, audit staff took into consideration the extensive organizational changes occurring during 2009 and

³⁷ Audit staff defines the RE caseload in this finding to include open violations that have not been sent to NERC for approval. These open violations may consist of: (1) current Initial Notices of Alleged Violations (INAV); (2) violations that are not in settlement and for which a Notice of Confirmed Violation (NOCV) has not been sent to NERC; (3) violations that may be in the settlement process but have not been submitted to NERC; (4) violations that may be in the Administrative Citation process but have not been sent to NERC; and (5) any violation that otherwise is in an open status for which the RE has not requested final disposition from NERC.

2010 that increased the RE's staffing and ability to process violations more effectively and efficiently.

However, the backlog is substantial. Backlogs were ongoing throughout the entire audit period. Besides past violations, numerous new violations (including many violations to the newly enforceable CIP standards) have caused the backlog to continue to grow. The RE stated that it experienced an unanticipated 42.4 percent increase in the number of new violations: from 56 in 2008 to 132 in 2009. The RE increased the number of violations it delivered to NERC for final disposition from 18 in 2009 to 92 in 2010. However, because the number of violations recorded in 2010 increased from 2009, from 132 to 254, the RE's effort and productivity gains in 2010 failed to trim the backlog. In addition to an increase in recorded violations, the RE stated that delays in processing violations may occur as result of the RE's ability to obtain evidence from registered entities in a timely manner.

While audit staff believes the RE is committed to compliance and enforcement efforts, audit staff is concerned about the extended time period that violations remain open. Audit staff's review of backlogged open violations found that the RE has not received mitigation plan submittals for 82 of the 308 violations that remain under RE review. While NERC does not require mitigation plans for these violations until the RE issues Notice of Alleged Violation (NAVPS), unmitigated violations may impact BPS reliability.

Further, audit staff identified the following violations in the RE Compliance Workbook that are in various stages of enforcement with prolonged processing times. Specifically, audit staff identified:

- A total of 105 open violations with no NAVPS or settlement for more than 100 days. At this stage, 37 violations have gone unresolved for more than 300 days.
- A total of 122 open violations are in settlement talks, without settlement agreements approved as yet by NERC, these violations have been pending for more than 100 days. Seventy of these violations have been open for more than 300 days from the date settlement was requested.
- A total of 13 violations have been open for an average of 248 days between the INAV and NAVPS, with three violations having a processing time of 407 days.

The Commission has repeatedly stated its concern about the processing time for alleged violations. The Commission has expressed concern that the RE may not be able to adequately perform its compliance and enforcement duties fully and in a timely manner. Due to this problem, audit staff is concerned that the RE's enforcement processes may not be operating efficiently enough to reduce the number of alleged violations under active consideration, especially those that are more than six months old.

Recommendations

We recommend the RE:

6. Perform an internal review of its enforcement process to determine areas of improvement to streamline or expedite the processing of open violations. For example, processes may incorporate the use of the administrative citation process for low risk violations. The RE should submit the results of the review to DA and provide any corrective actions resulting from the review.
7. Strengthen policies and procedures to encourage registered entities to make evidence supporting mitigation plans, settlements, and other matters more readily available to the RE to expedite the review and investigation process.
8. Review its compliance workbook, as previously submitted to NERC, and determine if any information the RE is required to record for each violation is accurate. Provide any revisions to NERC.

Corrective Actions

During the audit period, the RE trustees, at their April 2011 Board meeting, approved their performance matrix to reduce the backlog of enforcement cases. The performance matrix aims to trim the average number of days the RE takes to notify the registered entity and NERC of enforcement actions for INAV, NOCV, settlements, dismissals, administrative citations, and verification of mitigation plans. The RE has budgeted for an additional enforcement staff and \$300,000 of contractor resources for 2012. The RE is actively involved in NERC and FERC activities to streamline the current enforcement process.

3. Notification of Accepted Technical Feasibility Exceptions

The RE did not properly notify NERC and the registered entity when the RE accepted Part A of a technical feasibility exception (TFE) request. This improper notification led to NERC not receiving timely acceptance notices for 96 TFE Part A requests. Since the RE timely processed Part B of the TFE requests, this mitigated the risks of adverse impacts on reliability and possible registered entity noncompliance compliance with NERC reliability standards.

Pertinent Guidance

Section 5.1.3 of Appendix 4D to the NERC ROP states that “The Regional Entity will typically complete its initial screening within sixty (60) calendar days after receiving the TFE request,” unless the Regional Entity establishes an alternative time period objective and work plan for completing initial screenings and substantive reviews of TFE requests. Further, Section 5.1.4 of Appendix 4D states that “If, based on its initial screening, the Regional Entity determines the TFE Request is for an Applicable Requirement and contains all Part A Required Information, and that the Part A Required Information provided by the Responsible Entity indicates the TFE Request satisfies the criteria for approval of a TFE, the Regional Entity shall send a notice to the Responsible Entity, with a copy to NERC, accepting the TFE Request as complete.”

Background

Several NERC Critical Infrastructure Protection reliability standards permit case-specific TFEs from compliance when (1) long-life equipment is in place that is not readily compatible with a modern environment where cyber security issues are a concern and (2) an alternative course of action would protect the reliability of the BPS to an equal or greater degree than compliance.³⁸ To obtain a TFE, a registered entity must submit an application to the RE. A TFE request has two major parts: (1) Part A Review for Acceptance and (2) Part B Review for Approval. The registered entity seeking the TFE and NERC must receive notice of any acceptances or rejections for Part-A or approvals or disapprovals for Part B.

³⁸ *North American Electric Reliability Corp.*, 130 FERC ¶ 61,050 at P 3-5 (2010).

Audit staff reviewed the RE's process for managing TFE requests by registered entities. Part of audit staff's review included sampling TFE requests and determining whether the RE complied with the requirements in Section 5.1.3 of Appendix 4D. Based on the sample of TFE requests, audit staff determined that the RE did not issue acceptance notices to some registered entities for Part A of the TFE. As a result of the audit, the RE reviewed its TFE records and found that it had not properly notified NERC or formally notified registered entities. During the audit period, 369 notices of acceptance should have been issued. Of the 369 notices, the RE did not properly issue 113.

Audit staff's review of TFE requests also included a review of the processes used for completing Part B of the TFE requests. Audit staff noted that the RE completed a substantial amount of review and testing to determine whether to approve a registered entity's request and conducted these reviews in a timely manner. The expeditious processing of the Part B portion of the TFE requests mitigated the risks of adverse impact arising from the failures to notify entities under Part A.

While the RE did not send formal acceptance notices to some registered entities, the RE stated that in all cases the registered entities had access to the acceptance dates. The RE uses web CDMS (RE Compliance Data Management System) to process TFE requests. When a registered entity submits a TFE through web CDMS, RE staff reviews the request and accepts or rejects it within web CDMS. The acceptance date for Part A of a TFE is available to the registered entities within web CDMS. Therefore, registered entities had access and knowledge of when and if the RE accepted its TFE. After the audit disclosed this notification error, the RE provided notices to the registered entities and NERC on any remaining TFE Part A acceptances.

Recommendations

We recommend the RE:

9. Strengthen its internal processes, procedures, and controls to ensure that the RE properly and timely notifies NERC and registered entities when it accepts/rejects or approves/disapproves TFE requests.
10. Submit any required TFE notices to NERC and registered entities.

Corrective Actions

The RE made these corrective actions as a result of this audit:

- Issued “catch-up” acceptance notices in December 2010 for 113 TFE requests not been previously issued.
- Developed a written process manual for the CIP Compliance team to use for TFE requests.
- Implemented a quarterly review of all notices required in the TFE process, and completed its first quarterly review on April 8, 2011. The review included all TFE requests to date.

4. Procedures to Prevent Conflicts of Interest with Contractors

The RE lacked enterprise-wide policies and procedures to prevent conflicts of interest when hiring and using contractors to perform CMEP activities. As a result, the RE did not have standardized procedures in place to address conflict of interest concerns nor did it maintain records to provide evidence that contractors were screened for conflict of interest compliance on 22 separate compliance audits in 2009.

Pertinent Guidance

The NERC Rules of Procedure, Section 403.7.1, states that “The Regional Entity shall have procedures defining the allowable involvement of industry experts and regional entity members.” It further states that these procedures “shall address applicable antitrust laws and conflicts of interest.”

Background

The RE uses contractors to supplement its full-time staff in performing CMEP functions that include: (1) compliance activities related to Order No. 693 reliability standards, (2) compliance activities related to Critical Infrastructure Protection (CIP) standards, and (3) enforcement activities for both standards. In the performance of Order No. 693 compliance activities, contractors assume varied roles as team members based on individual skills and specialty, tailored to fit the team’s specific needs. Contractors assist CIP compliance teams in support of CIP compliance activities, including: audits, spot checks, and approval and verification of TFE requests. The Enforcement group uses contractors to help verify completed mitigation plans for both the Order No. 693 and CIP standards. All contractors that the RE used are seasoned industry and/or subject-matter experts in areas related to NERC reliability standards. The RE uses contractors to support RE functions by supplementing the expertise of RE staff, allowing the RE to effectively conduct its compliance and enforcement functions. However, RE policies and procedures are designed to prohibit contractors from leading compliance determinations during audits, spot checks, or investigations. Moreover, the policies and procedures do not allow the RE to contract with industry experts who are employees of registered entities within the RE operating footprint.

When the RE uses contractors, it is imperative that those who support RE functions be free from any and all conflicts of interest — reasonably perceived as well as actual. NERC ROP require that all team members be free from conflicts of

interest. Registered entities are allowed by the NERC ROP to object to team members under their purview if they have a reasonable basis to believe that a team member could not be impartial in the performance of his or her duties. As an example, it states that, “Employees or contractors of the registered entity being audited shall not be allowed to participate as auditors in the compliance audit of the registered entity.”³⁹ RE practices and procedures further specify that former employees or contractors of the registered entity being audited shall not be allowed to participate as auditors in the registered entity’s compliance audit if they have been employed within six months of the start of the audit.

The RE Organization Chart (Figure 1) depicts contractors as being functionally accountable to either of two managers: the Executive Director for Compliance and the Manager of Enforcement. However, operationally, when selecting contractors to be used in CMEP activities, the selection and oversight of contractors has been sliced three ways. The Manager of Enforcement has maintained autonomy in the criteria for selecting consultants in the enforcement space. However, on the compliance side, the Director, Critical Infrastructure Protection (CIP), has developed selection criteria independent from those employed when the Executive Director of Compliance retains consultants to assist with determining compliance to non-CIP mandatory reliability standards. Thus, in practice, these three CMEP areas have operated inconsistently in the criteria by which they assessed conflicts of interest in the use of consultants and in the specific policies and procedures they have implemented, used, and enforced.

Inconsistent and Unstructured Policies and Procedures

Audit staff determined that the RE had inconsistent and unstructured policies and procedures for addressing potential conflicts of interest with contractors performing CMEP activities. Each of the three RE functional groups that hires contractors follows different, and at times divergent, procedures to prevent such conflicts. While it may be necessary to implement policies or procedures that vary in certain aspects if circumstances warrant, the audit team did not discern that such considerations formed the basis for the divergences in approaches. Rather, audit staff concluded that the divergences resulted from a lack of focus to the issue on an enterprise-wide basis. The lack of focus was demonstrated by the fact that the RE had no formal or written policies or procedures on addressing conflict of interest in the hiring of consultants for CMEP activities.

³⁹ CMEP, Section 3.1.5 “Conduct of Compliance Audits.” Pg. 11.

Audit staff is also concerned that the significant reliance that the RE places on the use of contractors for CMEP activities may come at the expense of adequate screening for conflicts of interests. The RE's focus when hiring contractors is securing the necessary subject matter expertise to carry out CMEP activities. Therefore screening may be viewed as limiting the available pool of contractors and thus receive less attention than is warranted. However, Audit staff believes that the RE should place a higher priority on ensuring that conflicts of interest – real or a reasonable perception – do not exist with any compliance or enforcement activity. By so doing, the integrity of, and confidence in, RE CMEP activities will be uncompromised.

Audit staff believes that the RE should evaluate its policies and procedures, and adopt new, substantive practices enterprise-wide to address conflicts of interest. Doing so would spread the RE awareness of, and sensitivity to, this issue. Internally, such policies would encourage consistent enforcement of procedures needed to prevent conflicts of interest. Externally, it would enhance the confidence of the registered entities in the integrity and impartiality of RE CMEP activities. Audit staff identified best practices being used by the three functions of the RE. If the RE evaluates the varying practices and determines to adopt these practices as a whole, audit staff believes the RE policies and procedures would improve. These practices would:

1. Consider requiring each potential consultant/contractor firm seeking RE business to complete a conflict of interest survey for all registered entities within the region (and their affiliates in other regions). Based on these surveys, the RE would consider contractor conflicts of interest at the firm level, rather than the absence of any potential conflict of interest at an individual contractor level.
2. Consider inclusion of on-going solicitation for reliability compliance services, whether successful or not, within the RE operating footprint as a criteria upon which to assert conflict of interest.
3. Consider inclusion of a clause in any RE contractor retention agreement that would preclude solicitation or engagement in reliability compliance services with registered entities within the RE operating footprint during the term of the contract, and for a specified period once the contract concludes.

Missing Documentation of RE Assessment of Conflicts of Interest

The RE was unable to provide evidence that the contractors used on 22 compliance audits were free from conflicts of interest. During 2009, the RE did not obtain signed conflict of interest forms from contractors that supported Order No. 693 audits performed “off-site.”⁴⁰ The RE stated that the Compliance group, which performed the Order No. 693 audits during 2009, only required that each consultant sign conflict of interest forms on an ad hoc basis. Audit staff testing revealed that in 2009 the RE did not have contractors sign such forms during any off-site work. Based on discussions with the RE, there was an administrative oversight on the part of the audit team leader and the RE Compliance group management.

Audit staff’s sampling did not identify specific conflicts of interest for contractors the RE used, nor did audit staff find evidence indicating that any contractors directly compromised the integrity of such activities. However, audit staff has concerns about the RE’s policies and procedures that, if not addressed, could erode confidence in its compliance and enforcement activities and may fail to adequately address conflict of interest concerns.

Recommendations

We recommend the RE:

11. Review its policies, procedures, and controls to evaluate “best practices” for protecting against enterprise-wide conflicts of interest.
12. Strengthen its policies, procedures, and controls by creating written documents for ensuring no conflicts of interest exist when using contractors to perform compliance and enforcement activities.

Corrective Actions Taken

- The RE’s reliability compliance group implemented a method for securing all conflict of interest forms. Rather than signing conflict of interest attestations on an engagement basis, each consultant must now

⁴⁰ “Off-site” audits are performed without a site visit to a registered entity’s facilities.

sign a new conflict of interest form that lists scheduled compliance audit activities for the upcoming calendar year.

- The RE's Process Improvement staff is formally documenting more detailed conflict of interest policies and procedures that will be incorporated into the organization's internal procedures and policy documents.

5. Detecting and Reporting the Possible Failures to Comply with the NERC Rules of Procedure (ROP) and CMEP

The RE does not have formal processes or procedures, nor does it provide training for employees, in the area of detection and reporting infractions of the separation required between the RE and RTO functions regarding CMEP activities, nor the inappropriate sharing of confidential information between the RE and other registered entities.

Pertinent Guidance

The NERC Rules of Procedure (ROP), Section 403.1, Independence, states that:

Each regional entity's governance of its compliance enforcement program shall exhibit independence, meaning the compliance enforcement program shall be organized so that its compliance monitoring and enforcement activities are carried out separately from other activities of the regional entity. The program shall not be unduly influenced by the bulk power system owners, operators, and users being monitored or other regional entity activities that are required to meet the reliability standards.

The NERC Rules of Procedure, Section 402, NERC Oversight of the Regional Entity Compliance Enforcement Programs, states that:

To maintain the integrity of the NERC Compliance Monitoring and Enforcement Program, NERC and regional entity staff, audit team members, and committee members shall maintain the confidentiality of information shared during investigations, audits, drafting of reports, appeals, and closed meetings.

[I]n the event that a staff, committee, or audit team member violates any of the confidentiality rules set forth above, the staff, committee, or audit team member and any member organization with which the individual is associated may be subject to appropriate action by the regional entity or NERC, including prohibiting participation in future compliance enforcement activities.

Background

During the 2008 Commission Audit, audit staff determined that SPP, Inc. did not have a “strong” separation between its RTO and RE functions as required by Commission orders.⁴¹ The RE heavily relied on the RTO for staffing and performance of delegated duties. This reliance impacted the independence of RE operations, the responsibilities of the RE trustees, and the RE’s ability to comply with CMEP activities.

Based on audit staff recommendations, SPP, Inc. made significant changes to ensure that the RE was independent and adequately separated from the RTO. Specifically, the RE:

- Rapidly increased its staffing,
- Lessened its reliance on the RTO,
- Eliminated all reporting relationships between RE and RTO employees,
- Limited interactions between RE and RTO employees,
- Developed and implemented new RE policies and procedures relating to RE management and RE trustee authority and responsibilities, and
- Developed and implemented processes and procedures to ensure compliance with CMEP activities.

Audit staff reviewed and tested the RE’s implementation of the new processes and procedures. The purpose of the review was to determine whether these new RE actions alleviated Commission concerns regarding the RE’s independence from the RTO, as well as the RE’s independence from bulk-power system (BPS) owners, operators, and users. To conduct this review, audit staff interviewed RE employees, conducted on-site observations, and collected copies of processes and procedures used by the RE for: operations and delegated responsibilities, staffing, training and communication, infraction-reporting procedures, and disciplinary policies.

⁴¹ *Order Approving Audit Report, Determining Issue of Separation of Functions, and Directing Compliance and Other Corrective Actions*, 126 FERC 61,045 at P 23 (2009), (2008 Commission Audit).

Audit staff believes that the RE has made tremendous strides in gaining the strong separation desired by the Commission. However, there are areas in which improvements can still be made. In particular, audit staff determined that the RE's current policies, procedures, and training do not contain measures to adequately ensure RE employees report any failure to comply with NERC ROP concerning independence from the RTO and protection from the public disclosure of non-public documents and confidential information. Specifically, audit staff's concern relates to the RE and the ability of its employees to know and understand their responsibilities to detect and report instances of noncompliance identified within RE operations. Audit staff concluded that the RE does not have formal processes nor provide training for employees in the area of detection and reporting of noncompliance issues specific to the RE's performance of its CMEP activities.

When asked to provide information on its policies for detection and reporting of noncompliance issues, the RE provided copies of SPP, Inc. policies, procedures, and training relating to detection and reporting of ethical complaints and Standards of Conduct violations. Included in these procedures was the SPP, Inc. reporting channels available to all SPP, Inc. employees. SPP, Inc. employees may report complaints or violations to supervisors, managers, Human Resource department, Internal Audits department, or the vendor hotline. All of these channels are applicable to the RTO but may pose difficulties in regard to the RE staff if strong separation is to be maintained by the RE. For example, the ability of the SPP's Internal Audits department to conduct compliance audits or other investigations of noncompliance of the RE's CMEP activities would appear to violate the RE's independence. Therefore, this channel would be inappropriate for reporting such noncompliance issues.

Audit staff noted that the other available reporting channels did not include any reference to RE-specific channels (i.e., RE management, RE trustees, or NERC representatives). Additionally, the SPP, Inc. procedures and training materials reviewed did not include instructions for violations or noncompliance that were specific to the NERC ROP applicable performance guidance. For example, the Standards of Conduct or ethics training did not reference the RE's responsibilities for maintaining confidential information as required by the NERC ROP.

Audit staff believes it is essential for RE employees to have clear instructions and training on the available channels for reporting violations related to RE-specific matters. The RE is a part of SPP, Inc., but it also maintains a separate function and separate employees with responsibilities not addressed by

other corporate-wide policies and training. These RE-specific functions are conducted independently from the rest of SPP and the detection and reporting of these functions should be treated by a separate process to ensure independence.

Further, RE employees have routine, although limited, contact with RTO employees, as well as with the owners, operators, and users of the BPS. Based on interviews, audit staff determined that RE employees involved in CMEP activities may attend working groups, workshops, or other meetings with BPS owners, operators, and users (including RTO employees). Interviews revealed that the RE does not provide any formal training or maintain policies or procedures relating to restrictions on communication or sharing of information. While audit staff did not find any evidence of inappropriate behavior or communication by RE employees, audit staff believes that the risk of such behavior is apparent. As indicated elsewhere in the audit report, the RE has grown considerably in recent years and new employees may be less aware of the need to maintain a strong separation between the RE and the members of the RTO. Therefore the need for such training is even more important than would be the case in a more static organization. The RE should make available policies identifying employee responsibilities, appropriate channels of communication of concerns, as well as disciplinary actions or remedial efforts that may result from engaging in inappropriate activities or failing to report such activities.

By having policies, procedures, and training in place, the RE can mitigate the risk of employees not complying with the NERC ROP while performing their CMEP activities. The RE General Manager, as well as the other RE managers, can monitor and ensure that RE employees have the information available for compliance with the NERC ROP, as well as the education and training, to ensure the confidentiality and independence of RE activities.

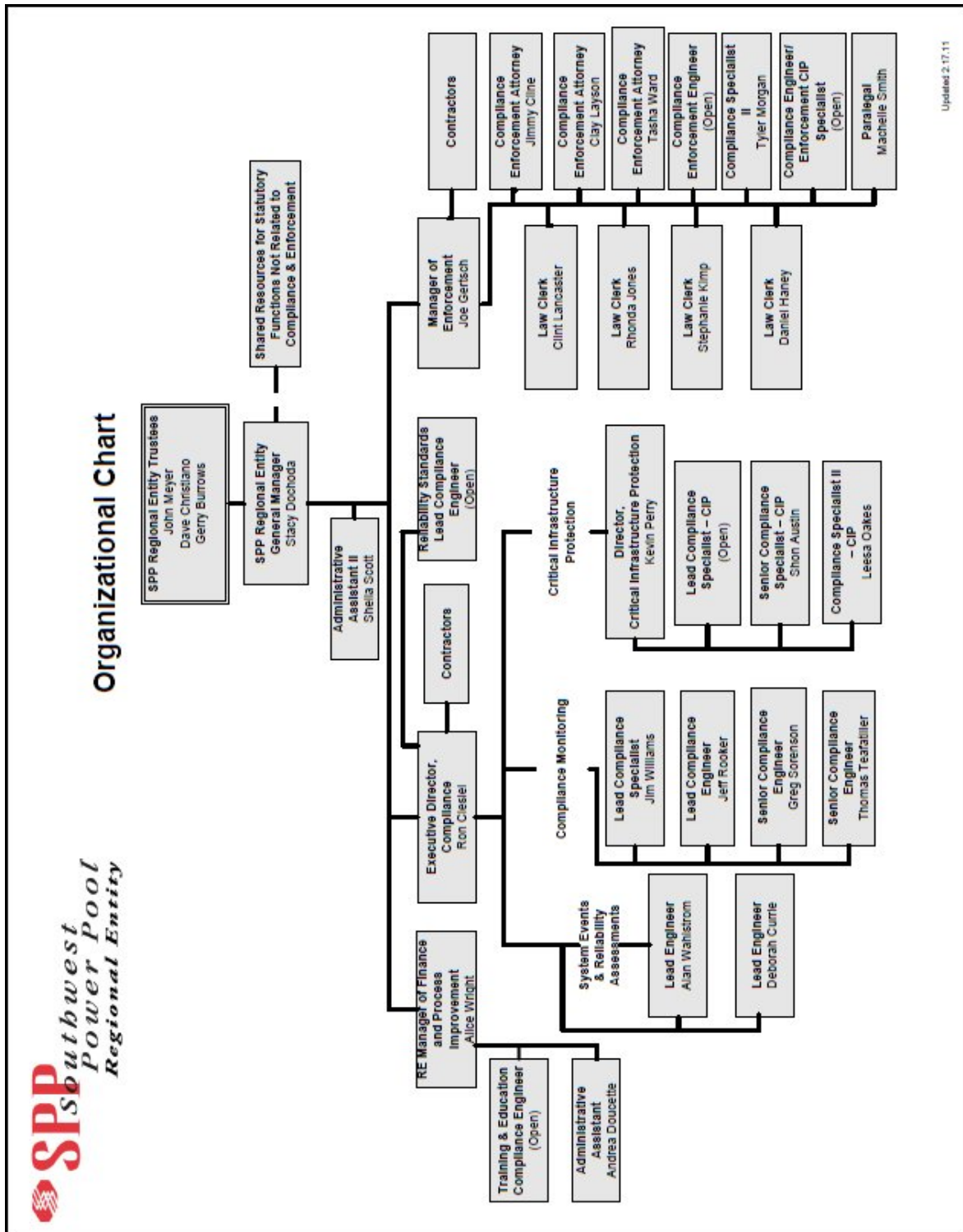
Recommendations

We recommend the RE:

- 13.** Develop and implement policies and procedures specific to RE employees to assist them in detecting and properly reporting infractions of the separation required between the RE and RTO functions regarding CMEP activities and any inappropriate sharing of confidential information between the RE and other registered entities.
- 14.** Conduct training for RE employees to ensure that they are aware of their responsibilities for complying with the NERC ROP and the procedures to

follow if a violation is detected and how to report it. Training should include procedures for employees to follow if any RE employee inappropriately shares, or is asked to share, confidential information with RTO employees or any owners, operators, or users of the BPS.

Appendix I-SPP RE Organizational Chart



Appendix II-SPP RE Response to Draft Audit Report



Stacy Dochoda
RE General Manager

Southwest Power Pool Regional Entity
16101 St. Vincent Way, Ste 103
Little Rock, AR 72223
P 501.688-1730
F 501.821.8726

Via Electronic Mail

August 16, 2011

Bryan K. Craig
Director and Chief Accountant
Division of Audits
Office of Enforcement
Federal Energy Regulatory Commission
888 First Street NE, RM 51-37
Washington, DC 20426

Re: SPP RE's response to FERC Audit of Regional Entity Operations at Southwest Power Pool for Compliance with its Bylaws, Delegation Agreement, Membership Agreement, and its Independence as an RE, Docket # PA11-2-00

Dear Mr. Craig,

Southwest Power Pool, Inc. ("SPP") in its capacity as a Regional Entity (hereinafter, "SPP RE") has reviewed the August 4, 2011, draft audit report titled *FERC Audit of Regional Entity Operations at Southwest Power Pool for Compliance with its Bylaws, Delegation Agreement, Membership Agreement, and its Independence as an RE*, Docket # PA11-2-00 ("Draft Audit Report").

SPP is pleased with the Federal Energy Regulatory Commission ("FERC" or "Commission") Office of Enforcement's Division of Audits ("Audit Staff's") finding that SPP has successfully completed and implemented the corrective actions needed to address the Audit Staff's 20 recommendations from the 2008 audit. SPP RE is likewise pleased with Audit Staff's recognition and acknowledgement of SPP RE's additional steps to further ensure independence of SPP RE functions from those of the SPP Regional Transmission Organization (SPP RTO).

SPP RE appreciates Audit Staff's helpful observations regarding its Compliance Monitoring and Enforcement Program (CMEP). SPP RE generally agrees with the audit findings, which consisted of five issues, and, as stated in the Draft Audit Report, has already taken specific corrective actions to remedy these issues. The audit provided a beneficial review of SPP RE's policies, procedures, and practices as it continuously strives to improve its performance of Regional Entity duties.

SPP RE's detailed response to each of the audit findings and related recommendations follows.

SPP RE Response to FERC Draft Audit, Docket # PA11-2-00

SPP RE's Response

I. ORGANIZATIONAL OVERVIEW

Organized in 1941, SPP became a founding North American Electric Reliability Corporation ("NERC") member in 1968 and was designated by FERC as an RTO in 2004 and an RE in 2007. SPP RE, an independent and functionally separate division of SPP, was created to fulfill the duties specified in the FERC-approved RE Delegation Agreement between SPP and NERC.

SPP RE is governed by three independent RE Trustees who operate separately from the SPP Board. The SPP RE Trustees have autonomy over decisions in fund allocation and approval of the SPP RE budget, as well as oversight of SPP RE decisions on regional standards, compliance enforcement actions, and penalties. Only the SPP RE Trustees and certain SPP RE staff members have the authority to make compliance and enforcement decisions. SPP RE direct staff are independent of all bulk power system users, owners, and operators.

Since the 2008 FERC audit, SPP RE's organizational structure has undergone significant changes and improvements including: 1) hiring a General Manager who reports directly to the SPP RE Trustees, 2) creating a separate Enforcement group, 3) forming two distinct audit teams (693-Traditional Operational and CIP-Critical Infrastructure Protection) within the Compliance Monitoring group, and 4) establishing a Finance and Process Improvement group. In mid-2009, SPP RE adopted specific performance metrics and goals to help focus staff on specific performance targets and inform management of potential resource constraints.

SPP RE direct staff has increased from three in 2007 to twenty-nine in 2011. SPP RE staff holds 18 professional certifications, including six professional engineers, two NERC-certified operators, one Certified Information Systems Security Professional, two certified in Risk and Information Systems Control, five licensed attorneys, and two Certified Public Accountants. SPP RE engages contractors to assist its staff in conducting certain CMEP activities, in particular compliance audits and mitigation plan review.

II. BACKGROUND

In its order approving the FERC Division of Audits' 2008 Audit Report, the Commission directed SPP to make quarterly submissions to Audit Staff detailing SPP RE's progress in implementing the corrective actions stated in the report until all corrective actions were completed. FERC also directed Audit Staff to conduct a post-audit site visit after SPP stated it had completed all of the recommended corrective actions. Lastly, the Commission directed Audit Staff to conduct another audit of SPP RE's independence from SPP RTO in fiscal year 2011.¹

SPP made its final quarterly compliance filing on April 29, 2010, indicating it had completed all recommended corrective actions. On August 17, 2010, Audit Staff conducted a post-audit site visit of SPP and reviewed documents, conducted testing, toured SPP RE offices, and interviewed the SPP RE General Manager and five other staff members.

¹ *Order Approving Audit Report, Determining Issue of Separation of Functions, and Directing Compliance and Other Corrective Actions*, 126 FERC 61,045 at P 23 (2009).

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As directed by the Commission, on November 2, 2010, (fiscal year 2011) Audit Staff commenced an SPP audit ("2011 Audit") to evaluate SPP RE's independence and separation from SPP RTO. The 2011 Audit also addressed SPP's compliance with: (1) the SPP Bylaws, (2) the Delegation Agreement between NERC and SPP and the conditions included in the Delegation Order,² (3) the SPP Membership Agreement, and (4) other obligations and responsibilities that the Commission has approved.

III. AUDIT FINDINGS AND RECOMMENDATIONS**Independence and Separation from SPP RTO**

As a part of the 2011 Audit, Audit Staff verified that SPP had successfully implemented processes and procedures to address the 20 recommendations contained in the 2008 audit report. Audit Staff recognized and acknowledged SPP RE's additional steps to further ensure its independence from SPP RTO, including: 1) moving SPP RE direct staff to a new restricted card key-access facility separate from where SPP RTO functions are performed, 2) creating an SPP RE Active Directory Group for electronic files access control, 3) shifting to SPP RE control of access to SPP RE network shares, 4) creating distinct email addresses for SPP RE staff members as an additional safeguard to prohibit transmission of confidential CMEP information to SPP RTO, and 5) reducing SPP RE's reliance on shared staff.³

SPP is pleased with the Audit Staff's finding that SPP has successfully completed and implemented the corrective actions needed to address the Audit Staff's 20 recommendations resulting from the 2008 audit. SPP RE is likewise pleased with the Audit Staff's recognition and acknowledgement of SPP RE's additional steps to further ensure independence of its functions from those of the SPP RTO.

SPP RE's Implementation of its Compliance and Enforcement Program

In the course of its audit, Audit Staff identified five issues related to SPP RE's implementation of its CMEP activities.

SPP RE generally agrees with the audit findings and, as stated in the Draft Audit Report, has already taken specific actions to correct the audit findings. Following is SPP RE's detailed response to each of the five audit findings and related recommendations, including the corrective action taken and/or planned and the targeted completion date.

A. Processing Mitigation Plans**Audit Findings:**

- The SPP RE processes and procedures for processing mitigation plans contained weaknesses.

Recommendations:

- Strengthen its procedures to ensure that it tracks all milestones within mitigation plans to completion and require registered entities to submit quarterly updates on the status of completion.

² *Southwest Power Pool*, 108 FERC ¶ 61,003 (2004), *North American Electric Reliability Council, et al.*, 119 FERC ¶ 61,060 (2007), *order on reh'g*, 120 FERC ¶ 61,260 (2007) (Delegation Order).

³ Draft Audit Report at 6-7.

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- Strengthen its procedures to ensure it maintains adequate and accurate documentation of its mitigation plan review process.
- Review current procedures for reviewing and accepting mitigation plans and determine methods to shorten the processing period between the time the RE receives the proposed mitigation plan and the time acceptance or rejection occurs.
- Strengthen its procedures to ensure RE staff properly obtain, review, and document evidence to support a registered entity's completion of its mitigation plan.
- Review current procedures and resource levels for processing verification of certifications and determine methods to expedite the processing period between the time the RE receives the certification and when verification is completed.

SPP RE Response:

SPP RE agrees with the FERC audit findings. However, SPP RE notes that FERC staff have included in their review of SPP RE's mitigation plan activities, mitigation plans that were processed by SPP RE prior to the audit period.⁴ SPP RE's view is that these mitigation plans are not reflective of SPP RE's performance of mitigation plan activities during the present audit period and should not be included.

Corrective Action Taken

Prior to the audit's commencement, SPP RE recognized these weaknesses and took corrective actions to strengthen its processes, procedures, and practices. Specifically, in mid-2009, SPP RE adopted specific performance metrics and goals, one of which addressed the processing of mitigation plans. As expected, the adoption of these metrics and goals helped focus SPP RE direct staff on specific performance targets and highlighted specific resource constraints.

During the 4th quarter of 2009, the SPP RE underwent a reorganization in which a separate enforcement group was created. The number of SPP RE direct staff members charged with performing enforcement activities increased from 1 FTE⁵ at the beginning of 2009 to 10.5 FTEs in 2011.⁶ In mid-2010, SPP RE began engaging contractors to assist enforcement staff in reviewing mitigation plans. Beginning in the 4th quarter 2009, SPP RE, through its outreach and training efforts, has made a concerted effort to encourage registered entities to review the circumstances of all possible violations and submit and implement appropriate mitigation plans as soon as possible.⁷

⁴ The 2011 FERC Audit was for the period from January 1, 2009 to May 31, 2011.

⁵ An enforcement attorney who is also an engineer

⁶ Manager of Enforcement who is an attorney and engineer; three enforcement attorneys, one of which is also an engineer; one compliance specialist; four part-time law clerks (2.5 FTEs); one enforcement mitigation plan engineer; one enforcement mitigation plan CIP specialist, which is currently open; and one paralegal

⁷ The currently effective NERC ROP, Appendix 4C, Section 6.4 requires the registered entity to submit a mitigation plan with 30 days after being served a Notice of Alleged Violation. Proposed revisions to the NERC ROP require mitigation plans to be reflected in a settlement agreement as well as a Notice of Penalty. As a general rule, the SPP RE will not execute a settlement agreement with a registered entity prior to the entity's completion of its mitigation plan.

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In the fall of 2010, the SPP RE's Compliance Data Management System (webCDMS) was enhanced to include the capability to track mitigation plan milestones. In mid-2011, webCDMS was further enhanced to allow registered entities to notify SPP RE of mitigation plan completion.

SPP RE consciously decided not to track intermediate milestones due to staffing considerations as the RE was attempting to get to full staffing levels. Until the backlog is reduced, SPP RE must balance work requirements with current resources. [w]ebCDMS generates milestone reminders to the entity. It is the entity's responsibility to use CDMS to notify SPP RE when it has completed the mitigation plan. SPP RE's responsibility is to review the plan for completion on the completion date.

As depicted in Figures 1 and 2, SPP RE's corrective actions as detailed above have resulted in significant improvements in SPP RE's processes, procedures, and practices related to reviewing and accepting or rejecting proposed mitigation plans and verifying their completion.

MP Accepted After 30 Days							
No. of MP (BY INITIAL SUBMITTAL DATE)							
Days Outstanding	>300 Days	201-300 Days	101-200 Days	31-100 Days	0-30 Days	Total	% Completed within 30 days
2008⁸	0	0	31	4	17	52	33%
2009	3	1	0	7	33	44	75%
2010	0	1	1	19	209	230	91%
2011*	0	0	0	4	77	81	95%

* Through May 31, 2011

⁸ FERC Staff included mitigation plans submitted in 2008 in their analysis, however the audit period began 1/1/2009.

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MP Verification							
No. of MP (By Year MP Completion was Verified)							
Days Outstanding	>300 Days	201-300 Days	101-200 Days	31-100 Days	0-30 Days	Total	% Completed within 30 days ⁹
2008	0	6	2	1	1	10	10%
2009	4	3	9	9	4	29	14%
2010	0	4	17	55	135	211	64%
2011*	0	0	5	23	57	85	67%

* Through May 31, 2011

In a significant number of instances, the number of days between the date the mitigation plan was submitted and accepted as measured by FERC Staff are significantly overstated due to the inherent limitations of the NERC Compliance Workbook, which NERC designed for regional entities' use. The NERC Compliance Workbook includes a column to track the "initial" mitigation plan submittal date; however, it does not include a column[s] to track the "revised or amended" mitigation plan submittal date. The NERC Compliance Workbook includes a column that tracks the date the mitigation plan is "accepted" by the region; however, it does not track the date a previously submitted mitigation plan is "rejected" by the region or NERC. Therefore, the number of days between the initial submission date and acceptance date from the workbook does not measure the true number of days that the RE took to accept a mitigation plan if the initial mitigation plan was rejected and/or amended, which is the case for all five of the mitigation plans in Figure 1 that reflect acceptance dates of more than 200 days after their initial submission dates and all but 30 of the 32 mitigation plans that reflect acceptance dates of 101-200 days after their initial submission dates. Similarly, the number of days between the date SPP RE received the entity's certification of a completed mitigation plan and the date SPP RE verified completion from the workbook is not always indicative of the SPP RE's processing period. Moreover, SPP RE notes that the CMEP has no specific deadline for the RE's verification of a completed mitigation plan. SPP RE has an internal goal of completing the verification within 30 days demonstrating its commitment to the importance of mitigation. Dates tracked in the NERC Compliance Workbook do not include any delays caused by the registered entities' failure to include evidence to support its assertion that the mitigation plan is complete. SPP RE cannot verify completion until it receives the evidence, which is often submitted after the certification date. The workbook, as designed by NERC, simply does not contain sufficient detail to reliably perform some of the calculations made by FERC staff.

As of May 31, 2011, the year-to-date average number of days between the mitigation plan submission dates and SPP RE's acceptance or rejection of the proposed mitigation plan is 7.38. The average number of days between SPP RE's receipt of the registered entities' certification of

⁹ Although the CMEP has no specific deadline for the RE's verification of a completed mitigation plan, SPP RE has an internal goal of completing the verification within 30 days demonstrating its commitment to the importance of mitigation.

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completed mitigation plan *and/or* the entity's supporting evidence, whichever is later, and the date SPP RE verifies the completion of the mitigation plan is 11.83 days.¹⁰

Additional Corrective Action Planned

While SPP RE has made significant improvement in processing mitigation plans, opportunities for additional improvement continue to exist, in particular related to maintaining adequate and accurate documentation and tracking mitigation plan intermediate milestones. Accordingly, to strengthen its procedures to ensure it maintains adequate and accurate documentation of its mitigation plan review process and to better track mitigation plan intermediate milestones, SPP RE will take the following corrective actions:

- Review and appropriately revise the internal templates used by enforcement staff to document their review and acceptance of proposed mitigation plans and verification of completed mitigation plans.¹¹
- Provide internal training to help ensure enforcement staff are aware of SPP RE's expectations regarding template completion.
- Implement a periodic internal review, of completed forms and supporting documentation to help ensure forms and documentation are being properly maintained.
- Implement procedures to ensure SPP RE enforcement staff monitor and verify that registered entities submit quarterly status reports on mitigation plan milestones as required by the NERC Rules of Procedure. Consistent with SPP RE's current practice, enforcement staff will strive to verify mitigation plan completion within 30 days following receipt of the entity's certification of completed mitigation plan and supporting evidence.

The SPP RE plans to implement these correctives actions within 90 days following the Commission's approval of the Final Audit Report.

B. RE Management of CaseloadAudit Findings:

- As of May 31, 2011, the SPP RE has a backlog of 308 open violations that NERC has not received for final disposition, and that a large violation backlog could potentially inhibit the SPP RE from properly monitoring and enforcing an entity's compliance with the NERC reliability standards, which could impact BPS reliability.

Recommendations:

- Perform an internal review of its enforcement process to determine areas of improvement to streamline or expedite the processing of open violations. Submit the results of the review to DA and provide any corrective actions resulting from the review.

¹⁰ Average number of days is based on performance from January 1, 2011 and May 31, 2011.

¹¹ NERC is now allowing registered entities to submit verification of completion of mitigation plans without the initial submittal of a mitigation plan consistent with the CMEP. In those instances the RE review will consist of one step; review and verification of completed mitigation plans.

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- Strengthen policies and procedures to encourage registered entities to make evidence supporting mitigation plans, settlements, and other matters more readily available to the RE.
- Review its compliance workbook, as previously submitted to NERC, and determine if any information the RE is required to record for each violation is [in]accurate. Provide any revisions to NERC.

SPP RE Response:

The SPP RE agrees that, as of May 31, 2011, it had a backlog of 308 open violations that NERC has not received for final disposition. This backlog is due principally to the number of actual violations discovered and/or reported since the CMEP program's inception, significantly exceeding the number that was expected. SPP RE initially expected to record less than 50 violations a year. However, in 2009 and 2010 SPP RE recorded 132 and 254 violations respectively. Ninety one (91) violations have been recorded in 2011 through May 31, 2011. The other seven regional entities are also experiencing backlogs.¹²

Corrective Action Taken

In addition to the organizational and staffing changes previously discussed, SPP RE has taken the following action:

- At the April 2011, SPP RE Board of Trustees meeting, the trustees approved a performance matrix designed to create incentives to improve SPP RE's productivity and efficiency and reduce backlogs in the CMEP processes.
- SPP RE has budgeted for additional enforcement staff and \$300,000 for contractor resources for 2012. With these additional resources, SPP RE projects it will achieve a 12-month violation processing time by the end of 2013.
- SPP RE is actively involved in NERC and FERC activities to streamline the current enforcement process. Specifically, SPP RE reviewed its violation caseload to identify candidates to include in the NERC and the regional entities' inaugural Find, Fix, Track and Report filing, which is anticipated to be filed for the Commission's consideration in September 2011. SPP RE estimates that as many as 50% of its violations could potentially qualify for this streamlined procedure.
- SPP RE actively participates on NERC and regional entity sponsored working groups to identify and implement improvements to processes, e.g., all of the regions are working with NERC to automate the process of transmitting violation reporting data to replace the NERC Compliance Workbook.

¹² See NERC Compliance Violation Statistics, which are available on NERC's public website at: <http://www.nerc.com/page.php?cid=3|304>

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Additional Corrective Action Planned

- Because this issue is not unique to the SPP RE but shared by all eight regional entities and NERC, SPP RE will continue to actively participate in NERC and FERC efforts to streamline the current enforcement processes.
- SPP RE will continue to work with NERC and the other regions to automate the submission of violation reporting data, which will permit SPP RE to eliminate manual submission of the NERC Compliance Workbook. Automating the transmission of violation reporting data should reduce the potential for the transmission of inaccurate data.
- On or about August 21, 2011, SPP RE will discontinue the submission of the NERC Workbook and will begin syncing its violation data directly from webCDMS to the NERC Compliance Reporting Analysis and Tracking System (CRATS). Replacing the NERC Workbook with the CRATS violation syncing process will eliminate the potential for key entry errors from webCDMS to the NERC Workbook.
- Within 90 days following the Commission's approval of the Final Audit Report, SPP RE will modify its procedures to help ensure Enforcement Staff review, in the course of processing a violation, previously reported data and to require the staff to make any necessary revisions needed to correct any inaccurate data previously recorded in the NERC Workbook or webCDMS.¹³

C. Notification of Technical Feasibility Exceptions

Audit Findings:

The SPP RE did not properly notify NERC and the registered entity when the RE accepted Part A of a technical feasibility exception (TFE) request. This improper notification led to NERC not receiving timely acceptance notices for 113 TFE Part A requests. Since the RE timely processed Part B of the TFE requests, this mitigated the risks of adverse impacts on reliability and possible registered entity noncompliance with NERC reliability standards.

Recommendations:

- Strengthen its internal processes, procedures, and controls to ensure that the RE properly and timely notifies NERC and registered entities when it accepts/rejects or approves/disapproves TFE requests.
- Submit any required TFE notices to NERC and registered entities.

SPP RE Response:

SPP RE agrees that it did not consistently notify NERC and the registered entity when it accepted Part A of a technical feasibility exception (TFE) request.

¹³ The review and update of Workbook data may take place in webCDMS upon implementation of violation syncing module of the NERC Compliance Reporting Analysis and Tracking System (CRATS).

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Corrective Action Taken

When SPP RE became aware of this oversight, it took the following corrective action:

- Issued “catch-up” acceptance notices in December 2010 (96), March 2011 (3) and April 2011 (14) for a total of 113 TFE requests not been previously issued.
- Developed a written process manual for the CIP Compliance team to use for TFE requests.
- Implemented a quarterly review of all notices required in the TFE process, and completed its quarterly reviews on April 8, 2011 and July 11, 2011. The first review included all TFE requests through the date of the review. The second review was for the second calendar quarter of 2011 with no discrepancies found.

Corrective Action Planned

In light of the action taken above, no further corrective action is planned.

D. Procedures to Prevent Conflicts of Interest with Contractors

Audit Findings:

The RE lacked enterprise-wide policies and procedures to prevent conflicts of interest when hiring and using contractors to perform CMEP activities. As a result, the RE did not have standardized procedures in place to address conflict of interest concerns nor did it maintain records to provide evidence that contractors were screened for conflict of interest compliance on 22 separate compliance audits in 2009.

Recommendations:

- Review its policies, procedures, and controls to evaluate “best practices” for protecting against enterprise-wide conflicts of interest.
- Strengthen its policies, procedures, and controls by creating written documents for ensuring no conflicts of interest exist when using contractors to perform compliance and enforcement activities.

SPP RE Response:

SPP RE agrees that during the audit period it did not have enterprise-wide written procedures in place to address conflict of interest concerns pertaining to the hiring and use of contractors to assist with CMEP activities, nor did it maintain records to provide evidence that contractors were screened for conflict of interest compliance on 22 separate compliance audits in 2009.

Corrective Action Taken

- During the audit period, SPP RE’s 693 reliability compliance group implemented a method for securing all conflict of interest forms. Rather than signing conflict of interest attestations on an engagement basis, each consultant must now sign a new conflict of interest form that lists all scheduled 693 reliability compliance audit activities for the upcoming calendar year.

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- During the 2nd quarter 2011, SPP RE reviewed its policies, procedures, and controls to evaluate “best practices” for protecting against SPP RE-wide conflicts of interest.
- In August of 2011, SPP RE developed SPP RE-wide CMEP Procedures pertaining to the hiring and use of contractors to assist with CMEP activities.

Corrective Action Planned

In light of the action taken above, no further corrective action is planned.

E. Detecting and Reporting the Possible Failures to Comply with the NERC Rules of Procedure (ROP) and CMEP.Audit Findings:

The SPP RE does not have formal processes or procedures, nor does it provide training for employees, in the area of detection and reporting infractions of the separation required between the RE and RTO functions regarding CMEP activities, nor the inappropriate sharing of confidential information between the RE and other registered entities.

Recommendations:

- Develop and implement policies and procedures specific to RE employees to assist them in detecting and properly reporting infractions of the separation required between the RE and RTO functions regarding CMEP activities and any inappropriate sharing of confidential information between the RE and registered entities.
- Conduct training for RE employees to ensure that they are aware of their responsibilities for complying with the NERC ROP and the procedures to follow if a violation is detected and how to report it. Training should include procedures for employees to follow if any RE employee inappropriately shares, or is asked to share, confidential information with RTO employees or any owners, operators, or users of the BPS.

SPP RE Response:

SPP RE agrees that, other than its CMEP Data Management Process Procedures, it does not have any formal SPP RE-specific processes or procedures, nor does it provide training for employees beyond the required NERC-sponsored training, related to detecting and reporting infractions of the separation required between RE and RTO functions regarding CMEP activities or the inappropriate sharing of confidential information between the RE and other registered entities.

Corrective Action Planned

By the end of 2011, SPP RE will take the following corrective actions:

- Develop and implement policies and procedures specific to SPP RE employees to assist them in detecting and properly reporting infractions of the separation required between the RE and RTO functions regarding CMEP activities and any inappropriate sharing of confidential information between the RE and registered entities.
- Conduct training for SPP RE staff to ensure that they are aware of their responsibilities for complying with the NERC ROP and the procedures to follow if a violation is detected

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and how to report it. Training should include procedures for employees to follow if any SPP RE staff inappropriately shares, or is asked to share, confidential information with SPP RTO staff or any owners, operators, or users of the BPS.

F. Further Actions—Compliance Reports

Recommendations

- Submit its plans for implementing audit staff's recommendations for audit staff's review. SPP should provide its plan to audit staff within 30 days of the issuance of the final audit report in this docket.
- Submit quarterly reports to the Division of Audits describing the Company's progress in completing each corrective action recommended in the final audit report in this docket. SPP should make its quarterly filings no later than 30 days after the end of each calendar quarter, beginning with the first quarter after the final audit report in this docket is issued, and continuing until SPP completes all recommended corrective actions.

SPP RE Response:

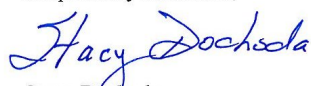
Within 30 days following the Commission's approval of the Final Audit Report, the SPP RE agrees to submit to Audit Staff its plans for implementing the Audit Staff's recommendations. SPP RE also agrees to submit quarterly reports to Audit Staff describing the SPP RE's progress in completing each corrective action no later than 30 days after the end of each calendar quarter, beginning with the first quarter in which the Commission approves the Final Audit Report and continuing until SPP RE completes all recommended corrective actions.

IV. CONCLUSION

SPP RE is pleased with the Audit Staff's finding that SPP RE has successfully completed and implemented the corrective actions needed to address the Audit Staff's 20 recommendations resulting from the 2008 audit. SPP RE is likewise pleased with the Audit Staff's recognition and acknowledgement of SPP RE's additional steps to further ensure independence of SPP RE functions from those of the SPP RTO.

SPP RE appreciates the professionalism of the Audit Staff and their helpful observations regarding the SPP RE Compliance Monitoring and Enforcement Program. The audit provided a beneficial review of policies, procedures, and practices as SPP RE continuously strives to improve its performance.

Respectfully submitted,



Stacy Dochoda
RE General Manager

Document Content(s)

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