

TABLE OF CONTENTS

I. NOTICES AND COMMUNICATIONS 3

II. STATUTORY FRAMEWORK 4

III. COMMENTS..... 5

A. A five year Performance Assessment cycle allows NERC to better demonstrate evolution of the ERO Enterprise and recognizes extensive formal and informal coordination and oversight ... 7

B. Direction on material areas of focus could be beneficial if provided at least six months in advance of the Performance Assessment deadline 11

C. NERC seeks and responds to valuable stakeholder coordination on a real-time basis and in advance of each Performance Assessment 13

D. If the Commission directs a three-year Performance Assessment cycle or any of the other proposed changes, that change should take effect after the 2024 Performance Assessment 14

III. CONCLUSION 15

Appendix A Appendix of Federal Energy Regulatory Commission and ERO Enterprise Coordination Activities

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

North American Electric Reliability Corporation)
)

Docket No. RM21-12-000

**COMMENTS OF THE
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION, MIDWEST
RELIABILITY ORGANIZATION, NORTHEAST POWER COORDINATING
COUNCIL, INC., RELIABILITYFIRST CORPORATION, SERC RELIABILITY
CORPORATION, TEXAS RELIABILITY ENTITY, INC., AND WESTERN
ELECTRICITY COORDINATING COUNCIL ON THE NOTICE OF PROPOSED
RULEMAKING**

On January 19, 2021, the Federal Energy Regulatory Commission (“FERC” or the “Commission”) issued a Notice of Proposed Rulemaking (“NOPR”) proposing that federal regulations concerning the certification of the Electric Reliability Organization (“ERO”) require that: (1) Performance Assessments occur every three years instead of every five years; (2) such assessments address items identified by the Commission at least 90 days prior to the filing deadline; and (3) the ERO establish a formal comment period on ERO Enterprise activities apart from other processes.¹ The North American Electric Reliability Corporation (“NERC”), as the Commission-certified ERO,² and the Regional Entities³ hereby submit comments in response to the NOPR.

¹ *Revisions to Regulations on Electric Reliability Organization Performance Assessments*, 174 FERC ¶ 61,031 (2021) [hereinafter NOPR].

² *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, at P 262, 321-37 [hereinafter Order No. 672], *order on reh’g*, Order No. 672-A, 114 FERC ¶ 61,328 (2006). NERC was certified by the Commission as the ERO, pursuant to § 215(c) of the Federal Power Act [hereinafter FPA], by Commission order issued July 20, 2006. *Order Certifying the North American Electric Reliability Corporation as the Electric Reliability Organization and Ordering Compliance Filing*, 116 FERC ¶ 61,062 (2006) [hereinafter Certification Order].

³ The Regional Entities are (i) Midwest Reliability Organization (“MRO”); (ii) Northeast Power Coordinating Council, Inc. (“NPCC”); (iii) ReliabilityFirst Corporation (“ReliabilityFirst”); (iv) SERC Reliability Corporation (“SERC”); (v) Texas Reliability Entity, Inc. (“Texas RE”); and (vi) Western Electricity Coordinating Council (“WECC”). NERC and the Regional Entities comprise the ERO Enterprise.

The ERO Enterprise is committed to the oversight process through which the Performance Assessment provides the Commission with all information necessary for that evaluation. The ERO Enterprise supports the effective and efficient communication, coordination, and feedback objectives that appear to drive the proposals in the NOPR. However, the NOPR proposals do not take into account numerous, existing opportunities for coordination and timely feedback from industry, FERC Commissioners, and Commission staff. The existing assessment cycle and stakeholder public comment process are more conducive to demonstrating evolution of the ERO Enterprise and gathering comments on performance. The existing process provides more comprehensive oversight of ERO Enterprise activity and allows for more focused interaction during the five-year period. Given the existing communication opportunities, the proposed change to a three-year assessment cycle and formalized comment process would place a burden on ERO Enterprise staff (shifting work away from other key activities) that would outweigh any potential benefits. In addition, the ERO Enterprise appreciates the proposal to provide direction on specific questions for the Performance Assessment as it may illuminate additional areas of interest, however, submits that a six month advance notice would permit a more meaningful response.

As a result, the ERO Enterprise respectfully requests that the Commission maintain the existing Performance Assessment filing cycle and stakeholder public comment process.⁴ The ERO Enterprise also requests that, to the extent the Commission issues a regulation requiring the ERO to address particular questions directed for the Performance Assessment beyond the broad scope which appears required under Order No. 672, such regulation provide for at least six months' prior notice. Finally, these comments request that if the NOPR proposals are adopted, they take effect after the 2024 Performance Assessment.

⁴ 18 C.F.R. §39.3(c).

I. NOTICES AND COMMUNICATIONS

Notices and communications with respect to this filing may be addressed to the following:⁵

Candice Castaneda*
Counsel
North American Electric Reliability
Corporation
1325 G Street, N.W., Suite 600
Washington, D.C. 20005
(202) 400-3000
(202) 644-8099 – facsimile
candice.castaneda@nerc.net

Lisa A. Zell*
Vice President General Counsel and Corporate
Secretary
Midwest Reliability Organization
380 St. Peter Street, Suite 800
Saint Paul, MN 55102
Ph: 651.855.1745
Lisa.zell@mro.net

Kristin McKeown*
General Counsel and Corporate Secretary
Northeast Power Coordinating Council, Inc.
1040 Ave. of the Americas, 10th Floor
New York, NY 10018
(212) 840-1070
kmckeown@npcc.org

Derrick Davis*
General Counsel and Corporate Secretary
Texas Reliability Entity, Inc.
805 Las Cimas Parkway, Suite 200
Austin, TX 78746
512.583.4923
derrick.davis@texasre.org

Megan E. Gambrel*
Manager, Regulatory and External Affairs
ReliabilityFirst Corporation
3 Summit Park Drive, Suite 600
Cleveland, Ohio 44131
(216) 503-0600
(216) 503-9207 - facsimile
megan.gambrel@rfirst.org

Steven F. Goodwill*
Senior Vice President, General Counsel &
Secretary
Western Electricity Coordinating Council
155 North 400 West, Suite 200
Salt Lake City, Utah 84103
(801) 883-6857
sgoodwill@wecc.org

Holly A. Hawkins*
Vice President, General Counsel &
Corporate Secretary
Rebecca Poulsen*
Senior Legal Counsel
3701 Arco Corporate Drive, Suite 300
Charlotte, NC 28273
hhawkins@serc1.org
rpoulsen@serc1.org

⁵ Persons to be included on the Commission's service list are identified by an asterisk. NERC respectfully requests a waiver of Rule 203 of the Commission's regulations, 18 C.F.R. § 385.203, to allow the inclusion of more than two persons on the service list in this proceeding.

II. STATUTORY FRAMEWORK

In enacting the Energy Policy Act of 2005⁶ and section 215 of the Federal Power Act (“section 215”) thereunder,⁷ Congress entrusted the Commission with: (i) approving and enforcing rules to ensure the reliability of the Bulk-Power System (“BPS”); and (ii) with certifying an ERO that would be charged with developing and enforcing mandatory Reliability Standards, subject to Commission approval, and assessing reliability and adequacy of the BPS in North America.⁸

Congressional and Commission statute and regulation reflect certification of an ERO subject to Commission oversight under various avenues. In 2006, the Commission certified NERC as the ERO pursuant to section 215.⁹ Prior to that, Order No. 672 established regulations implementing section 215, including a process for periodic Performance Assessments that would examine how well the ERO is accomplishing its responsibilities.¹⁰ The initial Performance Assessment was due three years after certification, with subsequent ones due on a five-year cycle. Order No. 672 also required that NERC and the Regional Entities submit a detailed annual budget and business plan filing each year for Commission approval, 130 days in advance of the ERO fiscal year.¹¹ The Commission also reviews and approves the Regional Delegation Agreements (“RDAs”) between NERC and the Regional Entities every five years.¹² Through oversight conducted pursuant to the RDAs and Rules of Procedure (“ROP”), NERC evaluates Regional Entity performance and compliance with the ROP, Commission directives, RDAs, NERC policies

⁶ Pub. L. 109–58, title XII, §1211(b), Aug. 8, 2005, 119 Stat. 946.

⁷ 16 U.S.C. §824o [hereafter section 215].

⁸ Section 215(a)(2). *See also*, Section 215(c) (providing the ERO certification criteria). *See also*, Pub. L. 109–58, title XII, §1211(b), Aug. 8, 2005, 119 Stat. 946 (clarifying, “[t]he Electric Reliability Organization... and any regional entity delegated enforcement authority... are not departments, agencies, or instrumentalities of the United States Government.”).

⁹ Certification Order.

¹⁰ Order No. 672, PP 183-191.

¹¹ 18 C.F.R. §39.4.

¹² 18 C.F.R. §39.8. A delegation agreement shall not be effective until it is approved by the Commission.

or procedures, and guidance and directions issued by the NERC Board of Trustees (“Board”). As provided in the 2019 Performance Assessment, these activities include the formal oversight program through which NERC identifies oversight monitoring activities, as well as performance metrics for the Regional Entities.

III. COMMENTS

NERC’s mission is to assure the effective and efficient reduction of risks to the reliability and security of the grid. The 2019 Performance Assessment demonstrated that NERC and the Regional Entities are achieving that mission and satisfying the statutory criteria in section 215.¹³ As evidenced by the detailed material in that docket, the ERO Enterprise has continued to develop and enforce Reliability Standards and to assess reliability of the grid in an effective, efficient, and diligent manner. Through its assessments, NERC demonstrated that there is improved resilience, decreased protection system misoperations, and advanced risk management for the BPS.¹⁴ The ERO Enterprise is continuing to remain at the vanguard of developments regarding the changing resource mix. NERC also coordinates with Commission staff on execution of the ERO Compliance Monitoring and Enforcement Program (“CMEP”). Commission staff participate in audit observation, joint investigations and inquiries, and other enforcement matters as appropriate. NERC issues quarterly reports on all matters associated with CMEP activities, holds public webinars and other opportunities to exchange information about its programs, and publicly posts dispositioned noncompliance (whether through a full Notice of Penalty, Spreadsheet Notice of

¹³ *North American Electric Reliability Corporation Five-Year Electric Reliability Organization (ERO) Performance Assessment Report*, Docket No. RR19-7-000 (July 22, 2019); *Compliance Filing of the N. Am. Elec. Reliability Corp. in response to Commission Order on the 5-year Performance Assessment*, Docket No. RR19-7-000 (June 1, 2020); and *Second Compliance Filing of the N. Am. Elec. Reliability Corp. in response to Commission Order on the 5-year Performance Assessment*, Docket No. RR19-7-000 (Sept. 28, 2020).

¹⁴ The following key indicators show how NERC is managing risks to improve the reliability of the BPS during the Assessment Period: (i) there were no Category 4 or Category 5 events; (ii) the protection system misoperation rate continues to decline; (iii) frequency response shows improvement; and (iv) the BPS experienced no loss-of-load due to cyber or physical security events, despite continually evolving threats.

Penalty, Find, Fix, Track, and Report (“FFT”), or compliance exception). The order recently accepting NERC’s 2019 Performance Assessment, subject to compliance filings and enhancements to the ROP stated, “NERC continues to satisfy the statutory and regulatory criteria for certification as the ERO, and [we] find that the Regional Entities continue to satisfy applicable statutory and regulatory criteria.”¹⁵

NERC is committed to the performance assessment process and to providing the Commission with the information necessary to support the Commission’s evaluation thereunder. NERC understands that the proposed revisions seek to establish opportunities for closer coordination and timely feedback. NERC supports these goals. The ERO Enterprise submits that the present five-year performance assessment cycle provides greater opportunity to demonstrate evolution of the ERO than a three-year cycle. Within that five-year period, NERC and the Commission engage in numerous formal and informal coordination and oversight activities to ensure accountability on ERO performance. In addition, while the ERO Enterprise appreciates the NOPR proposal for a Commission order or delegated order on particular questions for the Performance Assessment beyond those already required, providing at least six months’ notice, rather than 90 days, would enable NERC to more meaningfully respond to such questions. Also, the ERO Enterprise provides that the existing public comment process requesting comment on draft Performance Assessments is better suited toward gathering targeted feedback on performance when coupled with ongoing stakeholder coordination. Finally, the ERO Enterprise proposes that should the Commission enact the proposed regulatory revisions, those revisions should take effect after the upcoming 2024 Performance Assessment.

¹⁵ *North Am. Elec. Reliability Corp.*, 170 FERC ¶ 61,029, P 20 (2020) [hereinafter Five Year Order] (accepting performance assessment subject to compliance filings); and *N. Am. Elec. Reliability Corp.*, 174 FERC ¶ 61,030 (2021) (accepting the compliance filings submitted in response to the Five Year Order and directing an additional compliance filing).

A. A five year Performance Assessment cycle allows NERC to better demonstrate evolution of the ERO Enterprise and recognizes extensive formal and informal coordination and oversight

The NOPR proposes mandating a three-year ERO Performance Assessment cycle. The NOPR provides that:

While Order No. 672 established a five-year period for submitting ERO performance assessments following the initial three-year assessment, decreasing the periodicity to every three years would improve the ERO's accountability to the public, stakeholders, and the Commission.... the Bulk-Power System is transitioning in myriad ways through innovation and technology at a pace unanticipated when the Commission originally established the five-year performance assessment period and identified topics for the ERO to include in those assessments.¹⁶

The ERO Enterprise supports a Performance Assessment process that ensures accountability to the public, stakeholders, and the Commission. The Performance Assessment should demonstrate how well NERC and the Regional Entities are accomplishing their statutory responsibilities and should demonstrate the continued evolution of the ERO Enterprise. In Order No. 672, the Commission explained the scope of the Performance Assessment as follows:

Although [the assessment] will examine at a minimum the ERO's ongoing compliance with the statutory and regulatory criteria to qualify as an ERO, it will consist of a much broader examination of how well the ERO is carrying out all its responsibilities and how it may improve its performance of these responsibilities. These include not only the ERO's compliance investigations and penalty-setting responsibilities, but also its development of Reliability Standards, its ERO Rules and its relationships with the Regional Entities.¹⁷

The five-year Performance Assessment period recognizes the Commission's oversight role under section 215 of the FPA.¹⁸ A five year cycle provides NERC a better opportunity to demonstrate ERO Enterprise progress since the last assessment and is reasonable in light of the

¹⁶ NOPR at P 9. *See id.* at PP 9-13.

¹⁷ Order No. 672 at P 774.

¹⁸ Section II, *supra* (regarding the statutory framework).

continuous coordination between the Commission and ERO Enterprise that exists today. In particular, the five-year Performance Assessment cycle allows NERC initiatives to come to fruition and be evaluated. The collaborative nature of NERC processes often involves stakeholder coordination, public postings, iterative comment periods, and may culminate in a request for Board approval. Further, as discussed immediately below and reflected in **Appendix A**, frequent formal and informal coordination ensures Commission oversight of ERO Enterprise activities in the interim period between Performance Assessments. As the Commission recognized in Order No. 672, “the Commission requires the ERO to report to the Commission on various aspects of its operations, including an annual budget and business plan, reliability assessments, and penalties imposed.”¹⁹ The five-year cycle is long enough to demonstrate ERO Enterprise improvement, while frequent enough to ensure accountability when paired with other existing oversight mechanisms.

There are numerous examples of constant communication and feedback loops between NERC and the Commission. Several are enumerated here for illustration, and **Appendix A** hereto provides a more extensive list. For example, all of NERC’s meetings are open to the public. Commission staff attend these meetings, including the Members Representative Committee (“MRC”) informational session, committee meetings, the MRC, and NERC Board meetings, all open to the public. FERC staff also attend Regional quarterly board meetings. Information related to these meetings, including presentations and agendas are all publicly posted on the NERC website.

In addition, NERC files numerous Reliability Standards each year. These Reliability Standards are developed through public Standards Committee and standard drafting team

¹⁹ *Id.* at P 777.

meetings. Commission staff from the Office of Electric Reliability attend these meetings. Reliability Standards are then filed with the Commission. The Commission often issues directives (such as for modification to a Reliability Standard or informational filing on a pertinent subject) which NERC then responds to, furthering the ongoing and regular interaction between Commission and NERC staff.

Also, consistent with regulation, the ERO Enterprise submits Annual Business Plan and Budget filings and holds business plan and budget meetings with Commission staff. This provides annual insight as to the ERO Enterprise's intended use of resources and activities and an opportunity for Commission formal and informal feedback. Additional coordination occurs through Commission staff participation in Board and standing committees including the quarterly Member Representatives Committee, Reliability and Security Technical Committee ("RSTC"), Reliability Issues Steering Committee ("RISC"), Standards Committee, and Compliance and Certification Committee ("CCC") meetings. In connection with execution of the CMEP, for example, NERC and the Commission complete the joint annual FFT and Compliance Exception Report and Compliance Exception survey. Finally, a different Commissioner is invited to attend and present remarks at NERC's quarterly Board meetings.

The interactions highlighted above provide ongoing and timely opportunities for Commission staff to observe and raise questions or concerns related to NERC initiatives and efforts. Thus, the ERO Enterprise receives and adjusts to feedback in response to Commission orders (on matters such as Reliability Standards, RDAs, Budget Filings, and Performance Assessments) and more frequently in real time, for example, evaluating enhancements to reliability data collection and analysis in response to suggestions. For example, in coordinating with Commission staff on questions associated with the Reliability Coordinator transition in the western

interconnection in 2019-2020, the ERO Enterprise and stakeholders working on enhancements to the ROP identified opportunities for further clarification of rules related to the Certification program. As a result, those revisions were ready for posting at the time of the initial order on the 2019 Performance Assessment.

This ongoing and multi-faceted coordination also ensures continuity of oversight throughout Commissioner and staff transitions. More frequent preparation of the Performance Assessment would divert attention that would otherwise be spent by the ERO Enterprise on priorities associated with its mission of assuring the reliability and security of the BPS. Those critical activities include, for example, working with stakeholders to pursue modifications on Reliability Standards to address emerging issues, focusing on reliability assessments that target evolving potential risks to the grid, and engaging in outreach regarding those assessments with federal, state, and other policy makers on the reliability, resilience, and security challenges presented by the rapidly changing industry.

For example, in 2020, NERC developed a Reliability Guideline regarding the increasing integration of Battery Energy Storage Systems with the BPS entitled *Reliability Guideline: Performance, Modeling, and Simulations of BPS Connected Battery Energy Storage Systems [BESS] and Hybrid Power Plants*.²⁰ NERC posted Alerts in 2017 and 2018 to address this issue and formed a joint Inverter-Based Resource Performance Task Force to develop guidelines and recommended practices for inverter based resources connected to the BPS. The ERO Enterprise also plans to publish a compliance practice guide to provide guidance to ERO Enterprise staff with respect to the consistent application of the BES Definition to BESS and hybrid resources, as well

²⁰ Available at [https://www.nerc.com/comm/RSTC_Reliability_Guidelines/Reliability_Guideline_BESS_Hybrid_Performance_Modeling_Studies_2020-12-15%20\(003\).pdf](https://www.nerc.com/comm/RSTC_Reliability_Guidelines/Reliability_Guideline_BESS_Hybrid_Performance_Modeling_Studies_2020-12-15%20(003).pdf).

as to provide associated guidance related to NERC Registration.²¹ Commission staff are aware of and involved in these efforts through their participation in RSTC, RISC, and CCC subgroups. Other instances include NERC and the Regions' analysis and communication of matters associated with natural gas pipelines and cybersecurity matters. NERC and the Region also conduct frequent outreach to registered entities, such as workshops and webinars, and regularly issue reports on these and other key topics related to the reliability and security of the grid. More frequent preparation of the Performance Assessment could shift resources away from these priorities.

A three-year Performance Assessment cycle would consume additional resources by effectively requiring NERC to prepare an assessment every two years to permit sufficient time to (i) coordinate with Regional Entities regarding NERC oversight activities reported in the filing, (ii) incorporate stakeholder feedback during the assessment period and on the draft, (iii) present the draft assessment to the NERC Board for approval, and (iv) meet with Commission staff to identify and address particular questions. NERC would be required to redirect staff resources from initiatives which pertain to issues facing the BPS toward accomplishing the assessment. The short time frame also might not enable NERC to provide a comprehensive review of the myriad of activities and topics covered by the Performance Assessment. The burden of completing a comprehensive Performance Assessment on a three-year cycle is unsupported in light of extensive Commission coordination and oversight in intervening years between assessments.

B. Direction on material areas of focus could be beneficial if provided at least six months in advance of the Performance Assessment deadline

Based on the prior Performance Assessment proceedings, in which the Commission directed NERC to file additional information, the NOPR proposes:

²¹ *ERO Enterprise CMEP Practice Guide: Application of the Bulk Electric System Definition to Battery Energy Storage Systems and Hybrid Resources* (Feb. 2021).

to require that the Commission-certified ERO include in its performance assessments a detailed discussion of any areas of the ERO's activities and functions, or the Regional Entities' delegated functions, beyond those set forth in section 39.3(c)(1)(i), (ii), and (iii), that the Commission identifies for inclusion at least 90 days prior to the expected performance assessment submission date....

We also believe 90 days prior to the submission of each performance assessment provides NERC adequate time to address any Commission-identified topics in its performance assessment, but we seek comment on whether a different period of time may be more appropriate.²²

The ERO Enterprise appreciates the Commission's proposal to provide an order or delegated order directing areas of particular focus for the Performance Assessment as it could help illuminate particular areas of interest. However, the proposed 90 day period (sometimes used by the Commission in targeted directives related to Reliability Standards) would not provide sufficient time for an appropriate response in a Performance Assessment, particularly in light of ERO Enterprise and stakeholder coordination and presentation of the draft assessment to the NERC Board. The comprehensive scope of the Performance Assessment requires thoughtful and focused oversight and a shared commitment to improving the evaluation of the organization. Direction on particular Commission staff questions should be provided at least six months in advance of the submittal deadline to ensure that questions are considered within that context.

The order on a Performance Assessment should highlight areas for continued focus with at least six months' notice of any update on particular Commission staff questions, in addition to those identified in statute, regulation, and prior order, to account for the time needed to meaningfully address such areas. NERC would continue to hold pre-filing meetings in advance of submitting the Performance Assessment to identify potential Commission staff questions that may exist nearer to the filing deadline. These pre-filing meetings would ensure continued coordination, in addition to specific instruction at least six months in advance of the filing deadline.

²² NOPR at P 14.

C. NERC seeks and responds to valuable stakeholder coordination on a real-time basis and in advance of each Performance Assessment

The NOPR proposes an additional, separate, stakeholder public comment process on ERO Enterprise performance apart from NERC's posting of the draft Performance Assessment for public comment. Specifically, the NOPR proposes:

to add a formal requirement for a public comment period to solicit Regional Entities, users, owners, and operators of the Bulk-Power System, and other interested parties for improvement of the ERO's operations, activities, oversight and procedures. The intent of the comment period is to inform the content of the ERO's draft performance assessment. We anticipate that the ERO would meet the proposed requirement by issuing notice of a public comment period on its website specifically requesting that interested parties identify areas of improvement. We envision the solicitation of comments would be issued separately and prior to the posting of the draft performance assessment. The posting should be independent of other recurring stakeholder surveys that may have a more limited audience. The ERO would then include the submitted comments, and the ERO's responses to such comments, with its performance assessment filing.²³

NERC greatly values and leverages industry stakeholder feedback. For this reason, NERC provides extensive opportunities for stakeholder feedback on ERO operations, activities, oversight, and procedures, including areas for improvement. The NOPR does not explain the basis of its proposal for a separate stakeholder comment process discrete from all other existing robust feedback mechanisms and in addition to NERC's solicitation for public comment on the draft Performance Assessment prior to its filing.

NERC Committees provide fundamental stakeholder feedback that shapes NERC's activities. NERC's MRC provides policy input to the NERC Board on a quarterly basis. The MRC is comprised of representatives from every sector that affect and ensure the reliability and security of the grid. During the quarterly Board meetings, stakeholders are also able to consider and provide

²³ *Id.* at P 15.

feedback on NERC's report of ERO Enterprise oversight activities in the CMEP quarterly and annual reports to the Board of Trustees Compliance Committee.

NERC solicits public comment on the draft Performance Assessment two to three months prior to its filing. NERC publicly posts the Performance Assessment prior to filing to ensure that the assessment contains and responds to any stakeholder recommendations for improvement.²⁴ NERC responds to stakeholder feedback in real-time throughout the performance assessment process and has, therefore, typically posted the draft assessment for a two to three week public comment period. Stakeholder comments build upon prior feedback throughout the Performance Assessment period. NERC would be amenable to publicly posting the draft for comment earlier or to providing stakeholders additional time to comment. The draft Performance Assessment is the best vehicle to solicit comments on ERO Enterprise performance in connection with the assessment, because such a posting ensures that comments are grounded in specific activities and issues material to ERO certification and effectiveness.

D. If the Commission directs a three-year Performance Assessment cycle or any of the other proposed changes, that change should take effect after the 2024 Performance Assessment

The NOPR does not provide an intended effective date for the proposed revisions. If the Commission directs a three-year Performance Assessment cycle or adopts any of the other proposed changes, NERC requests that the change take effect after the 2024 Performance Assessment. If the proposals were immediately effective, it would require NERC to begin drafting the next Performance Assessment for filing next year. Such an assessment would be submitted in 2022, three years from the last filing, only one year after issuance of the NOPR, and one year prior

²⁴ Exhibit C to NERC's 2019 performance assessment (reflecting posting in April, prior to the July filing). See also, ERO Performance Assessment website at <https://www.nerc.com/gov/Pages/Three-Year-Performance.aspx>.

to the 2023 deadline for Appendix 4A audits directed in the order on compliance filing.²⁵ Such a compressed timeframe would also take away from the NOPR's proposals regarding directives on specific areas of interest and a separate stakeholder public comment.

III. CONCLUSION

The ERO Enterprise remains committed to the Performance Assessment process and to providing the Commission with the information necessary to that evaluation. The ERO Enterprise supports the NOPR's goals of closer coordination and timely feedback. For the reasons presented in these comments, however, the burden of changing from a five-year to a three-year Performance Assessment cycle is greater than potential perceived benefits. The Commission and NERC are dedicated to assuring the reliability and security of the BPS. Together, the Commission and NERC have identified numerous priorities that must be addressed to target the significant issues facing reliability and security of the BPS. NERC, MRO, NPCC, ReliabilityFirst, SERC, Texas RE, and WECC respectfully request that the Commission maintain the existing Performance Assessment cycle and stakeholder public comment process as it exists in present regulation.

²⁵ *Order on Compliance Filings*, 174 FERC ¶ 61,030, at P 2 (2021).

Respectfully submitted,

/s/ Candice Castaneda

Candice Castaneda
Counsel
North American Electric Reliability
Corporation
1325 G Street, N.W., Suite 600
Washington, D.C. 20005
(202) 400-3000
(202) 644-8099 – facsimile
candice.castaneda@nerc.net

*Counsel for the North American Electric
Reliability Corporation*

/s/ Lisa A. Zell

Lisa A. Zell
Vice President General Counsel and Corporate
Secretary
Midwest Reliability Organization
380 St. Peter Street, Suite 800
Saint Paul, MN 55102
Ph: 651.855.1745
Lisa.zell@mro.net

/s/ Kristin McKeown

Kristin McKeown
General Counsel and Corporate Secretary
Northeast Power Coordinating Council, Inc.
1040 Ave. of the Americas, 10th Floor
New York, NY 10018
(212) 840-1070
kmckeown@npcc.org

/s/ Derrick Davis

Derrick Davis
General Counsel and Corporate Secretary
Texas Reliability Entity, Inc.
805 Las Cimas Parkway, Suite 200
Austin, TX 78746
512.583.4923
derrick.davis@texasre.org

/s/ Niki Schaefer

Niki Schaefer
Vice President & General Counsel
ReliabilityFirst Corporation
3 Summit Park Drive, Suite 600
Cleveland, Ohio 44131
(216) 503-0600
(216) 503-9207 - facsimile
niki.schaefer@rfirst.org

/s/ Steven F. Goodwill

Steven F. Goodwill
Senior Vice President, General Counsel &
Secretary
Western Electricity Coordinating Council
155 North 400 West, Suite 200
Salt Lake City, Utah 84103
(801) 883-6857
sgoodwill@wecc.org

/s/ Holly A. Hawkins

Holly A. Hawkins
Vice President, General Counsel & Corporate
Secretary
Rebecca Poulsen
Senior Legal Counsel
3701 Arco Corporate Drive, Suite 300
Charlotte, NC 28273
hhawkins@serc1.org
rpoulsen@serc1.org

Date: March 1, 2021

Appendix A

**Federal Energy Regulatory Commission and
ERO Enterprise Coordination Activities**

Appendix A

Federal Energy Regulatory Commission and ERO Enterprise Coordination Activities

As provided in the attached Comments, the Federal Energy Regulatory Commission (“Commission” or “FERC”) and ERO Enterprise communicate on a consistent basis through a variety of channels. This Appendix includes examples of frequent coordination and oversight between the Commission and the North American Electric Reliability Corporation (“NERC”) and the Regional Entities.¹

Leadership Meetings and Commission Technical Conferences

- Annual Reliability Technical Conference (*see, e.g.*, Docket Nos. AD 18-11-000; AD19-13-000).
 - In 2019, for example, NERC Chief Executive Officer James Robb and Senior Vice President and Chief Reliability Officer Mark Lauby spoke about matters such as the implications of the changing resource mix and the pace of that transformation, including inverter issues. *See*, Remarks of James B. Robb, President and Chief Executive Officer; and Mark Lauby, Senior Vice President and Chief Reliability Officer, Docket No. AD19-13-000
- Other Technical Conferences such as the Security Investments for Energy and Infrastructure Technical Conference in Docket No. AD19-12-000

Filings and Meetings on Matters Pertaining to Governance and Budgets

- Annual Business Plan & Budget Filings (*see, e.g.*, Docket Nos. RR16-6-000; RR17-7-000; RR18-9-000; RR19-8-000; RR20-6-000)
- Budget meetings between NERC finance staff and Commission budget staff
- Regional Delegation Agreement (“RDA”) Filings (*see, e.g.*, Docket Nos. RR15-2-000 and RR20-5-000)
- Regional Entity transitions or dissolution (*see, e.g.*, Docket Nos. RR18-3-000 and RR20-6-000)
- Rules of Procedure filings (*see, e.g.*, Docket Nos. RR19-2-000; RR18-1-000; RR17-2-000; and RR17-6-000)

¹ Together, NERC and the Regional Entities constitute the “ERO Enterprise.”

Communication and Coordination Pertaining to Reliability Standards

- Commission directives in response to Reliability Standards, whether for modifications to a proposed Reliability Standard or for informational filings.

Examples:

- Reliability Standard CIP-012-1, Docket No. RM18-20-000
- FERC Order Directing Informational Filing Regarding Virtualization and Cloud Computing Services, Docket No. RM20-8-000
- Supply Chain Notice of Inquiry, Docket No. RM20-19-000
- Commission staff participation in Standards Drafting Team meetings
- Pre-filing and Post-filing Meetings
 - Pre-filing meetings regarding filings such as Reliability Standards, Rules of Procedure revisions, and the RDAs
 - Post-filing meetings on matters such as the above examples, and informational filings (*see, e.g.* Reliability Standard BAL-003-1.1 in Docket No. RM13-11-000)

Commission Participation in NERC Committees

- Commission participation as a non-voting member of the Reliability and Security Technical Committee (“RSTC”), Standards Committee (“SC”), and Compliance and Certification Committee (“CCC”), as well as most, if not all, subgroups that report to these committees
- Commission Staff attendance at NERC Member Representatives Committee (“MRC”) and NERC Board meetings and Regional Entity Board meetings where Commission staff participates
- Commission staff participation in MRC information sessions
- Commission Office of Electric Reliability Director Regulatory Update to MRC

Communication and Coordination Pertaining to Reliability Assessments

- Commission-NERC coordination regarding Commission access to Transmission Availability Data System, Generator Availability Data System, and protection system misoperations databases pursuant to Order No. 824 and accompanying regulation
- Quarterly call between the Commission’s Office of Electric Reliability and NERC Events Analysis
- Commission staff attendance at Reliability Assessment Subcommittee meetings
- As needed, meetings on specific topics

Examples:

- Joint FERC/NERC White Paper on Supply Chain Vendor Identification
- Facilities Rating Task Force
- Supply Chain Task Force

Electricity Information Sharing and Analysis Center

- EISAC outreach to the Commission's Office of Office of Energy Infrastructure Security and Office of Electric Reliability

Commission Coordination with Regional Entities

- Regional Entity Chief Executive Officer meetings with Commissioners
- Regional Entity staff meetings with Commission Office of Electric Reliability staff
- Regional Entity participation in Commission technical conferences

Compliance Monitoring and Enforcement Program

- Commission and NERC's joint annual Find, Fix, Track and Report and Compliance Exception survey (and the regular meetings involved)
- Bi-monthly meetings of NERC, Regional Entities, and Commission Enforcement staff
- Pre-filing meetings on full Notices of Penalty (typically monthly)
- Bi-weekly NERC/Commission Alignment Conference Call (Compliance Assurance and Enforcement staff)
- Ad hoc calls on Enforcement items (e.g., noncompliance dispositions, enforcement metrics, proposed Rules of Procedure changes)