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ATTACHMENTS

Attachment 1: NERC Written Criteria for Determining Whether a Reliability Activity Is Eligible to be Funded Under Section 215 of the Federal Power Act.

I. INTRODUCTION

The North American Electric Reliability Corporation (“NERC”) submits this compliance filing in response to P 30 of the Commission’s Order dated November 2, 2013 in Docket No. RR12-13-000 and Docket No. FA11-21-000.¹

The 2013 Budget Order accepted the 2013 Business Plans and Budgets of NERC and the Regional Entities. The Commission issued the 2013 Budget Order in both Docket No. RR12-13-000 (the proceeding relating to NERC’s 2013 Business Plan and Budget) and Docket No. FA11-21-000 (the proceeding relating to a pending performance audit of NERC relating to budget formulation, administration, and execution (“Audit Docket”). The 2013 Budget Order made findings relating to Recommendations 37 and 38 of the Final Audit Report² and directed NERC to make a compliance filing relating to Recommendation 37 by February 1, 2013.³ Although the Office of Enforcement’s Audit Staff and NERC proposed slightly different versions of Recommendation 37 in the Audit Docket, they agreed that NERC should develop written criteria for NERC to use to determine whether a NERC reliability activity is a statutory activity under Section 215 of the Federal Power Act⁴ (“FPA §215”) and should be funded pursuant to FPA §215.⁵ In P 30 of the 2013 Budget Order, the Commission “adopt[ed] recommendation 37 in the Audit Report, as agreed to by NERC, to establish written criteria for determining whether a

¹ *North American Electric Reliability Corporation, Order Accepting 2013 Business Plan and Budget of the North American Electric Reliability Corporation and Ordering Compliance Filing*, 141 FERC ¶ 61,086 (2012) (“2013 Budget Order”).

² The Final Audit Report was issued by the Office of Enforcement, Division of Audits on May 4, 2012 in Docket No. FA11-21-000. *Performance Audit of the North American Electric Reliability Corporation for Budget Formulation, Administration, and Execution* (“Final Audit Report”).

³ 2013 Budget Order at PP 30-32. The Commission directed that the compliance filing be submitted in Docket No. FA11-21-000.

⁴ 16 U.S.C. §824o.

⁵ The Audit Staff version of Recommendation 37 is: “Establish written criteria for determining whether a reliability activity should be funded under section 215 through coordination and discussion with Commission staff and stakeholders. Submit to audit staff the criteria developed from this collaborative process.” The NERC version is: “Establish written criteria for determining whether an activity is a statutory activity and should be funded under section 215 through an open and transparent process initiated by NERC.”

reliability activity is eligible to be funded under FPA Section 215 through coordination and discussion with stakeholders,” and “direct[ed] NERC to make a compliance filing with the Commission by February 1, 2013, containing NERC’s proposed statutory funding criteria.”

NERC submits this filing in response to P 30 of the 2013 Budget Order. **Attachment 1** is NERC’s proposed written criteria for determining if a reliability activity is eligible to be funded under FPA §215. NERC requests Commission approval of the written criteria in **Attachment 1**. The proposed criteria are based on the text of FPA §215, the Commission’s regulations at 18 C.F.R. Part 39, and prior Commission orders concerning the scope of the Electric Reliability Organization’s (“ERO”) activities under FPA §215. They reflect NERC’s understanding of Congress’ intent in enacting FPA §215 to ensure and enhance the reliability of the Bulk Power System. The proposed criteria reflect NERC’s understanding and experience as to the activities necessary to successfully carry out the duties of the ERO envisioned in FPA §215.

II. NOTICES AND COMMUNICATIONS

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III. PURPOSE AND DEVELOPMENT OF THE NERC WRITTEN CRITERIA

A. Purpose of the NERC Written Criteria

Beginning in August 2011 and continuing into 2012, the Division of Audits (“DA”) of the Office of Enforcement conducted a financial performance audit to evaluate NERC’s budget formulation, administration, and execution.⁶ The DA’s Final Audit Report, released May 4, 2012, stated in the section entitled “NERC Activities” that “NERC did not have written criteria to determine whether activities should be funded under the [FPA] section 215.”⁷ The Final Audit report stated that “audit staff discovered that NERC has not developed any policies, procedures, processes or practices (i.e., criteria) to guide its staff in the types of activities permissible under section 215.”⁸ The Final Audit Report further observed that “Since becoming the ERO, NERC has embarked on new or expanded programs it believes maintain and improve the reliability and security of the BPS,” but the DA noted that NERC had not established “written criteria to determine whether its activities are statutory.”⁹ The Final Audit Report concluded its discussion of this topic with the following summary:

Audit staff sampled NERC’s current activities and requested NERC to provide evidence that it had developed documentation to demonstrate that the activity was within the scope of activities that would permit funding under section 215. After reviewing this material audit staff did not find a clear linkage to section 215 activities in the materials examined. While there were certainly elements related to grid reliability and security, NERC had not developed project specifications that laid out the statutory goals to be accomplished by the project with sufficient clarity. Therefore NERC had no clear written criteria adequate to satisfy the concerns of the audit staff. This was of particular concern for projects that were undertaken within a budget cycle and had not therefore been subject to review as part of the budget approval process for statutory applicability prior to being undertaken by NERC.

⁶ See Letter from Norman Bay, Director, Office of Enforcement, to Gerry Cauley, NERC President and CEO, dated August 22, 2011, advising NERC of the initiation of the financial performance audit under Docket No. FA11-21-000.

⁷ Final Audit Report at 70.

⁸ *Id.* at 75.

⁹ *Id.* at 77.

While each of the sampled programs promoted reliability and has reliability and security aspects (to a greater or lesser extent), audit staff believes that these alone are not appropriate criteria upon which to assess their statutory nature. NERC needs to establish and operate under formal criteria that ensure all of its program activities that are funded pursuant to FPA section 215 are statutory. This is of particular concern to audit staff when NERC embarks on new projects within an operating year that were not budgeted and approved through the budget process, NERC needs clear guidance to ensure that the funds expended are for statutory purposes.¹⁰

Based on this discussion, the Final Audit Report made the following Recommendation 37:

37. [NERC should] Establish written criteria for determining whether a reliability activity should be funded under section 215 through coordination and discussion with Commission staff and stakeholders. Submit to audit staff the criteria established from this collaborative process.¹¹

In response to Recommendation 37, NERC agreed that it should “establish written criteria for determining whether an activity is a statutory activity and should be funded under section 215 through an open and transparent process initiated by NERC.”¹² NERC also accepted the Office of Enforcement’s position that the written criteria that NERC would develop should be filed with the Commission, in a compliance filing, in advance of the filing date for NERC’s 2014 Business Plan and Budget, and that NERC would use the written criteria (with any revisions indicated by the Commission’s order on the compliance filing) in developing its 2014 Business Plan and Budget.¹³

The 2013 Budget Order, while not expressly making a choice between DA’s proposed text and NERC’s proposed text for Recommendation 37, found that pursuant to the recommendation, “NERC should establish written criteria for determining whether a reliability activity is eligible to be funded under FPA section 215, such that these criteria can be applied to

¹⁰ *Id.* at 77-78.

¹¹ *Id.* at 78.

¹² *Initial Brief of the North American Electric Reliability Corporation* in Docket No. FA11-21-000, filed July 19, 2012 (“NERC Initial Brief”), at 99.

¹³ *Reply Brief of the North American Electric Reliability Corporation* in Docket No. FA11-21-000, filed September 10, 2012 (“NERC Reply Brief”), at 46-47.

future budgets.”¹⁴ The 2013 Budget Order stated that “[t]he criteria developed and filed with the Commission should be specific and detailed enough so that when applied the Commission can readily determine what activities are and are not statutory activities.”¹⁵ The Commission directed NERC to develop the written criteria and to file them with the Commission by February 1, 2013.¹⁶

Related to Recommendation 37 (and relevant to understanding its purpose), the 2013 Budget Order also adopted Final Audit Report Recommendation 38 (which had also been proposed under the topic “NERC Activities”) with the revisions proposed by NERC in the NERC Initial Brief and NERC’s explanation as to what constitutes a “major activity”:

38. In its annual business plan and budget filings, [NERC should] provide an explanation as to why the proposed activities to be undertaken by each program area for the budget year are statutory, including, at a minimum: a description and the purpose of the major activities to be undertaken by each program area and an explanation for why the activity is a statutory activity.¹⁷

Based on the discussion in the Final Audit Report and in the 2013 Budget Order, NERC understands the written criteria to be developed pursuant to Recommendation 37 to have two purposes. First, the written criteria should be used by NERC for internal purposes to determine whether proposed reliability activities fall within FPA §215 and therefore should be classified as “statutory” and eligible to be funded through the FPA §215 funding mechanism. If new reliability activities are proposed internally during the development of NERC’s annual business plan and budget, the written criteria should be applied by management to determine if the

¹⁴ 2013 Budget Order at P 30.

¹⁵ *Id.* at P 31.

¹⁶ *Id.* at P 30.

¹⁷ 2013 Budget Order at P 16. In the 2013 Budget Order, the Commission accepted NERC’s revision of Recommendation 38 to specify that the annual business plan and budgets would contain the description and purpose of the “major activities to be undertaken by each program area” and an explanation for why the activity is a statutory activity, noting that “various activities in a program area can be grouped into categories and the purpose and statutory basis for each such category explained, without the need to describe each activity therein.” *Id.* at P 31; *see* NERC Initial Brief at 99 and NERC Reply Brief at 47-48 (explanation of what constitutes a “major activity”).

proposed activities fall within the scope of FPA §215 and can be included in the business plan and budget and associated funding requirement as statutory activities. Reliability activities included in the approved business plan and budget can then be carried out during the ensuing budget year. If new activities are proposed internally or need to be undertaken during the budget year (*i.e.*, outside the budget preparation cycle), using funding that was obtained through the FPA §215 funding mechanism, the written criteria should be used by management to determine if the activities fall within the scope of FPA §215 and can be undertaken using FPA §215 funding. In short, the written criteria should be employed internally as a management tool to screen proposed activities as to whether they fall within the scope of FPA §215 and are eligible for statutory funding.¹⁸

Consistent with approved Recommendation 38, NERC management will use the written criteria to evaluate whether major activities fall within the scope of FPA §215. Further, during the course of the budget year, NERC will monitor, track, and apply the written criteria to, major activities using NERC's time recording system as further described in, and consistent with, the terms and conditions of the Settlement Agreement in the Audit Docket, as that system may evolve as NERC implements the agreed audit recommendations.¹⁹

Second, the written criteria will be used in NERC's annual business plan and budget filings as a basis for demonstrating that NERC's proposed activities are statutory and should be funded through the FPA §215 funding mechanism. The business plan and budget filing should

¹⁸ NERC notes that pursuant to its Working Capital and Operating Reserve Policy, which was approved by the Board of Trustees in 2012 (and provided as Exhibit C to NERC's 2013 Business Plan and Budget filed in Docket No. RR12-13-000), Board approval, based on recommendation of the Finance and Audit Committee of the Board, is required for any expenditure of \$500,000 or more from NERC's operating reserves on "unforeseen contingencies" during any year, and that NERC must then seek Commission approval of such expenditures pursuant to the Settlement Agreement in the Audit Docket. *See* §II.7(b)(ii) of the Settlement Agreement, which the Commission approved in *North American Electric Reliability Corporation, Order Approving Settlement Agreement*, 142 FERC ¶ 61,042 (2013).

¹⁹ *See* §II.9 of the Settlement Agreement, relating to Audit Report Recommendations 9, 12 and 13. The Settlement Agreement also provides that throughout the Settlement Agreement, the term "major activities" shall have the meaning ascribed to that term in P 31 of the 2013 Budget Order. Settlement Agreement at 4 footnote 5.

explain how each major activity included in the proposed business plan and budget is a statutory activity and therefore can be funded through the FPA §215 funding mechanism.

The written criteria are NERC's criteria to be used in evaluating, for internal approval and business planning and budgeting purposes, whether proposed reliability activities are FPA §215 activities. The written criteria are not intended to address any activities of Regional Entities that have been specifically approved by the Commission as FPA §215 activities.²⁰ Further, the written criteria are not intended to be used by NERC to determine whether the activities of a regional advisory body approved by the Commission pursuant to FPA §215(j) can be funded pursuant to FPA §215.

To illustrate the application of the written criteria, going forward, in the context of certain NERC activities which Audit Staff questioned during the course of the audit process in Docket No. FA11-21-000, consider NERC's 2011 Grid Security Exercise and its 2011 Grid Security Conference.²¹ Both of these activities were first developed and executed outside of the budget cycle for the 2011 Business Plan and Budget and were not reflected in the 2011 Business Plan and Budget that was submitted to the Commission. Had the written criteria been in place at the time these two activities were proposed internally, management would have used the criteria to evaluate whether the proposed Grid Security Exercise and the Grid Security Conference were statutory activities and could be funded using funds obtained through the FPA §215 funding mechanism. Thereafter, if in subsequent years additional grid security exercises and grid security conferences were proposed for inclusion in a business plan and budget, the written criteria would be used to demonstrate in the business plan and budget document that these activities are statutory activities and can be funded through the FPA §215 funding mechanism.

A number of commenters responding to the postings of the draft written criteria

²⁰ For example, performance of the Reliability Coordinator function by WECC within its Region. *See North American Electric Reliability Corporation, Order on Rehearing*, 119 FERC ¶ 61,059 (2007).

²¹ *See* Final Audit Report, Appendix A (NERC's Response to the Draft Audit Report), at 19-20.

suggested that the written criteria should also include provisions concerning whether proposed activities will be appropriate and efficient uses of NERC's resources. NERC agrees that this inquiry is necessary and important in its determination of whether activities will be undertaken, but NERC believes this consideration is beyond the scope of determining whether activities are FPA §215 activities. To be clear, however, in neither of the above-described uses of the written criteria will application of the criteria be the final determinant of whether NERC should undertake proposed activities. The written criteria will only be used to evaluate whether activities are statutory activities and can be funded through the FPA §215 funding mechanism. Assuming activities are determined to be statutory activities, management must also determine that the activities are or will be an efficient and productive use of resources in carrying out the ERO's statutory responsibilities and achieving its objectives. For example, in the illustration provided in the immediately preceding paragraph, if it were determined that the Grid Security Exercise or Grid Security Conference is a statutory activity, it would still be incumbent upon NERC management to determine that the Grid Security Exercise and Grid Security Conference would be efficient and productive uses of NERC's resources for the purpose of carrying out the ERO's statutory responsibilities and achieving its objectives.

B. Development of the NERC Written Criteria

Prior to issuance of the 2013 Budget Order, NERC recognized, based on the proceedings in the Audit Docket, that regardless of the specific text of Recommendation 37 that the Commission would adopt, NERC had committed to developing and submitting written criteria for determining whether a reliability activity is a statutory activity. Therefore, at the meeting of the NERC Member Representatives Committee ("MRC") on August 15, 2012, NERC initiated discussions with its stakeholders concerning the need to consider the proper scope of the ERO's activities. Following that meeting, the Chair of the MRC appointed a working group from among the members of the MRC and tasked it to provide informal assistance to NERC staff on

two aspects of the business planning and budgeting process: (i) developing appropriate criteria for determining the proper scope of the ERO's activities, and (ii) developing ways of obtaining input from MRC members, earlier in the annual business planning and budgeting cycle, on the priorities and plans for inclusion in NERC's annual business plans and budgets.²²

Senior NERC staff met with the MRC working group by conference calls on several occasions in the months of September through November, 2012, to discuss the approach to be used to develop draft written criteria, to take informal comments on draft written criteria, and to work to develop a process for obtaining coordinated input from the MRC to NERC's business planning and budgeting prioritization process on an ongoing basis. A background document concerning the development of the NERC written criteria was provided to the MRC working group as well as to Regional Entity executives. Additionally, at the November 2012 MRC meeting, NERC's Chief Financial and Administrative Officer briefed the members of the MRC on the activities of the MRC working group and the anticipated schedule for posting and obtaining public comment on a draft of the NERC written criteria. A draft of the written criteria was circulated to the MRC working group and the Regional Entity executives in mid-November 2012. Based on informal comments from the MRC working group and feedback received from the Regional Entity executives, NERC staff revised the draft written criteria and posted them on the NERC website on November 20, 2012, for a 30-day public comment period ending December 21, 2012.²³ The posting included, in addition to the draft written criteria, a discussion of the background for development of the written criteria, an overview of the draft written criteria, and a set of resources that were used in developing the draft written criteria.²⁴

²² See the minutes of the August 15, 2012 MRC meeting, available at: http://www.nerc.com/docs/mrc/MRC_08_15_12_Quebec_City_Complete_Minutes_package.pdf.

²³ The posting is available at: http://www.nerc.com/filez/section_215_criteria.html.

²⁴ The resources provided included the text of FPA §215 and excerpts from the legislative history of FPA §215, from NERC's application for certification as the ERO, and from the Commission's orders adopting its ERO regulations implementing FPA §215, certifying NERC as the ERO, approving NERC's 2007

On December 5, 2012, senior NERC staff met in person and by conference call with representatives of a number of stakeholder trade associations to answer questions on the draft written criteria that had been posted for comment and to obtain initial reaction to and feedback on the draft written criteria from these groups. The following organizations were represented: the American Public Power Association (“APPA”), the Canadian Electricity Association, the Edison Electric Institute (“EEI”), the Electricity Consumers Resource Council, the Large Public Power Council (“LPPC”), the National Rural Electric Cooperative Association (“NRECA”), and the Transmission Access Policy Study Group (“TAPS”). Also on December 5, NERC staff met with senior members of Commission staff to receive input on the posted written criteria and provide information on NERC’s plans for the compliance filing due on February 1, 2013.

NERC received comments on the November 20, 2012 posting of the draft written criteria from a total of 18 organizations: Alstrom Power; American Transmission Company LLC; Black Hills Corporation; Consumers Energy; EEI; GE [General Electric] Gas Turbines LLC; the Ontario Independent Electricity System Operator; the ISO/RTO Council (“IRC”); the LPPC; the National Association of Regulatory Utility Commissioners; the Northeast Power Coordinating Council, Inc.; NRECA; Occidental Energy Ventures Corp. (“OECV”); PacifiCorp; PPL Generation, LLC and subsidiaries; Schneider Engineering, Ltd.; TAPS; and the Western Interconnection Regional Advisory Body.²⁵ The comments were not in all respects consistent. Different commenters focused on different areas of concern in the draft written criteria. Some commenters proposed modifications to or deletions of certain portions of the draft written criteria. Other commenters supported adoption of the same portions, and some commenters proposed additions to the draft written criteria to encompass additional activities as being within the scope of FPA §215.

business plan and budget, and accepting NERC’s three-year ERO performance assessment report that was submitted in July 2009 pursuant to 18 C.F.R. §39.3(c).

²⁵ The comments are also posted at http://www.nerc.com/filez/section_215_criteria.html.

NERC staff reviewed all of the comments. Based on consideration of the written comments as well as the previous meetings and conference calls, NERC made numerous revisions to the draft written criteria that had been posted. The revisions included both (i) specific changes to the text of the written criteria suggested by or in response to comments from stakeholders, and (ii) a reorganization of the written criteria to provide more direct ties between the major sections of the written criteria and FPA §215, the Commission’s ERO regulations, and Commission orders issued pursuant to FPA §215. Some provisions in the posted draft written criteria were completely eliminated in response to stakeholder comments. The revisions were also intended: (i) to make the written criteria more specific (some commenters criticized the posted draft as too general or vague), and (ii) to make the written criteria a set of criteria that can be applied to future activities in connection with business plan and budget development and internal approvals, rather than simply a listing of NERC’s current activities (as some commenters characterized the posted draft written criteria).

NERC posted the revised written criteria on its website on January 10, 2013, for an additional stakeholder comment period through January 23, 2013.²⁶ Comments on the second posting were received from a total of seven organizations: ACES; the City of Austin, Texas d/b/a Austin Energy; EEI; IRC; LPPC; OECV; and the Western Electricity Coordinating Council (“WECC”).²⁷ Several commenters observed that the revised written criteria in the second posting were an improvement over the written criteria in the first posting. These comments did not raise any significant new concerns that had not been raised in the first round of comments; however, several additional revisions were made to the written criteria based on these comments.

The draft written criteria (as revised following review of the stakeholder comments on

²⁶ This posting is available at:
http://www.nerc.com/docs/bot/finance/Section%20215%20Criteria/Public_Comment_Posting_2ndDraft_Section_215_Criteria_Complete_0213.pdf.

²⁷ These comments are available at:
http://www.nerc.com/docs/bot/finance/Section%20215%20Criteria/2nd%20Round%20Comments/Section215_Comments_2ndDraft_1-22-2013.pdf.

the initial posting) were submitted to the NERC Board of Trustees for consideration in early January, 2013. The Board discussed the written criteria in an executive session on January 17, 2013. A further revised version of the written criteria (as revised following review of the stakeholder comments on the second posting) were submitted to the Board, and posted on the NERC website, on January 25 as an agenda item for a scheduled Board conference call on January 30. At the January 30, 2013 meeting, the Board of Trustees, after further discussion, approved the proposed written criteria for filing with the Commission in response to the directive in P 30 of the 2013 Budget Order.

IV. DISCUSSION OF THE NERC WRITTEN CRITERIA

The proposed NERC written criteria, which are set forth in full in **Appendix 1**, are organized around a series of eleven major criteria in the form of questions. Several of the eleven major criteria include sub-criteria (also stated as questions) that fall within the major criteria. The criteria or questions are not necessarily distinct from each other, or intended to be distinct from each other. Rather, NERC anticipates that some activities may fall within more than one of the major criteria or sub-criteria. That a reliability activity may fall within more than one of the criteria is the result of the list being a set of criteria that can be applied to future NERC activities, rather than just a list of NERC's current activities.

NERC has based each major criterion on one or more of the following: (i) a provision in FPA §215; (ii) a provision in the Commission's ERO regulations at 18 C.F.R. Part 39; or (iii) a finding or provision in a Commission order issued pursuant to FPA §215; or on the category and related activities being necessary administrative activities to operate the ERO as a functioning organization. This approach is consistent with the Commission's statement in its order certifying NERC as the ERO that, "We generally believe that anything required of the ERO or a Regional Entity by the statute, Order No. 672 pursuant to the statute, or any subsequent Commission order

pursuant to section 215 of the FPA is a statutory activity.”²⁸ NERC’s current major activities that fall within each of the major criteria have previously been included as statutory activities in one or more of NERC’s annual business plans and budgets that have been approved by the Commission since NERC was certified as the ERO in 2006. The Commission’s order on NERC’s first business plan and budget included an extended discussion of the appropriate scope of activities under FPA §215.²⁹ However, NERC has not attempted to develop and justify the written criteria based solely on the Commission’s approval of the activities that fall within the criteria as statutory activities in NERC’s previous annual business plans and budgets.

The first introductory paragraph to the written criteria states that where sub-criteria are listed below a major criterion, the proposed activity should be a positive answer to at least one of the sub-criteria. Conversely, an activity that falls under a sub-criterion should pertain to the subject matter of the major criterion. The sentence stating the latter point (third sentence in the first introductory paragraph) was added based on comments, received in response to the second posting of the draft written criteria, which seemed to indicate some concern or confusion that the sub-criteria would go beyond the scope of the related major criterion.

As stated in the first introductory paragraph of the written criteria in **Attachment 1** (and consistent with the discussion in §III.A above), for purposes of internal NERC approval of activities as statutory activities that can be funded by revenues obtained through the FPA §215 funding mechanism, the activities must be shown to fall within at least one of the eleven written criteria. Further (as stated in the second introductory paragraph), NERC’s annual business plan and budget that is approved by the NERC Board of Trustees and filed with the Commission will describe how each major activity in the business plan and budget for which statutory funding is

²⁸ *Order Certifying North American Electric Reliability Organization as the Electric Reliability Organization and Ordering Compliance Filing*, 116 FERC ¶ 61,062 (2006) (“ERO Certification Order”) at P 185.

²⁹ *Order Conditionally Accepting 2007 Business Plans and Budgets of the North American Electric Reliability Corporation, Approving Assessments to Fund Budgets, and Ordering Compliance Filings*, 117 FERC ¶61,091 (2006), at PP 19-39.

requested falls within at least one of the eleven major criteria (and, where applicable, within at least one of the sub-criteria).³⁰

As discussed in §III.A above, a determination that activities fall within FPA §215 does not necessarily mean that NERC will propose or undertake the activities. This is stated in the third introductory paragraph to the written criteria. Rather, NERC management must also determine that the activities are or will be an efficient and productive use of resources in carrying out the ERO's statutory responsibilities and achieving its objectives. The determination of whether activities that have been determined to be FPA §215 activities should be or will be included in NERC's business plan and budget for a given year will be addressed in the context of the business plan and budget process and will include opportunities for stakeholder input (second sentence of the third introductory paragraph of the written criteria).

The following discussion lists separately each of the major criteria (including its sub-criteria where applicable) and describes the basis for the criterion and why activities falling within the criterion qualify as FPA §215 activities.

Criterion I:

- I. Does the activity involve or support the development of Reliability Standards?
 - A. Is the activity a (or part of a) Reliability Standards development project pursuant to the NERC Rules of Procedure (ROP)?
 - B. Does the activity involve providing guidance and assistance to Regional Entities in carrying out Regional Reliability Standards development activities?
 - C. Does the activity involve information gathering, collection and analysis activities to obtain information reasonably necessary in Reliability Standards development, including for purposes of identifying areas in which new Reliability Standards could be

³⁰ The term "major activity" is used in the written criteria in the same manner as described in the 2013 Budget Order, *i.e.*, to reflect that "various activities in a program area can be grouped into categories and the purpose and statutory basis for each such category explained, without the need to describe each activity therein." 2013 Budget Order at P 31.

developed, existing Reliability Standards could be revised, or existing Reliability Standards could be eliminated, such as:

1. Measuring reliability performance – past, present and future; publishing or disseminating the results of such measurements; analyzing the results of such measurements; identifying and analyzing risks to reliability of the Bulk Power System based on such measurements; and/or identifying approaches to mitigating or eliminating such risks?
 2. Monitoring, event analysis and investigation of Bulk Power System major events, off-normal occurrences and near miss events?
- D. Does the activity involve or support the provision of training and education concerning Reliability Standards development processes, procedures and topics for/to (i) NERC personnel, (ii) Regional Entity personnel, and (iii) industry personnel?

Discussion of Criterion I:

The development of Reliability Standards is an activity of the ERO set forth in FPA §215.³¹ Specific projects to develop or modify one or more Reliability Standards should fall within Criterion I. Activities should also fall within this criterion if they involve gathering, collecting and analyzing information that is reasonably necessary in the development of Reliability Standards, including identifying areas in which new Reliability Standards could be developed or existing Reliability Standards could be modified or eliminated (sub-criterion I.C).³²

Activities falling within this sub-criterion would include technical research and development

³¹ In the written criteria and in this filing, terms, such as “Reliability Standard,” which are defined terms in the NERC *Glossary of Terms Used in Reliability Standards* and/or in the NERC ROP (*see* Appendix 2 of the ROP, *Definitions Used in the Rules of Procedure*), have been capitalized.

³² A commenter on the first posting of the draft written criteria suggested that the sub-criteria for Criterion I, II and III should explicitly refer to “information gathering activities pursuant to 18 C.F.R. §39.2(d),” which states: “Each user, owner or operator of the Bulk-Power System within the United States (other than Alaska and Hawaii) shall provide the Commission, the Electric Reliability Organization and the applicable Regional Entity such information as is necessary to implement section 215 of the Federal Power Act as determined by the Commission and set out in the Rules of the Electric Reliability Organization and each applicable Regional Entity.” However, a commenter on the second posting of the draft written criteria pointed out that §39.2(d) provides authority and a process for the ERO to collect information to implement FPA §215, but does not independently establish that the activity for which the information is being sought is a FPA §215 activity. Based on consideration of this comment, the separate reference to “information gathering activities pursuant to 18 C.F.R. §39.2(d)” was removed from the written criteria.

work that may be necessary as a predicate to standards development, so that stakeholders can understand the nature of the problem to be addressed and the possible consequences of potential solutions. This criterion also encompasses NERC's provision of oversight, guidance and assistance to Regional Entities in carrying out their Regional Reliability Standards development activities (sub-criterion I.B). FPA §215(d) and the Commission's regulations at 18 C.F.R. §39.5 provide for Reliability Standards developed by Regional Entities as well as Reliability Standards developed by the ERO. Additionally, this criterion encompasses activities that involve or support the provision of training and education by the ERO concerning Reliability Standards development processes, procedures and topics for or to NERC personnel, personnel of the Regional Entities, and personnel of Registered Entities and other stakeholders (sub-criterion I.D). Providing training and education on Reliability Standards development processes, procedures and topics to NERC and Regional Entity personnel and to industry stakeholders helps to maintain and improve the efficiency and efficacy of the Reliability Standards development process as well as promoting industry understanding and participation in the consensus-based Reliability Standards development process.

Criterion II:

- II. Does the activity involve or support the monitoring and enforcement of compliance with Reliability Standards?
 - A. Does the activity involve or support the identification and registration of users, owners, and operators of the Bulk Power System that are required to comply with Requirements of Reliability Standards applicable to the reliability functions for which they are registered?
 - B. Does the activity involve or support the Certification of Reliability Coordinators, Transmission Operators and Balancing Authorities as having the requisite personnel, qualifications and facilities and equipment needed to perform these reliability functions in accordance with the applicable Requirements of Reliability Standards?
 - C. Does the activity involve or support the Certification of system operating personnel as qualified to carry out the duties and

responsibilities of their positions in accordance with the Requirements of applicable Reliability Standards?

- D. Does the activity involve or support conducting, participating in or overseeing compliance monitoring and enforcement activities pursuant to the NERC ROP and (through the Regional Entities) the Commission-approved delegation agreements?
- E. Does the activity involve information gathering, collection and analysis activities to obtain information reasonably necessary to monitor and enforce compliance with Reliability Standards, including evaluating the effectiveness of current compliance monitoring and enforcement processes, the need for new or revised compliance monitoring and enforcement processes, and the need for new or different means of training and education on compliance with Reliability Standards, such as:
 - 1. Measuring reliability performance – past, present and future; publishing or disseminating the results of such measurements; analyzing the results of such measurements; identifying and analyzing risks to reliability of the Bulk Power System based on such measurements; and/or identifying approaches to mitigating or eliminating such risks?
 - 2. Monitoring, event analysis and investigation of Bulk Power System major events, off-normal occurrences, and near miss events?
- F. Does the activity involve or support the provision of training, education and dissemination of information for/to (i) NERC personnel, (ii) Regional Entity personnel, and (iii) industry personnel with respect to compliance monitoring and enforcement topics and topics concerning reliability risks identified through compliance monitoring and enforcement activities, such as:
 - 1. Requirements of Reliability Standards, including how to comply and how to demonstrate compliance? This includes development of guidance and interpretation documents.
 - 2. Compliance monitoring and enforcement processes, including how to conduct them, how to participate in them, and the expectations for the processes? This includes development of guidance documents.
 - 3. Disseminating, through workshops, webinars, Advisories/Recommendations/Essential Actions, and other publications, “lessons learned” information on compliance concerns and reliability risks obtained through compliance monitoring and enforcement activities, monitoring and

investigation of Bulk Power System major events, off-normal occurrences and near miss events, and other Bulk Power System monitoring activities?

4. Registered Entity internal processes for compliance with Reliability Standards, such as development, implementation and maintenance of internal reliability compliance programs?

G. Does the activity involve the maintenance and provision of tools and services that are useful for the provision of adequate reliability, because they relate specifically to compliance with existing Reliability Standards and they proactively help avert Reliability Standard violations and Bulk Power System disturbances, but only in the absence of an independent organization stepping forward to provide the tool or service?

Discussion of Criterion II:

Enforcing compliance with approved Reliability Standards is an activity of the ERO set forth in FPA §215. While FPA §215(c)(2)(A) uses the term “enforce . . . reliability standards,” enforcing compliance with Reliability Standards necessarily involves monitoring compliance with Reliability Standards by the users, owners, and operators of the Bulk Power System that are required to comply. In its order adopting its ERO regulations implementing FPA §215, the Commission concluded that “enforcement” for purposes of the ERO regulations includes “both pro-active compliance efforts by the ERO or a Regional Entity as well as after-the-fact investigations and impositions of penalties” and that “[t]he ERO and Regional Entities are expected to have a compliance program for ongoing monitoring of user, owner and operator compliance with Reliability Standards.”³³ Conducting, participating in or overseeing Compliance Monitoring and Enforcement Program (“CMEP”) activities pursuant to the NERC ROP and (through the Regional Entities) the Commission-approved delegation agreements falls under this criterion (sub-criterion II.D).³⁴

³³ Order No. 672 at P 456.

³⁴ FPA §215(e)(4) authorizes the Commission to authorize the ERO to enter into agreements to delegate authority to a Regional Entity. The Commission implemented its authority under FPA §215(e)(4) in 18 C.F.R. §39.8.

This criterion encompasses activities that involve or support the identification and registration of the users, owners, and operators of the Bulk Power System that are required to comply with the Requirements of Reliability Standards that are applicable to the entity's reliability functions (sub-criterion II.A). Section 39.2(c) of the Commission's ERO regulations requires that:

Each user, owner and operator of the Bulk-Power System within the United States (other than Alaska and Hawaii) shall register with the Electric Reliability Organization and the Regional Entity for each region within which it uses, owns or operates Bulk-Power System facilities, in such manner as prescribed in the Rules of the Electric Reliability Organization and each applicable Regional Entity.

Monitoring and enforcing compliance with Reliability Standards by users, owners, and operators of the Bulk Power System necessarily requires a system for identifying which users, owners, and operators perform which Bulk Power System functions and therefore which Reliability Standards Requirements are applicable to the activities of each user, owner, and operator.

This criterion also encompasses activities that involve or support the Certification of Reliability Coordinators, Transmission Operators and Balancing Authorities as having the requisite personnel, qualifications and facilities and equipment needed to perform these reliability functions in accordance with the Requirements of applicable Reliability Standards (sub-criterion II.B). Some commenters on the first posting of the draft written criteria stated that Certification of users, owners, and operators of the Bulk Power System should not be included as a statutory activity. However, entity Certification is a necessary component of monitoring and enforcing compliance with the Reliability Standards Requirements applicable to Reliability Coordinators, Transmission Operators and Balancing Authorities. Certification of these reliability entities is a starting point in monitoring and enforcing compliance by Reliability Coordinators, Transmission Operators and Balancing Authorities with applicable Reliability Standards Requirements to ascertain that the Bulk Power System users, owners, and operators performing (or seeking to perform) these critical reliability functions have the requisite

personnel, qualifications, and facilities and equipment needed to perform these functions. Additionally, the requirements for Reliability Coordinators, Transmission Operators and Balancing Authorities to be certified and the procedures for Certification are embodied in NERC's Commission-approved ROP;³⁵ and the Commission's ERO regulations at 18 C.F.R. §39.2(b) require that "All entities subject to the Commission's reliability jurisdiction under paragraph (a) of this section shall comply with . . . applicable Electric Reliability Organization and Regional Entity rules made effective under this part."

This criterion additionally encompasses activities that involve or support the Certification of system operating personnel as qualified to carry out the duties and responsibilities of their positions in accordance with the Requirements of applicable Reliability Standards (sub-criterion II.C). Some commenters on the postings of the draft written criteria stated that Certification of System Operators should not be included as a statutory activity.³⁶ However, similar to entity Certification, System Operator Certification is a necessary component of monitoring and enforcing compliance with Reliability Standards. The System Operator Certification Program helps to ensure that persons employed by Registered Entities in positions in which these personnel must perform reliability-related system operating tasks in accordance with applicable Reliability Standards Requirements have the necessary skills and knowledge to correctly and successfully carry out their responsibilities. Therefore, Certification of System Operators is a starting point in monitoring and enforcing compliance with applicable Reliability Standards Requirements. Further, Reliability Standard PER-003-1 requires that Reliability Coordinators, Transmission Operators and Balancing Authorities must staff Real-time operating positions performing reliability-related tasks with System Operators who have obtained and maintain

³⁵ Section 500 of the ROP and Appendix 5A, *Organization Registration and Certification Manual*.

³⁶ One of the bases given for this comment was that NERC conducted a System Operator Certification Program before being certified as the ERO. NERC does not believe that the fact that it was able to conduct an activity before it was certified as the ERO renders the activity not a statutory activity. The written criteria are to be used to determine if activities fall within the scope, or support the exercise, of the authority NERC has been granted as the ERO.

specified NERC System Operator certificates.³⁷

Criterion II also encompasses information gathering, collection and analysis activities to obtain information reasonably necessary to monitoring and enforcing compliance with Reliability Standards (sub-criterion II.E). These information-gathering activities include activities to measure, analyze and disseminate information on reliability performance and analysis, and monitoring, investigation and analysis of Bulk Power System events. In addition to identifying areas in which new Reliability Standards could be developed or existing Reliability Standards could be modified or eliminated (Criterion I), these information-gathering activities can also (for example): (i) identify areas in which the ERO's existing compliance monitoring and enforcement practices and techniques have not been fully effective in detecting noncompliances that have led to reliability issues, (ii) identify particular Reliability Standards Requirements and particular types of Registered Entities that should be the subject of greater or lesser compliance monitoring by the ERO, or (iii) identify particular Reliability Standards Requirements for which Registered Entities should devote greater attention and resources to compliance, and other "lessons learned" information for Registered Entities.

Criterion II also encompasses the provision of training and education and the dissemination of information to NERC personnel, Regional Entity personnel and the industry concerning compliance monitoring and enforcement topics (sub-criterion II.F). These topics include: (i) the Requirements of Reliability Standards, how to comply with them and how to demonstrate compliance; (ii) the compliance monitoring and enforcement processes used by the ERO and the ERO's expectations from Registered Entities in those processes; (iii) "lessons learned" information on compliance concerns and reliability risks including areas to which

³⁷ Although Certification of System Operators is an activity falling within the scope of, and therefore eligible to be funded pursuant to, FPA §215, NERC strives to fully fund the costs of this activity through fees charged to participants. The separation of funding for the System Operator Certification Program is enhanced by NERC's new Working Capital and Operating Reserve Policy that was included as Exhibit C to NERC's 2013 Business Plan and Budget filed in Docket No. RR12-13-000.

Registered Entities should devote greater resources and attention to compliance; and (iv) the development, implementation and maintenance by Registered Entities of internal reliability compliance programs and other internal processes for maintaining compliance with Reliability Standards.³⁸ The provision of training and education, and dissemination of other information, on compliance monitoring and enforcement topics can improve reliability performance (*i.e.* reduce the number and severity of noncompliances with Reliability Standards), and can make compliance monitoring processes more efficient for both the ERO and Registered Entities. For example, if Registered Entities understand what is expected of them in the compliance monitoring processes and are well-prepared for compliance monitoring processes such as Compliance Audits, the compliance monitoring processes can be conducted more efficiently and with fewer resources expended by both the ERO and the Registered Entity.

Finally, Criterion II encompasses the maintenance and provision of tools and services that are useful for the provision of adequate reliability, because they relate specifically to compliance with existing Reliability Standards and they proactively help to avert Reliability Standards violations and Bulk Power System violations, but only in the absence of an independent organization stepping forward to provide the tool or service (sub-criterion II.G). This sub-criterion is based on the Commission's conclusion at P 188 of the ERO Certification Order, where the Commission stated:

We believe that ISO/RTO Council's concern that some of NERC's activities, services or tools may present a conflict of interest is unfounded. NERC, as a not-for-profit entity, has no financial incentive to promote these tools and services. Moreover, these services are extremely useful for the provision of adequate reliability, because they relate specifically to compliance with existing standards and they proactively help avert Reliability Standard violations and system disturbances. At this time, in the absence of an independent organization

³⁸ A commenter on the second posting of the draft written criteria expressed concern, regarding sub-criterion II.F.4, that NERC should not be requesting and disseminating information about Registered Entities' internal compliance processes. However, sub-criterion II.F.4 pertains (consistent with the overall purpose of sub-criterion II.F) to the provision by the ERO of training, education and information on internal processes that Registered Entities can use for achieving compliance with Reliability Standards; it is not intended to describe an information-gathering activity.

stepping forward to provide some of these services as with the example of INPO in the nuclear industry, adequate reliability on the Bulk-Power System is better assured if the ERO offers to provide them.³⁹

However, this sub-criterion helps to illustrate the difference between: (i) the question of whether activities are statutory activities, and (ii) whether it is an appropriate use of the ERO's resources to engage in the activities. Although the maintenance and provision of tools and services in accordance with this sub-criterion are statutory activities, NERC has recently adopted a new policy regarding maintenance and financial support of existing and potential new reliability tools and support services. Under the new policy, NERC may assist in the development of tools and other support services for the benefit of Reliability Coordinators and other System Operators to enhance reliability, operations and planning, by working with industry to identify new tools, collaboratively develop requirements, support development, provide an incubation period, and at the end of that period transition the tool or service to another group or owner for long term operation of the tool or provision of the service. NERC may also develop reliability tools on its own, but will consult with industry concerning the need for the tool prior to development. Tools and services that were being maintained by NERC as of January 1, 2012 are being reviewed and, as warranted, will be transitioned to an appropriate industry group or organization. On December 20, 2012, the Commission approved a proposed revised version of NERC ROP §1002, Reliability Support Services, that reflects this new policy.⁴⁰ Further, consistent with the new policy, and based on a suggestion by a commenter on the first posting of the draft written criteria, the underscored words were added to the last clause of this sub-criterion: "but only in the absence of an independent organization stepping forward to provide the tool or service."

³⁹ ERO Certification Order at P 188.

⁴⁰ *Order Conditionally Approving Revisions to North American Electric Reliability Corporation Rules of Procedure*, 141 FERC ¶ 61,241 (2012).

Criterion III:

- III. Does the activity involve or support conducting and disseminating periodic assessments of the reliability of the Bulk Power System or monitoring the reliability of the Bulk Power System?
- A. Does the activity involve or support the preparation or dissemination of long-term, seasonal, and special assessments of the reliability and adequacy of the Bulk Power System?
 - B. Does the activity involve or support measuring reliability performance – past, present and future; publishing or disseminating the results of such measurements; analyzing the results of such measurements; identifying and analyzing risks to reliability of the Bulk Power System based on such measurements; and/or identifying approaches to mitigating or eliminating such risks?
 - C. Does the activity involve investigating, analyzing, evaluating, and disseminating information concerning, the causes of major events and off-normal occurrences, and/or providing coordination assistance, technical expertise and other assistance to users, owners, and operators of the Bulk Power System in connection with Bulk Power System major events and off-normal occurrences, but not Real-time operating control of the Bulk Power System?
 - D. Is the activity reasonably necessary for awareness of circumstances on the Bulk Power System and to contribute to understanding the risks to reliability?
 - E. Does the activity involve gathering, analyzing and sharing with and among industry and government participants, information regarding the physical or cyber security of the Bulk Power System?
 - F. Does the activity involve the development and dissemination of Advisories/Recommendations/Essential Actions regarding lessons learned and potential reliability risks to users, owners, and operators of the Bulk Power System?
 - G. Does the activity involve or support data collection and analysis of information regarding Bulk Power System reliability matters mandated by the Commission?

Discussion of Criterion III

Conducting, and preparing and disseminating reports on, periodic assessments of the reliability and adequacy of the Bulk Power System in North America are activities of the ERO

specified in FPA §215 and provided for in §39.11 of the Commission’s ERO regulations.⁴¹ Criterion III encompasses, in addition to conducting and preparing reports on assessments of the reliability and adequacy of the Bulk Power System, the information-gathering activities to support the preparation of such assessments. It also encompasses measuring and analyzing reliability performance, disseminating the results of the measurements and analysis, identifying and analyzing risks to the reliability of the Bulk Power System based on the measurements, and identifying approaches to mitigating or eliminating the risks. All of these activities comprise assessments of the reliability and adequacy of the Bulk Power System.

Additionally, in Order No. 672, the Commission specified that FPA §215 provides for funding for “monitoring the reliability of the Bulk-Power System.”⁴² Criterion III encompasses the investigation, analysis, evaluation and dissemination of information concerning the causes of major events and off-normal occurrences on the Bulk Power System, as well as coordination assistance, technical expertise and other assistance to users, owners, and operators of the Bulk Power System in connection with such major events and off-normal occurrences. These activities also provide or support assessments of the reliability and adequacy of the Bulk Power System.⁴³ However, sub-criterion III.C expressly excludes activities that would comprise “Real-time operating control of the Bulk Power System.”

Criterion III includes activities for monitoring and assessing conditions on, and identifying threats and vulnerabilities to the reliability of, the Bulk Power System, and sharing and disseminating information on and assessments of conditions, threats and vulnerabilities (sub-

⁴¹ FPA §215(g); 18 C.F.R. §39.11.

⁴² *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards*, Order No. 672, 114 FERC ¶ 61,104 (2006), at P 202.

⁴³ As discussed under Criterion I and Criterion II, these event analysis activities can also provide information to identify the need for development of new or revised Reliability Standards and information useful in evaluating and modifying compliance monitoring and enforcement processes and in identifying ways in which Registered Entities can improve their compliance with Reliability Standards.

criteria III.D, III.E and III.F). These sub-criteria encompass NERC's situation awareness and ES-ISAC activities.⁴⁴ Situation awareness activities involve directly assessing, and disseminating information concerning, circumstances, conditions and risks impacting the reliability of the Bulk Power System. Situation awareness activities can also provide information that is important in identifying the need for development of new or revised Reliability Standards and in identifying potential improvements in the ERO's compliance monitoring and enforcement activities and in Registered Entities' activities to comply with applicable Reliability Standards. The ES-ISAC activities are a critical role in maintaining Real-time situation awareness (but not Real-time operating control) of the Bulk Power System and in protecting the electric industry's critical infrastructure against threats and vulnerabilities. The ES-ISAC information sharing and analytical functions support the reliability of the Bulk Power System through receipt, and dissemination to the industry, of information regarding threats and vulnerabilities, disturbances, and off-normal occurrences on the Bulk Power System. Situation analysis activities, including the ES-ISAC, directly obtain information on, and move analyses of, threats to and impacts on the Bulk Power System to stakeholders through a variety of means, thereby directly benefiting the reliability and security of the Bulk Power System by educating and informing Registered Entities and other industry stakeholders on issues, risks and vulnerabilities affecting the reliability of the Bulk Power System, as well as potential mitigation strategies.

The situation awareness activities include information gathering, analysis and dissemination of information concerning the cyber security, as well as the physical security, of the Bulk Power System. The relevance of cyber security to the reliability of the Bulk Power System is expressly recognized in the definitions of "reliability standard" in FPA §215(a)(3) and "reliable operation" in FPA §215(a)(4):

The term "reliability standard" means a requirement, approved by the Commission under this section, to provide for reliable operation of the bulk-

⁴⁴ "ES-ISAC" is the acronym for Electricity Sector Information Sharing and Analysis Center.

power system. The term includes requirements for the operation of existing bulk-power system facilities, including cybersecurity protection, and the design of planned additions or modifications to such facilities to the extent necessary to provide for the reliable operation of the bulk-power system, but the term does not include any requirement to enlarge such facilities or to construct new transmission capacity or generation capacity. (FPA §215(a)(3); emphasis added.)

The term “reliable operation” means operating the elements of the bulk-power system within equipment and electric system thermal, voltage, and stability limits so that instability, uncontrolled separation, or cascading failures of such system will not occur as a result of a sudden disturbance, including a cybersecurity incident, or unanticipated failure of system elements. (FPA §215(a)(4); emphasis added.)

FPA §215(a)(8) defines “cybersecurity incident” as:

a malicious act or suspicious event that disrupts, or was an attempt to disrupt, the operation of those programmatic electronic devices and communications networks including hardware, software and data that are essential to the reliable operation of the bulk power system. (FPA §215(a)(8); emphasis added.)

The situation awareness activities under Criterion III provide for monitoring conditions, circumstances and risks on the Bulk Power System in order to identify, as they occur, cybersecurity incidents (both actual and attempted) that threaten the Reliable Operation of the Bulk Power System, and to analyze and disseminate information on these threats..

Criterion III includes the development and dissemination of Level 1 (Advisories), Level 2 (Recommendations) and Level 3 (Essential Actions) notifications (sometimes referred to collectively as “alerts”) to users, owners, and operators of the Bulk Power System regarding potential reliability risks and lessons learned, in accordance with §810, Information Exchange and Issuance of NERC Advisories, Recommendations and Essential Actions, of the NERC ROP (sub-criterion III.F). Although sometimes more particularized to specific operations, equipment, reliability threats or distinct portions of the Bulk Power System, these alerts also constitute assessments of the reliability and adequacy of the Bulk Power System and provide information on how to identify or address specific risks to reliability.

The sub-criteria of Criterion III describe activities that are conducted in NERC’s Reliability Assessment and Performance Analysis Program or in its Situation Analysis and

Critical Infrastructure Protection Programs and are described in Sections 800 and 1000 of the NERC ROP.

Criterion IV

- IV. Is the activity one that was required or directed by a Commission order issued pursuant to FPA §215? Justification of an activity as a FPA §215 activity based on this category must reference the particular Commission order and directive.

Discussion of Criterion IV

In the ERO Certification Order, the Commission stated that “We generally believe that anything required of the ERO or a Regional Entity by the statute, Order No. 672 pursuant to the statute, or any subsequent Commission order pursuant to section 215 of the FPA is a statutory activity.”⁴⁵ Criterion IV is included in the list of statutory criteria to encompass activities that are being conducted by the ERO in response to a requirement or a directive contained in an order issued by the Commission pursuant to FPA §215.

Some commenters on the first posting of the draft written criteria suggested that “required or directed by a Commission order issued pursuant to FPA §215” should not be a separately-stated criteria because the Commission does not have authority to impose requirements on or to issue directives to the ERO outside the scope of FPA §215. However, from NERC’s perspective, the ERO is not in a position to second-guess the Commission on whether a requirement or directive in an order issued under authority of FPA §215 was in fact within the scope of the Commission’s authority under that statute. Rather, the ERO must follow the Commission’s requirement or directive unless and until it is modified, revoked or vacated on rehearing or judicial review or by a subsequent order.

Criterion V:

- V. Is the activity one that is required or specified by, or carries out, the provisions of NERC’s Rules of Procedure that have been approved by the

⁴⁵ ERO Certification Order at P 185.

Commission as “Electric Reliability Organization Rules” (defined in 18 C.F.R. §39.1) pursuant to FPA §215(f)?

Discussion of Criterion V

The Commission’s ERO regulations at 18 C.F.R. §39.1 define “Electric Reliability Organization Rules” (“ERO Rules”) as “the bylaws, a rule of procedure or other organizational rule or protocol of the Electric Reliability Organization.”⁴⁶ NERC’s ROP are ERO Rules. FPA §215(f) requires that ERO Rules and proposed changes to ERO Rules must be filed with and approved by the Commission:

The Electric Reliability Organization shall file with the Commission for approval any proposed rule or proposed rule change, accompanied by an explanation of its basis and purpose. The Commission, upon its own motion or complaint, may propose a change to the rules of the ERO. A proposed rule or proposed rule change shall take effect upon a finding by the Commission, after notice and opportunity for comment, that the change is just, reasonable, and not unduly discriminatory or preferential, is in the public interest, and meets the requirements of subsection (c) of this section.

The Commission’s ERO regulations at 18 C.F.R. §39.10 mirror the statutory requirements of FPA §215(f).

All of the provisions of the NERC ROP have been approved by orders issued by the Commission. NERC’s initial set of ROP was submitted as part of its application for certification as the ERO, which was approved in the ERO Certification Order (with directives to submit revisions to various provisions of the ROP), and numerous additions, deletions and revisions to the ROP have been approved in subsequent orders of the Commission issued pursuant to FPA §215(f) and 18 C.F.R. §39.10(c). When a new provision of the ROP, or a revision to the ROP, is approved by the Commission, it “take[s] effect.”⁴⁷ Once a ROP provision is approved by the Commission and “take[s] effect,” NERC must comply with the ROP provision, unless and until the provision is further revised or eliminated following another filing by NERC and approval by

⁴⁶ 18 C.F.R. §39.2 also defines “Regional Entity Rule,” as “the bylaws, a rule of procedure or other organizational rule or procedure of a Regional Entity.”

⁴⁷ FPA §215(f); 18 C.F.R. §39.10(c).

the Commission pursuant to FPA §215(f) and 18 C.F.R. §39.10(a) and (c).

As noted earlier, in the ERO Certification Order, the Commission stated that “We generally believe that anything required of the ERO or a Regional Entity by the statute, Order No. 672 pursuant to the statute, or any subsequent Commission order pursuant to section 215 of the FPA is a statutory activity.”⁴⁸ The provisions of NERC’s ROP are approved by “Commission order[s] pursuant to section 215 of the FPA,” and, as stated, NERC must conduct its activities in accordance with the provisions of its ROP. Therefore, the activities specified in NERC’s Commission-approved ROP are statutory activities.

As an illustration of this point, in its 2009 Business Plan and Budget filing with the Commission, NERC stated that it was discontinuing its Reliability Readiness Evaluation and Improvement Program (“Reliability Readiness Program”), which was conducted pursuant to Section 700 of the NERC ROP.⁴⁹ In its order on the 2009 Business Plan and Budget, the Commission, noting that “the reliability readiness program was initiated as a direct response to the August 2003 blackout, with the goal to increase transparency of operating practices and assess the industry’s preparedness to minimize the likelihood of another major blackout,” and that “[t]he Commission believes that the ongoing vigilance provided by the Reliability Readiness Evaluation and Improvement Program serves an important function in ensuring Bulk-Power System reliability,” directed NERC “to reconsider the funding for the Reliability Readiness Evaluation and Improvement Program, to provide additional explanation in a compliance filing about the proposed elimination of this program and, if appropriate, to provide a supplemental budget request for the continued funding of the program beyond the first quarter of 2009.” The Commission specifically directed that “this compliance filing should address the affect [sic] of the proposed elimination on section 700 of [NERC’s] Rules of Procedure that implement this

⁴⁸ ERO Certification Order at P 185.

⁴⁹ *Request of the North American Electric Reliability Corporation for Acceptance of its 2009 Business Plan and Budget and the 2009 Business Plans and Budgets of Regional Entities and for Approval of Assessments to Fund Budgets*, filed August 22, 2008 in Docket No. RR08-6-0000, at 30-31.

program.”⁵⁰ In short, the Commission indicated concern that NERC could not terminate an activity that was conducted pursuant to the NERC ROP. In its compliance filing in response to the Commission’s order, NERC stated that it believed it was premature to request approval for a revision to ROP Section 700 to reflect elimination of the Reliability Readiness Program until the Commission had approved the elimination as proposed in the Business Plan and Budget filing and the remaining scheduled readiness evaluations were completed. However, NERC agreed that it would then need to file, for Commission approval, proposed revisions to ROP Section 700 consistent with elimination of the Reliability Readiness Program.⁵¹ After the Commission issued an order on the compliance filing approving the elimination of the Reliability Readiness Program,⁵² NERC filed proposed changes to Section 700 of the ROP reflecting elimination of the program,⁵³ which the Commission approved.⁵⁴

For reference, the NERC ROP are organized on the basis of its activities and functions in Sections 300 through 1700 as follows:⁵⁵

Section 300: Reliability Standards Development

Section 400: Compliance Enforcement

Section 500: Organization Registration and Certification

Section 600: Personnel Certification

⁵⁰ *Order Conditionally Accepting 2009 Business Plan and Budget of the North American Electric Reliability Corporation and Ordering Compliance Filings*, 125 FERC ¶ 61,056 (2008), at PP 31 and 34.

⁵¹ *Compliance Filing of the North American Electric Reliability Corporation in Response to October 16, 2008 Order on 2009 Business Plans and Budgets*, filed December 15, 2008 in Docket Nos. RR08-6-002 and RR07-14-003, at 23-24.

⁵² *Order on Compliance Filing*, 128 FERC ¶ 61,025 (2009), at P 28.

⁵³ *Petition of the North American Electric Reliability Corporation for Approval of Amendments to its Rules of Procedure to Reflect Elimination of the Reliability Readiness Evaluation and Improvement Program*, filed November 12, 2009 in Docket No. RR10-3-000.

⁵⁴ Letter Order issued January 14, 2010, in Docket No. RR10-3-000.

⁵⁵ Section 100 of the ROP states the Applicability of the Rules of Procedure. Section 200 formerly stated definitions used in the ROP, but now refers to Appendix 2, *Definitions Used in the Rules of Procedure*, where the definitions are provided.

Section 700: Reliability Readiness Evaluation and Improvement and Formation of Sector Forums

Section 800: Reliability Assessment and Performance Analysis

Section 900: Training and Education

Section 1000: Situation Awareness and Infrastructure Security

Section 1100: Annual NERC Business Plans and Budgets

Section 1200: Regional Delegation Agreements

Section 1300: Committees

Section 1400: Amendments to the NERC Rules of Procedure

Section 1500: Confidential Information

Section 1600: Requests for Data and Information

Section 1700: Challenges to Determinations

Additionally, twelve Appendices to the ROP, also approved by the Commission as ERO Rules, provide additional detail concerning certain of NERC's activities.⁵⁶

Criterion VI:

VI. Does the activity involve the supervision and oversight of Regional Entities in the performance of their delegated responsibilities in accordance with FPA §215, 18 C.F.R. Part 39, the Commission-approved delegation agreement between NERC and the Regional Entity, the NERC ROP, and the applicable provisions of Commission orders?

Discussion of Criterion VI

FPA §215(e)(4) provides for delegation agreements, subject to Commission approval, by which NERC delegates its statutory authority to Regional Entities. The Commission's ERO regulations at 18 C.F.R. §39.8 implement this authority. The Commission has issued a series of orders approving the original delegation agreements between NERC and the eight Regional

⁵⁶ E.g., Appendix 3A, *Standard Processes Manual*; Appendix 4C, *Compliance Monitoring and Enforcement Program*; Appendix 5A, *Organization Registration and Certification Manual*; and Appendix 8, *NERC Blackout and Disturbance Response Procedures*.

Entities and revised versions of or amendments to the delegation agreements.⁵⁷ Additionally, the NERC ROP contain a section on Regional Delegation Agreements (ROP §1200), which includes a provision requiring that “NERC and each Regional Entity shall comply with all applicable ERO Rules of Procedure and the obligations stated in the regional delegation agreement.”⁵⁸ Further, the approved delegation agreements contain a requirement that as a condition to the delegation of authority, the Regional Entity shall comply with the applicable provisions of the NERC ROP.⁵⁹ Accordingly, activities involving NERC’s supervision and oversight of the Regional Entities in the performance of their delegated responsibilities in accordance with FPA §215, the Commission’s regulations in Part 39, the approved delegation agreements, the NERC ROP, and the applicable provisions of Commission orders, are statutory activities.

Criterion VII:

- VII. Is the activity necessary or appropriate to maintain NERC’s certification as the Electric Reliability Organization? This criterion includes conducting periodic assessments of NERC and the Regional Entities’ performance as the Electric Reliability Organization as required by 18 C.F.R. §39.3(c).

Discussion of Criterion VII

To be certified by the Commission as the ERO, NERC was required to satisfy the criteria for certification in FPA §215(c) and the Commission’s ERO regulations at 18 C.F.R. §39.3. Further, 18 C.F.R. §39.3(c) requires the ERO to “submit an assessment of its performance three years after the date of certification by the Commission, and every five years thereafter,” and sets forth requirements for the contents of the assessment, including “[a]n explanation of how the

⁵⁷ The most recent order approving comprehensive revisions to the delegation agreements is *Order Conditionally Approving Revised Pro Forma Delegation Agreement, Revised Delegation Agreements with Regional Entities, Amendments to Rules of Procedure and Certain Regional Entity Bylaws*, 133 FERC ¶ 61,061 (2010), *rehearing denied*, 134 FERC ¶ 61,179 (2011).

⁵⁸ NERC ROP §1204.

⁵⁹ The currently-effective delegation agreements are posted at: <http://www.nerc.com/page.php?cid=1|9|119|181>.

[ERO] satisfies the requirements of §39.3(b) [*i.e.*, the certification criteria].”⁶⁰ This regulation specifies that:

The Commission will issue an order finding that the Electric Reliability Organization meets the statutory and regulatory criteria or directing the Electric Reliability Organization to come into compliance with or improve its compliance with the requirements of this part. If the ERO fails to comply adequately with the Commission order, the Commission may institute a proceeding to enforce its order, including, if necessary and appropriate, a proceeding to consider decertification of the ERO consistent with §39.9. The Commission will issue an order finding that each Regional Entity meets the statutory and regulatory criteria or directing the Regional Entity to come into compliance with or improve its compliance with the requirements of this part. If a Regional Entity fails to comply adequately with the Commission order, the Commission may institute a proceeding to enforce its order, including, if necessary and appropriate, a proceeding to consider rescission of its approval of the Regional Entity’s delegation agreement.⁶¹

Additionally, the ERO Certification Order and other, subsequent orders of the Commission have specified conditions to NERC’s certification that NERC must meet.

Because NERC must continue to maintain compliance with the statutory criteria for certification as the ERO and must periodically demonstrate to the Commission that it continues to meet the statutory criteria for ERO certification, activities that are necessary or appropriate to maintain NERC’s certification as the ERO are statutory activities. These activities include conducting the periodic assessments of the performance of NERC and the Regional Entities as the ERO as required by 18 C.F.R. §39.3(c).

This criterion also encompasses NERC’s efforts to gain and maintain recognition as the electric reliability organization in Canada and Mexico. FPA §215(c)(2)(iv) states that one of the criteria for certification as the ERO is that the entity has established rules that “provide for taking, after certification, appropriate steps to gain recognition in Canada and Mexico.” This requirement is also stated in the Commission’s regulations at 18 C.F.R. §39.3(b)(2)(v) (“provide appropriate steps, after certification by the Commission as the Electric Reliability Organization,

⁶⁰ 18 C.F.R. §39.3(c)(1).

⁶¹ 18 C.F.R. §39.3(c)(2).

to gain recognition in Canada and Mexico”). *See also* Order No. 672 at P 119 (“[t]he statute contemplates that the ERO will be subject to the jurisdiction of the United States, Canada, and possibly Mexico”) and P 126 (“for the ERO to be effective in maintaining Bulk-Power System reliability across national borders, it must be able to operate in an international arena”).

Criterion VIII:

VIII. Does the activity respond to or support audits of NERC and the Regional Entities conducted by the Commission?

Discussion of Criteria VIII

The Commission, from time to time, conducts audits of NERC and of the Regional Entities addressing various aspects of their performance of their ERO responsibilities.⁶² NERC is required to expend resources to respond to audits of NERC and may be required to expend resources to support the Commission’s audits of Regional Entities (*e.g.*, by assisting in providing information requested of the Regional Entity by Commission Audit Staff). These audits are conducted to evaluate various aspects of the audited entity’s performance of its responsibilities under FPA §215. Therefore, activities that respond to or support audits of NERC or the Regional Entities conducted by the Commission are statutory activities.

Criterion IX:

IX. Does the activity provide support for NERC and Regional Entity committees, subcommittees and working groups engaged in activities encompassed by one or more of the other criteria?

Discussion of Criterion IX

NERC’s Bylaws provide for the appointment of standing committees and other committees by the NERC Board of Trustees.⁶³ ROP Section 1300 also provides for the appointment of committees by the Board of Trustees and the appointment of subgroups by

⁶² *E.g.*, Docket No. FA11-21-000 (NERC); Docket No. PA09-7-000 (Florida Reliability Coordinating Council); Docket No. PA09-6-000 (Texas Regional Entity); Docket No. PA08-2-000 (Southwest Power Pool).

⁶³ Bylaws of the North American Electric Reliability Corporation, Article VII, section 1. As defined in 18 C.F.R. §39.1, NERC’s Bylaws are an ERO Rule, and they have been approved by the Commission.

standing committees, and specifies requirements for nomination, appointment and composition of membership on committees and subgroups and procedures for conducting committee business. Pursuant to these provisions, the Board of Trustees has appointed NERC standing committees such as the Compliance and Certification Committee, the Critical Infrastructure Protection Committee, the Operating Committee and the Planning Committee.⁶⁴ Further, provisions of the ROP pertaining to the Reliability Standards Development Process provide for a Standards Committee, whose members are elected.⁶⁵ Generally, these committees are comprised of industry volunteers; however, NERC staff provides support to the activities of these committees and NERC expends other resources in support of the committees' activities, such as payment of committee expenses, provision of or payment for meeting space and other facilitation of committee meetings, and publication and dissemination of reports. To the extent that a NERC committee, subcommittee or working group is engaged in work that falls within one of the other statutory criteria, NERC's activities and expenditures of resources in support of the activities of the committee, subcommittee or working group are statutory activities.

Criterion X:

- X. Does the activity involve analysis and evaluation of activities encompassed by one or more of the other criteria for the purpose of identifying means of performing the activities more effectively and efficiently?

Discussion of Criterion X

NERC's Board of Trustees, management and staff devote considerable time and effort to analyzing and evaluating NERC's activities for the purpose of identifying means of performing the activities more effectively and efficiently. For example, in connection with the annual business planning and budgeting process, the NERC Board and senior management, along with the Regional Entity executives, engage in a strategic planning process to identify and develop

⁶⁴ A list of NERC committees, subcommittees and working groups can be found at: <http://www.nerc.com/page.php?cid=1117>.

⁶⁵ ROP Section 306 and Appendix 3B, *Election Procedures for Members of NERC Standards Committee*.

strategic goals and objectives for the upcoming year. NERC's self-analysis efforts may from time to time involve the retention of external consultants to assist in process evaluation and improvement efforts.⁶⁶ These self-analysis efforts may not actually constitute the direct performance of a statutory activity such as development of a Reliability Standard or conducting compliance monitoring and enforcement activities. However, because these self-analysis activities are intended to result in improvements in the efficiency and effectiveness of NERC's performance of its statutory responsibilities, the self-analysis activities should be considered to be statutory activities.

Criterion XI:

- XI. Is the activity a governance or administrative/overhead function or service in support of the activities encompassed by the other criteria and, in general, necessary and appropriate to operate a functioning organization? (Should NERC perform any non-FPA §215 activities, the costs of governance and administrative/overhead functions must be appropriately allocated.)

NERC's current governance and administrative/overhead functions are carried out in the following program areas:

- A. Technical Committees and Members' Forum Programs.
- B. General and administrative (includes, but is not limited to, executive, board of trustees, communications, government affairs, and facilities and related services).
- C. Legal and Regulatory.
- D. Information Technology
- E. Human Resources
- F. Accounting and Finance.

Discussion of Criterion XI

Criterion XI encompasses all of NERC's administrative and general, or "indirect," activities and costs. These administrative and general activities are necessary to support the

⁶⁶ For example, in 2009, NERC retained an external consultant, Crowe Horwath LLP, to conduct an evaluation of the CMEP processes.

performance of the statutory activities encompassed by the other criteria and, more generally, to operate a functioning organization. Criterion XI lists the administrative and general program areas in which NERC budgets and records its indirect costs.⁶⁷

NERC does not currently engage in any non-statutory activities, but it is conceivable that NERC could engage in one or more non-statutory activities in the future. Criterion XI specifies that in the event NERC were to engage in non-statutory activities, its administrative and general costs would need to be allocated between its statutory and non-statutory activities using an appropriate allocation procedure.

Matters Excluded from the Scope of FPA §215 Activities:

The following matters are excluded from the scope of FPA §215 activities. While a list of non-FPA §215 activities would be infinite, the following matters are listed here because they are expressly referred to in FPA §215, the Commission's ERO regulations and/or a Commission order issued pursuant to FPA §215:

- A. Developing or enforcing requirements to enlarge Bulk Power System facilities, or to construct new transmission capacity or generation capacity, or requirements for adequacy or safety of electric facilities or services.
- B. Activities entailing Real-time operational control of the Bulk Power System.
- C. Activities pertaining to facilities used in the local distribution of electric energy.

Discussion

The written criteria list three types of matters that are excluded from the scope of FPA §215 activities. Several commenters on the first posting of the draft written criteria stated that there was no need to include a limited list of matters excluded from the scope of FPA §215 and that this portion of the written criteria should be deleted. Other commenters, however, supported the inclusion of the list of exclusions in the written criteria. NERC recognizes that a list of non-FPA §215 activities would be infinite (or at least, extremely lengthy); however, the three listed

⁶⁷ The list of administrative and general program areas could conceivably be revised in the future, although NERC has no current plans for changes.

matters have been included because they are expressly referred to in FPA §215, in the Commission's ERO regulations and/or in a Commission order issued pursuant to FPA §215:

- The definitions of Reliability Standard in FPA §215(a) and 18 C.F.R. §39.1 state that a Reliability Standard does not include any requirement to enlarge Bulk Power System components or to construct new transmission capacity or generation capacity.
- FPA §215(i)(2) and (3) state, respectively, that “This section does not authorize the ERO or the Commission to order the construction of additional generation or transmission capacity or to set and enforce compliance with standards for adequacy or safety of electric facilities or services,” and “Nothing in this section shall be construed to preempt any authority of any State to take action to ensure the safety, adequacy, and reliability of electric service within that State, as long as such action does not result in lesser reliability outside the State than that provided by the reliability standard.”
- In the ERO Certification Order, the Commission concluded that NERC's approved activities under §1001 of the ROP do not entail Real-time operational control over the Bulk Power System, but rather are limited to “leadership coordination, technical expertise and assistance to the industry in responding to events.”⁶⁸
- The definitions of Bulk Power System in FPA §215(a) and 18 C.F.R. §39.1 state that the Bulk Power System does not include facilities used in the local distribution of electric energy.
- FPA §215(i) states that the ERO may develop and enforce compliance with Reliability Standards for only the Bulk Power System.

The list of matters excluded from the scope of FPA §215 activities was revised in several respects from the first posted draft written criteria based on stakeholder comments on the posting. In the first posted draft, the second exclusion was stated as “Except as otherwise ordered by the Commission, activities entailing operational control of the Bulk Power System.” Based on a stakeholder comment, the phrase “Except as otherwise ordered by the Commission” was deleted. Additionally, other changes were made to the text of the exclusions based on stakeholder comments that the text of the exclusions should more closely track the text of the statute, regulations and/or orders on which they are based.

⁶⁸ ERO Certification Order at P 186.

V. CONCLUSION

The North American Electric Reliability Corporation respectfully requests approval by the Commission of NERC's written criteria for determining whether a reliability activity is eligible to be funded under Section 215 of the Federal Power Act, as set forth in **Attachment 1** to this filing, as compliant with Recommendation 37 in Docket No. FA11-21-000 and the directive in P 30 of the 2013 Budget Order.

Respectfully submitted,

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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 lists compiled by the Secretary of the Commission for Docket No. RR12-13-000 and Docket No. FA11-21-000.

Dated at Chicago, Illinois, this 1st day of February, 2013.

/s/ Owen E. MacBride
Owen E. MacBride

Attorney for North American
Electric Reliability Corporation

FEDERAL ENERGY REGULATORY COMMISSION

DOCKET NO. DOCKET NO. FA11-21-000

ATTACHMENT 1

TO

COMPLIANCE FILING OF

THE NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION

TO PARAGRAPH 30 OF NOVEMBER 2, 2012 COMMISSION ORDER

NERC WRITTEN CRITERIA FOR DETERMINING

WHETHER A RELIABILITY ACTIVITY IS ELIGIBLE TO BE FUNDED

UNDER SECTION 215 OF THE FEDERAL POWER ACT

**NERC WRITTEN CRITERIA FOR DETERMINING
WHETHER AN ACTIVITY IS ELIGIBLE TO BE FUNDED
UNDER SECTION 215 OF THE FEDERAL POWER ACT**

For purposes of internal management approval of a proposed new activity or group of related activities (“major activity”), the proposed activity or major activity must be shown to fall within at least one of the criteria listed below. When sub-criteria are listed below a roman numeral numbered major criterion, the proposed activity should be a positive answer to at least one of the sub-criteria. Conversely, an activity that falls under a sub-criterion should pertain to the subject matter of the major criterion.

NERC’s annual business plan and budget will describe how each major activity falls within one or more of the criteria listed below. If the major activity is substantially the same as a major activity that was shown to fall within the criteria in a previous year’s business plan and budget, the current year’s business plan and budget can refer to the prior year business plan and budget.

A determination that an activity falls within FPA §215 does not necessarily mean that NERC will propose or undertake such activity. The determination of whether an activity falling under FPA §215 should or will be undertaken in a given budget year will be addressed in the context of the applicable business plan and budget and will include opportunities for stakeholder input.

The criteria listed below are not necessarily each distinct from the others. An activity or major activity may fall within more than one of the criteria listed below.

- I. Does the activity involve or support the development of Reliability Standards?
 - A. Is the activity a (or part of a) Reliability Standards development project pursuant to the NERC Rules of Procedure (ROP)?
 - B. Does the activity involve providing guidance and assistance to Regional Entities in carrying out Regional Reliability Standards development activities?
 - C. Does the activity involve information gathering, collection and analysis activities to obtain information reasonably necessary in Reliability Standards development, including for purposes of identifying areas in which new Reliability Standards could be developed, existing Reliability Standards could be revised, or existing Reliability Standards could be eliminated, such as:
 1. Measuring reliability performance – past, present and future; publishing or disseminating the results of such measurements; analyzing the results of such measurements; identifying and analyzing risks to reliability of the Bulk Power System¹ based on such measurements; and/or identifying approaches to mitigating or eliminating such risks?
 2. Monitoring, event analysis and investigation of Bulk Power System major events, off-normal occurrences and near miss events?

¹ This document uses the term “Bulk Power System” because that is the term defined and used in FPA §215. NERC recognizes that a different term, “Bulk Electric System,” is used to define the current reach of Reliability Standards.

- D. Does the activity involve or support the provision of training and education concerning Reliability Standards development processes, procedures and topics for/to (i) NERC personnel, (ii) Regional Entity personnel, and (iii) industry personnel?
- II. Does the activity involve or support the monitoring and enforcement of compliance with Reliability Standards?
- A. Does the activity involve or support the identification and registration of users, owners, and operators of the Bulk Power System that are required to comply with Requirements of Reliability Standards applicable to the reliability functions for which they are registered?
 - B. Does the activity involve or support the Certification of Reliability Coordinators, Transmission Operators and Balancing Authorities as having the requisite personnel, qualifications and facilities and equipment needed to perform these reliability functions in accordance with the applicable Requirements of Reliability Standards?
 - C. Does the activity involve or support the Certification of system operating personnel as qualified to carry out the duties and responsibilities of their positions in accordance with the Requirements of applicable Reliability Standards?²
 - D. Does the activity involve or support conducting, participating in or overseeing compliance monitoring and enforcement activities pursuant to the NERC ROP and (through the Regional Entities) the Commission-approved delegation agreements?
 - E. Does the activity involve information gathering, collection and analysis activities to obtain information reasonably necessary to monitor and enforce compliance with Reliability Standards, including evaluating the effectiveness of current compliance monitoring and enforcement processes, the need for new or revised compliance monitoring and enforcement processes, and the need for new or different means of training and education on compliance with Reliability Standards, such as:
 - 1. Measuring reliability performance – past, present and future; publishing or disseminating the results of such measurements; analyzing the results of such measurements; identifying and analyzing risks to reliability of the Bulk Power System based on such measurements; and/or identifying approaches to mitigating or eliminating such risks?
 - 2. Monitoring, event analysis and investigation of Bulk Power System major events, off-normal occurrences, and near miss events?

² Although certification of system operating personnel is an activity falling within the scope of, and eligible to be funded pursuant to, FPA §215, NERC strives to fully fund the costs of this activity through fees charged to participants.

- F. Does the activity involve or support the provision of training, education and dissemination of information for/to (i) NERC personnel, (ii) Regional Entity personnel, and (iii) industry personnel with respect to compliance monitoring and enforcement topics and topics concerning reliability risks identified through compliance monitoring and enforcement activities, such as:
1. Requirements of Reliability Standards, including how to comply and how to demonstrate compliance? This includes development of guidance and interpretation documents.
 2. Compliance monitoring and enforcement processes, including how to conduct them, how to participate in them, and the expectations for the processes? This includes development of guidance documents.
 3. Disseminating, through workshops, webinars, Advisories/Recommendations/Essential Actions, and other publications, “lessons learned” information on compliance concerns and reliability risks obtained through compliance monitoring and enforcement activities, monitoring and investigation of Bulk Power System major events, off-normal occurrences and near miss events, and other Bulk Power System monitoring activities?
 4. Registered Entity internal processes for compliance with Reliability Standards, such as development, implementation and maintenance of internal reliability compliance programs?
- G. Does the activity involve the development and provision of tools and services that are useful for the provision of adequate reliability, because they relate specifically to compliance with existing Reliability Standards and they proactively help avert Reliability Standard violations and Bulk Power System disturbances, but only in the absence of an independent organization stepping forward to provide the tool or service?
- III. Does the activity involve or support conducting and disseminating periodic assessments of the reliability of the Bulk Power System or monitoring the reliability of the Bulk Power System?
- A. Does the activity involve or support the preparation or dissemination of long-term, seasonal, and special assessments of the reliability and adequacy of the Bulk Power System?
 - B. Does the activity involve or support measuring reliability performance – past, present and future; publishing or disseminating the results of such measurements; analyzing the results of such measurements; identifying and analyzing risks to reliability of the Bulk Power System based on such measurements; and/or identifying approaches to mitigating or eliminating such risks?
 - C. Does the activity involve investigating, analyzing, evaluating, and disseminating information concerning, the causes of major events and off-normal occurrences, and/or providing coordination assistance, technical expertise and other assistance

to users, owners, and operators of the Bulk Power System in connection with Bulk Power System major events and off-normal occurrences, but not real-time operational control of the Bulk Power System?

- D. Is the activity reasonably necessary for awareness of circumstances on the Bulk Power System and to contribute to understanding risks to reliability?
 - E. Does the activity involve gathering, analyzing and sharing with and among industry and government participants, information regarding the physical or cyber security of the Bulk Power System?
 - F. Does the activity involve the development and dissemination of Advisories/Recommendations/Essential Actions regarding lessons learned and potential reliability risks to users, owners, and operators of the Bulk Power System?
 - G. Does the activity involve or support data collection and analysis of information regarding Bulk Power System reliability matters mandated by the Commission?
- IV. Is the activity one that was required or directed by a Commission order issued pursuant to FPA §215? Justification of an activity as a FPA §215 activity based on this category must reference the particular Commission order and directive.
- V. Is the activity one that is required or specified by, or carries out, the provisions of NERC's Rules of Procedure that have been approved by the Commission as "Electric Reliability Organization Rules" (defined in 18 C.F.R. §39.1) pursuant to FPA §215(f)?
- VI. Does the activity involve or support the supervision and oversight of Regional Entities in the performance of their delegated responsibilities in accordance with FPA §215, 18 C.F.R. Part 39, the Commission-approved delegation agreement between NERC and the Regional Entity, the NERC ROP, and applicable provisions of Commission orders?
- VII. Is the activity necessary or appropriate to maintain NERC's certification as the Electric Reliability Organization? This Criterion includes conducting periodic assessments of NERC's and the Regional Entities' performance as the Electric Reliability Organization as required by 18 C.F.R. §39.3(c).
- VIII. Does the activity respond to or support audits of NERC and the Regional Entities conducted by the Commission?
- IX. Does the activity provide support for NERC and Regional Entity committees, subcommittees and working groups engaged in activities encompassed by one or more of the other criteria?
- X. Does the activity involve analysis and evaluation of activities encompassed by one or more of the other criteria for the purpose of identifying means of performing the activities more effectively and efficiently?
- XI. Is the activity a governance or administrative/overhead function, activity or service in support of the activities encompassed by the other criteria and, in general, necessary and

appropriate to operate a functioning organization? (Should NERC perform any non-FPA §215 activities, the costs of governance and administrative/overhead functions must be appropriately allocated.)

NERC's current governance and administrative/overhead functions are carried out in the following program areas:

- A. Technical Committees and Members' Forum Programs
- B. General and administrative (includes, but is not limited to, executive, board of trustees, communications, government affairs, and facilities and related services).
- C. Legal and Regulatory.
- D. Information Technology
- E. Human Resources
- F. Accounting and Finance.

The following matters are excluded from the scope of FPA §215 activities. While a list of non-FPA §215 activities would be infinite, the following excluded matters are listed here because they are expressly referred to in FPA §215, the Commission's ERO regulations and/or a Commission order issued pursuant to FPA §215:

- A. Developing or enforcing requirements to enlarge Bulk Power System facilities, or to construct new transmission capacity or generation capacity, or requirements for adequacy or safety of electric facilities or services.
- B. Activities entailing Real-time operational control of the Bulk Power System.
- C. Activities pertaining to facilities used in the local distribution of electric energy.