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January 11, 2010

**VIA ELECTRONIC FILING**

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

**Re: North American Electric Reliability Corporation  
Docket Nos. RR09-9-000, RR07-14-004 and RR08-6-004  
Partial Compliance Filing of the North American Electric Reliability Corporation  
In Response to Paragraph 36 of October 15, 2009 Order on  
2010 Business Plans and Budgets**

Dear Ms. Bose:

The North American Electric Reliability Corporation (NERC) hereby submits the “Partial Compliance Filing of the North American Electric Reliability Corporation in Response to Paragraph 36 of October 15, 2009 Order on 2010 Business Plans and Budgets.”

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

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

Respectfully submitted,

/s/ Owen E. MacBride  
Owen E. MacBride

Attorney for North American Electric  
Reliability Corporation

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**UNITED STATES OF AMERICA**  
**Before the**  
**FEDERAL ENERGY REGULATORY COMMISSION**

**NORTH AMERICAN ELECTRIC** ) **Docket Nos. RR09-9-000**  
**RELIABILITY CORPORATION** ) **RR08-6-004**  
 ) **RR07-14-004**

**PARTIAL COMPLIANCE FILING OF THE**  
**NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION**  
**IN RESPONSE TO PARAGRAPH 36 OF OCTOBER 15, 2009 ORDER**  
**ON 2010 BUSINESS PLANS AND BUDGETS**

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January 11, 2010

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## **I. INTRODUCTION**

The North American Electric Reliability Corporation (“NERC”) respectfully submits this filing in partial compliance with P 36 of the Commission’s Order issued October 15, 2009 in these dockets.<sup>1</sup> The 2010 ERO Budget Order conditionally accepted the 2010 Business Plans and Budgets of NERC, as the Electric Reliability Organization (“ERO”), the eight Regional Entities<sup>2</sup>, and the Western Interconnection Regional Advisory Body. The 2010 ERO Budget Order also specified certain compliance items to be filed by NERC within 60 days (*i.e.*, by December 14, 2009)<sup>3</sup>; a compliance item to be filed by NERC by November 20, 2009<sup>4</sup>; certain periodic status reports to be filed by NERC on the development of procedures for processing technical feasibility exceptions (“TFE”) to certain requirements of NERC Critical Infrastructure Protection (“CIP”) standards<sup>5</sup>; and certain information to be included in the ERO and Regional

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

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

<sup>3</sup> 2010 ERO Budget Order at PP 25, 30, 31, 32, 33, 40, 42, 43, 44, 45, 46, 48, 50, and 52. NERC timely addressed these items in a compliance filing on December 11, 2009. *Compliance Filing of the North American Electric Reliability Corporation in Response to October 15, 2009 Order on 2010 Business Plans and Budgets* (“December 11, 2009 Budget Compliance Filing”).

<sup>4</sup> 2010 ERO Budget Order at P 64. This item, *Informational Filing of the North American Electric Reliability Corporation in Response to Paragraph 64 of the October 15, 2009 Order on 2010 Business Plans and Budgets*, was timely filed on November 20, 2009 in this docket.

<sup>5</sup> 2010 ERO Budget Order at P 36. The December 11, 2009 Budget Compliance Filing included a partial response to P 36.

Entity business plan and budget filings for 2011.<sup>6</sup> This filing responds to the directive in P 36 of the 2010 ERO Budget Order that NERC submit an evaluation of the adequacy of ERO and Regional Entity resources for implementing the processing of TFE “within 90 days after implementation of the activity by the Regional Entities.” For the reasons explained in this filing, such an evaluation is premature at this time due to the small number of TFE Requests that have been submitted; accordingly, NERC is requesting that it be allowed to submit a further evaluation on or before May 3, 2010.

## **II. NOTICES AND COMMUNICATIONS**

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

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## **III. PARTIAL RESPONSE TO P 36 OF 2010 ERO BUDGET ORDER**

Paragraph 36 of the 2010 ERO Budget Order stated:

As indicated in the proposed business plans and budgets, the details of how Regional Entities plan to process technical feasibility exceptions continue to evolve. We are concerned that, once the ERO develops the procedure and the Regional Entities implement the process of reviewing technical feasibility

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<sup>6</sup> 2010 ERO Budget Order at P 24.

exceptions, Regional Entities may not have budgeted adequate funding of this potential labor-intensive activity. It is premature for the Commission to rule on the adequacy of the ERO and Regional Entity funding of this activity at this time. The Commission, however, directs the ERO to provide status reports, every three months from the date of this order, regarding the development of uniform procedures for processing technical feasibility exceptions; and, within 90 days after implementation of the activity by the Regional Entities, an evaluation of the adequacy of ERO and Regional Entity resources for implementing this activity.

This compliance filing is NERC's initial response to the directive in P 36 to provide, "within 90 days after implementation of the activity by the Regional Entities, an evaluation of the adequacy of ERO and Regional Entity resources for implementing this activity."

As NERC reported at pages 38-39 of the December 11, 2009 Budget Compliance Filing, on October 29, 2009, NERC filed a petition with the Commission requesting approval of new Section 412, "Requests for Technical Feasibility Exceptions to NERC Critical Infrastructure Protection Reliability Standards," to the NERC Rules of Procedure ("ROP"), and new Appendix 4D, "Procedure for Requesting and Receiving Technical Feasibility Exceptions to NERC Critical Infrastructure Protection Standards" (the "TFE Procedure") to the ROP. The TFE Procedure provides a set of conditions or criteria that a Responsible Entity must follow when relying on the technical feasibility exception contained in specific requirements of certain NERC CIP standards.<sup>7</sup> NERC's Petition requests that the Commission issue an Order approving proposed Section 412 and the TFE Procedure by on or about January 21, 2010. NERC's Petition is currently the subject of Docket No. RR10-1-000. As also reported at page 39 of the December 11, 2010 Budget Compliance Filing, on October 12, 2009, NERC announced that the Regional Entities would begin accepting TFE Requests from registered entities pursuant to a set of posted "Interim TFE Rules," which are essentially the same as the proposed TFE Procedure that is

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<sup>7</sup> Capitalized terms used throughout this filing are defined terms in the proposed TFE Procedure and the Interim TFE Rules.

pending before the Commission in Docket No. RR10-1-000.<sup>8</sup> Because the Regional Entities were prepared to begin accepting and processing TFE Requests beginning on October 12, 2009, pursuant to the Interim TFE Rules, NERC is treating January 11, 2010 (*i.e.*, 90 days following October 12, 2009) as the date by which it is required to submit an evaluation of the adequacy of NERC and Regional Entity resources for implementing the activity of processing TFEs, as specified in P 36 of the 2010 ERO Budget Order.

However, although the evaluation of the adequacy of NERC and Regional Entity resources for processing TFEs is due on January 11, 2010, in literal compliance with P 36 of the 2010 ERO Budget Order, NERC submits that the evaluation is premature at this time and in fact would not be consistent with the intent of the Commission's directive. NERC believes that the Commission directed submission of an evaluation of the adequacy of NERC and Regional Entity resources for processing TFEs "within 90 days after implementation of the activity by the Regional Entities" because the Commission expected 90 days of receiving and processing TFE Requests would give NERC sufficient time to observe, and evaluate the adequacy of resources for, processing TFEs. As of January 8, 2010 (*i.e.*, approximately 90 days after the Regional Entities first began to accept TFE Requests under the Interim TFE Rules), however, the Regional Entities had received, in the aggregate, only 137 TFE Requests.<sup>9</sup>

NERC believes that only a small number of TFE Requests have been submitted for the following reason (at least in part): Both the proposed TFE Procedure and the Interim TFE Rules

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<sup>8</sup> See NERC Compliance Process Bulletin #2009-007 v1.2, posted at [http://www.nerc.com/files/2009-007\\_Public\\_Notice-V1.2.pdf](http://www.nerc.com/files/2009-007_Public_Notice-V1.2.pdf).

<sup>9</sup> The number of TFE Requests received by each Regional Entity as of January 8, 2010 is as follows: FRCC, 22; MRO, 5; NPCC, 12; ReliabilityFirst, 13; SERC, 28; SPP RE, 1; Texas RE, 10; and WECC, 46. No Regional Entity has reported any difficulty in receiving and beginning initial screening of these small numbers of TFE Requests.

provide that if a Responsible Entity whose Compliant Date (pursuant to the NERC CIP Implementation Plan<sup>10</sup>) for an Applicable Requirement of a CIP standard that allows for TFE was on or before December 31, 2009, submits a TFE Request for the Applicable Requirement by January 31, 2010 (either pursuant to the TFE Procedure or to the Interim TFE Rules), and the TFE Request is accepted by the Regional Entity as complete, the Responsible Entity will not be subject to a finding of violation for non-compliance with the Applicable Requirement for the period from the Compliant Date until the date the TFE Request is approved or disapproved by the Regional Entity.<sup>11</sup> For this reason, and assuming the Commission acts to approve NERC's proposed TFE Procedure by on or about January 21, 2010, as requested, NERC and the Regional Entities anticipate that the Regional Entities may begin to receive a much more substantial volume of TFE Requests during the second half of January 2010, leading up to January 31.

NERC provides, below, a description of the resources planned and budgeted by NERC and the Regional Entities for processing TFEs in 2010. For the reasons described above, there is not yet sufficient experience in receiving and processing TFE Requests to provide a basis for evaluating the adequacy of these resources. Accordingly, NERC requests that the Commission accept this filing as partial compliance with P 36 of the 2010 ERO Budget Order, and authorize and direct NERC to file a further evaluation of the adequacy of NERC and Regional Entity resources for processing TFE Requests, to be due no later than May 3, 2010, *i.e.*, 90 days after January 31, 2010. At that time NERC should have a better basis for evaluating the adequacy of NERC and Regional Entity resources for this task, based on the upcoming period of anticipated much greater activity for the Regional Entities in receiving and processing TFE Requests.

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<sup>10</sup> (Revised) Implementation Plan for Cyber Security Standards CIP-002-1 Through CIP-009-1, available at [http://www.nerc.com/files/Guidance\\_on\\_CIP\\_Standards.pdf](http://www.nerc.com/files/Guidance_on_CIP_Standards.pdf).

<sup>11</sup> See sections 4.5 and 5.3 of the Interim TFE Rules and of the TFE Procedure.



The remainder of this filing describes the resources that each Regional Entity and NERC have planned and budgeted at this time for processing TFEs in 2010. Under the Interim TFE Rules and the proposed TFE Procedure, the Regional Entities are responsible for intake and initial screening of TFE requests to determine that all required information has been provided with the TFE Request; substantive review of the TFE Request to determine if it should be approved or disapproved (generally the substantive review will be conducted through a spot check or compliance audit process); and (assuming the TFE Request is approved based on the substantive review), monitoring (through receipt of periodic reports and ongoing compliance monitoring activities) the Responsible Entity's progress in implementing its proposed measures to compensate or mitigate for not being in Strict Compliance with the Applicable Requirement, and its progress in reaching the point at which the TFE is no longer needed and the Responsible Entity can achieve Strict Compliance with the Applicable Requirement. NERC's responsibilities include developing a set of Class-Type TFEs,<sup>12</sup> reviewing the Regional Entities' reports of approval and disapproval of TFE Requests and taking steps to question the Regional Entity's determination if and when appropriate; and preparing and submitting to the Commission an annual report on TFE activities including wide-area analyses on the impact of reliance on TFEs, and the associated compensating measures and/or mitigating measures, on the reliability of the Bulk Electric System.

### **FRCC**

Since the volume of TFE-related work in 2010 remains uncertain at this time, FRCC has not budgeted specific staff or contractor resources for processing TFEs during 2010. FRCC

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<sup>12</sup> A Class Type TFE is defined in §2.6 of the proposed TFE Procedure as “[a] type or category of equipment, device, process or procedure for which NERC has determined that a TFE from an Applicable Requirement is appropriate, as set forth on a list of such Class-Type TFEs posted on the NERC Website.”

expects to be able to meet any costs it may need to incur during 2010 for processing TFEs out of its working capital reserves.

### **MRO**

Due to the uncertainty as to the volume of TFE-related work that will be necessary in 2010, MRO has not budgeted for additional staff in 2010 for processing TFEs. However, MRO's 2010 Business Plan and Budget includes resources for obtaining contractor assistance in processing TFEs, in addition to MRO's existing staff of technical experts in this area. MRO budgeted \$480,000 for Consultants in its 2010 Compliance Monitoring and Enforcement Program budget for contractor resources to process TFE Requests. MRO believes using contractor resources rather than hiring additional full-time staff at this time is a prudent approach for meeting TFE processing requirements until the scope of TFE-related activities becomes more predictable. Additionally, MRO has staffed a team of technical experts in the CIP area to manage the work load through the budgeted external consultant resources.

### **NPCC**

Due to the uncertain scope of work that may be required in 2010 for processing TFEs, at this time NPCC has not budgeted specific resources for TFE-related activities. NPCC expects to be able to meet any costs it may need to incur during 2010 for processing TFEs out of its working capital reserves.

### **ReliabilityFirst**

For 2010, ReliabilityFirst has budgeted for and assigned 5 full-time equivalent employees ("FTE") for TFE activities. In preparing its 2010 Business Plan and Budget, ReliabilityFirst projected it would receive 410 TFE Requests to be processed over the three-year period 2010-2012, or an average of approximately 135 TFE Requests per year. ReliabilityFirst

also projected that TFE processing would result in 20 additional compliance violations to be processed per year (*e.g.*, a rejected/disapproved TFE Request may result in a violation of the Applicable Requirement). Three of the 5 FTEs are for compliance activities and represent additional resources necessary to process TFE Requests and to monitor and track the Responsible Entities' mitigation and compliance activities pursuant to approved TFEs. ReliabilityFirst anticipates using contractor support if the TFE processing workload is greater than can be handled by the 3 assigned FTEs. One of the 5 FTEs is for enforcement activities and has been added to process the additional violations and penalties expected to result from the TFE activity. The fifth FTE is in ReliabilityFirst's Information Technology ("IT") function and represents additional IT support necessary due to the increase in overall staff. ReliabilityFirst budgeted these resources taking into account the entire range of TFE-related activities, including initial intake and screening of TFE Requests, substantive review and approval or disapproval of TFE Requests, and tracking and follow-up with respect to the mitigation and remediation activities of Responsible Entities with approved TFEs. ReliabilityFirst expects these 5 FTEs to be permanent staff additions.

### **SERC**

Due to the uncertainty with respect to the number of TFE Requests that would be received in 2010 and the amount of time that would be required to process each TFE Request, SERC did not include any resources in its 2010 Business Plan and Budget specifically for processing TFEs. SERC anticipated funding any necessary TFE-related activities in 2010 from its working capital reserves or, if necessary, through submission of a supplemental budget request. As of the date of this compliance filing, SERC does not have a basis for anticipating

more than a small number of TFE Requests to be processed during 2010. Therefore, SERC continues to anticipate that it will fund any necessary resources from its working capital reserve.

### **SPP RE**

SPP RE's 2010 Business Plan and Budget includes \$700,000 for contractors and consultants to assist SPP RE staff in processing TFEs. After 2010, if the steady-state workload associated with TFEs is better known, SPP RE may consider adding staff for TFE-related activities.

### **Texas RE**

In preparing its 2010 Business Plan and Budget, Texas RE projected it would receive 240 TFE Requests in 2010 and 2011, or 120 per year. Texas RE also projected, based on the estimated average number of man-hours to process a TFE Request, that processing these TFE Requests would require staff time equivalent to a total of 4 FTEs (engineering, IT and legal staff time equivalent to 3.6 FTEs and support staff hours equivalent to 0.4 FTE). However, due to the uncertainty as to the TFE-related workload that will emerge, Texas RE only budgeted for 3.0 additional FTEs for TFE-related activities in its 2010 Business Plan and Budget, consisting of 2.0 FTEs in the compliance staff for TFE screening and verification and implementation plan review and follow-up, and 1.0 FTE in the compliance staff for data base administration and tracking. Texas RE's projections and budgeted staffing do not include additional resources specifically to process additional compliance violations that may be identified as a result of the TFE evaluation process. If the TFE-related workload in 2010 proves to require more resources than budgeted, Texas RE anticipates initially funding the additional resource requirements from its working capital reserves, and, if necessary, would request a budget supplement.

## WECC

Due to the uncertain scope of work that may be required in 2010 for processing TFEs, at this time WECC has not budgeted specific resources for TFE-related activities. WECC expects to be able to meet any costs it may need to incur during 2010 for processing TFEs out of its working capital reserves, or, if necessary, by submitting a supplemental budget request.

## NERC

As noted earlier, under the proposed TFE Procedure, NERC's TFE-related activities will consist primarily of developing a set of Class-Type TFEs, reviewing the Regional Entities' reports of approval and disapproval of TFE Requests and taking steps to question the Regional Entity's determination if and when appropriate; and preparing and submitting to the Commission an annual report on TFE activities including wide-area analyses on the impact of reliance on TFEs, and the associated compensating measures and/or mitigating measures, on the reliability of the Bulk Electric System. Because of this relatively limited scope, NERC did not provide for specific additional staffing or other resources for TFE-related activities in its 2010 Business Plan and Budget. However, NERC has recently (December 2009) entered into a contract with a consulting firm to provide the following assistance relating to TFE activities: (1) analyze and recommend required staffing and resources, develop position descriptions, design processes, and estimate work flows and recommend strategies to address workload peaks based on the CIP compliance dates for Responsible Entities in the NERC CIP Implementation Plan; (2) assist in the identification and description of Class-Type TFEs; (3) develop metrics and criteria for wide-area reporting and review and report on wide-area results; and (4) assist NERC in developing appropriate procedures for processing and reviewing TFEs requested by nuclear plant owners.

#### **IV. CONCLUSION**

The North American Electric Reliability Corporation respectfully requests that the Commission (1) accept this filing as partial compliance with P 36 of the 2010 ERO Budget Order, and (2) authorize and direct NERC to file a further evaluation of the adequacy of NERC and Regional Entity resources for processing TFE requests, by May 3, 2010.

Respectfully submitted,

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David N. Cook  
Vice President and General Counsel  
Michael Walker  
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**CERTIFICATE OF SERVICE**

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

Dated at Chicago, Illinois this 11th day of January, 2010.

/s/ Owen E. MacBride  
Owen E. MacBride

*Attorney for North American Electric  
Reliability Corporation*