Joint Regional Entity Self-Assessment
Draft for Comment

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Introduction

Purpose

In its order approving the North American Electric Reliability Corporation ("NERC") as the Electric Reliability Organization ("ERO"), the Federal Energy Regulatory Commission ("FERC") directed NERC to conduct an assessment of its performance after the initial three years of operation as the ERO, and to include an assessment of the Regional Entities. This report provides a joint review of key issues and consensus recommendations on behalf of the eight Regional Entities and supplements the enclosed individual Regional Entity self-assessments.

The purpose of this report is to:

- Provide the Regional Entity assessments, based on their experience over the past three years, of the effectiveness of the self-regulatory framework and delegation model.
- Describe the results to date, including achievements, key issues and challenges, and opportunities to improve the Regional Entities' execution of delegated functions.
- Provide the Regional Entity assessment of NERC's performance as the ERO, as required by FERC.
- Respond to the broad issues identified in the NERC assessment of the Regional Entities (region-specific issues are addressed in the self-assessment of each Regional Entity).
- Respond to the broad concerns identified by reliability stakeholders through their inputs to the industry survey (region specific issues are addressed within each Regional Entity's self-assessment).
- Present the Regional Entity recommendations for improvements.

Report Organization

The report begins with a review of the self-regulatory framework and delegation model, from the viewpoint of the Regional Entities. The report then assesses the general performance of the Regional Entities in executing their responsibilities under their delegation agreements and addresses such issues as governance, independence, and non-statutory functions. Included is a summary of the key milestones achieved in the

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1 See Rule Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards, Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 187-188, order on reh'g, Order No. 672-A, FERC Stats. & Regs. ¶ 31,212 (2006).
2 The Regional Entities are: Florida Reliability Coordinating Council ("FRCC"), Midwest Reliability Organization ("MRO"), Northeast Power Coordinating Council ("NPCC"), ReliabilityFirst Corporation ("RFC"), SERC Reliability Corporation ("SERC"), Southwest Power Pool Regional Entity ("SPP RE"), Texas Regional Entity ("TRE"), and Western Electricity Coordinating Council ("WECC").
3 See Order No. 672 at P 188.
4 [Citation] See Industry Survey
transformation of the Regional Entities and significant challenges and tensions encountered along the way.

The remainder of the report then addresses each of the delegated functional areas and identifies key issues and opportunities for improvement. An executive summary of achievements and recommendations for improvement is provided in the next section, for ease of reference.
Major Achievements and Recommendations for Improvement

Summary of Achievements

Although this report is focused on identifying recommendations for improvement, it is important to first recognize that the ERO and the Regional Entities have effectively executed their responsibilities as delegated by FERC in the United States and by provincial authorities in Canada. In particular, the Regional Entities have met the requirements of Order 672, Order 693,5 FERC’s order approving the delegation agreements,6 memoranda of understanding with provincial authorities, and other applicable orders and requirements. In addition, the Regional Entities have adhered to the ERO rules of procedure and the terms of their delegation agreements. The Regional Entities also believe that NERC has, without exception, met its obligations as the ERO.

The Regional Entities concur with NERC’s assessment that it is too early to measure improvements in the reliability performance of the bulk power system. The Regional Entities further agree that the major successes in the first three years of the ERO are primarily related to the implementation of the necessary structures and processes to ensure reliability going forward. Several significant accomplishments include:

1. The Regional Entities have registered 1,845 owners, operators, and users of the bulk power system to provide clear notice to these entities that they are subject to mandatory reliability standards. This number is at least six times greater than the number of entities that previously followed the voluntary operating and planning guides published by NERC and includes a significant number of entities in the United States that were not previously within FERC jurisdiction.

2. The Regional Entities have completed the processing of approximately 5,000 compliance violations that were self-reported prior to the start of mandatory enforcement of reliability standards on June 18, 2007. With independent verification by the Regional Entities that the mitigation plans to cure all but 49 of these pre-existing violations have been completed, risk to the reliability of the bulk power system has to a significant degree been reduced.

3. Since June 18, 2007, when the standards became mandatory, the Regional Entities have conducted over 500 audits of registered bulk power system owners, operators, and users to verify compliance with reliability standards. Regional Entities have reported approximately 600 possible violations from these audits. This independent verification of compliance is in addition to thousands of periodic self-certifications of compliance to specific standards that have been provided by registered entities.

4. Since the inception of mandatory standards, registered entities have self-reported or self-certified approximately 1,300 possible violations of standards, most of which were timely corrected. This culture of self-reporting is a direct result of work by

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NERC and the Regional Entities to promote a strong compliance culture among bulk power system owners, operators, and users.

5. NERC has engaged more than 300 industry experts in drafting reliability standards through an open, balanced, and inclusive standards development process. In addition to the 83 reliability standards originally approved by FERC in Order No. 693,7 NERC has since received approval of 45 new standards and dozens of revised standards. Additionally, each Regional Entity has established a FERC-approved process for developing any needed regional reliability standards, and 8 regional reliability standards have received FERC approval.

6. NERC and the eight Regional Entities have adopted a uniform Compliance Monitoring and Enforcement Program, including a Penalties and Sanctions Guide and hearing procedures. These procedures provide assurance of clearly defined protocols for the discovery, prosecution, and appeal of alleged violations of reliability standards. To date, FERC has accepted 61 Notices of Penalty addressing 176 enforceable violations that were processed and filed using these procedures.

7. NERC has established strong oversight through an independent board and a set of rules of procedure, both of which have been approved by FERC.8 Each Regional Entity has established a FERC-approved governance using either a balanced stakeholder board or a hybrid board including independent directors. Each Regional Entity has further established necessary procedures and safeguards to execute its delegated functions effectively and in the public interest.

8. NERC and the Regional Entities have established arrangements for the performance of similar delegated functions in the various provinces of Canada (WECC, MRO, and NPCC perform these functions).

9. NERC and the Regional Entities have performed over 20 event analyses for the purpose of determining lessons learned and opportunity for reliability improvements and issued 25 alerts addressing reliability issues.

10. NERC and the Regional Entities have provided extensive outreach and communication with bulk power system owners, operators, and users regarding the reliability standards and the compliance program.

The individual Regional Entity self-assessments provide further detail on the major accomplishments of each region in the first years of operation under the delegation agreements.

Summary of Improvements Needed and Recommendations
The following is a summary of key areas for improvement with specific recommendations of the Regional Entities.

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1. The self-regulatory model adopted by Congress, which combines significant industry input with strong regulatory oversight and controls, is the best model for ensuring the reliability of the bulk power system, is working effectively, and therefore should remain in effect.

2. The existing international reliability assurance structure, utilizing the NERC independent board to provide vision and direction, the ERO to provide guidance and oversight, and the Regional Entities to implement delegated responsibilities and authorities, is the best model for ensuring the reliability of the bulk power system, is working effectively, and therefore should remain in effect.

3. NERC and Regional Entities should strive toward mutual openness and cooperation, with strong conviction and singularity of purpose, to promote mutual success of their respective contributions in ensuring the reliability of the bulk power system.

4. To improve the delegation process, NERC and the Regional Entities should work together to update the delegation agreements, which are due for renewal in May 2010, to provide a clearer division of responsibilities, both related to the division of performance of statutory functions and oversight of those functions, and to provide effective mechanisms to resolve routine differences.

5. The existing governance structures of the Regional Entities are working effectively. A requirement that all compliance programs must report to independent directors is unnecessary due to the existing safeguards that are in place.

6. While agreeing with NERC that conflicts of interest with statutory functions should not exist, Regional Entities recommend that the issue of whether a potential conflict of interest exists should be resolved on a case-by-case basis with the affected Regional Entity and that a change in policy is unnecessary to address the issue.

7. To ensure development of reliability standards that provide for an adequate level of reliability of the bulk power system:
   a. NERC must on a priority basis finalize its performance requirements necessary for the development of the regional fill-in-the-blank reliability standards so that Regional Entities may complete any necessary regional reliability standards; and
   b. NERC should prioritize its reliability standards development activity and compliance review by focusing on those standards that are performance-based, rather than documentation-based, and that have the greatest potential to mitigate risk to reliability, and furthermore NERC should consider adopting less critical standards as guides or technical references.

8. To provide a more efficient registration of bulk power system owners, operators, and users that focuses on material impacts to reliability:
   a. NERC and the Regional Entities, in consultation with stakeholders, should review the registration criteria to determine if there should be a different
b. NERC should consider a more precise long-term solution of increasing the granularity of registration so that it focuses on the requirement level and includes registration by bulk power system facility, or classes of facilities.

9. To improve performance and build upon the initial successes of the Compliance Monitoring and Enforcement Program:

a. NERC should, in consultation with Regional Entities and using a deliberate change management and feedback process, refine its implementation of decentralized compliance monitoring and enforcement by providing clear standardized procedures, active controls, clearly articulated performance metrics, and checks or audits of performance to guide Regional Entity performance of delegated compliance functions;

b. NERC and Regional Entities should operate together in a mutually supportive manner, with more transparent, clear, and frequent communications among the compliance authority staffs;

c. NERC should provide greater deference to Regional Entity compliance activities going forward than in the initial start up period and should not, except in unusual or problematic cases, replicate the initial investigatory work performed by a Regional Entity when considering a reliability standards violation, but rather should establish clear, transparent metrics for review and acceptance of Regional Entity actions;

d. NERC should communicate clear expectations to Regional Entity compliance audit and enforcement staffs and provide comprehensive training, even possibly to the extent of a compliance audit and enforcement “training academy”, to promote greater consistency in implementation and interpretation of standards;

e. NERC and Regional Entities must collaborate in the development of compliance information systems that provide seamless flow and processing of compliance information from registered entities, through the regions, to NERC;

f. Regional Entities are bound to apply the plain language of a standard when conducting compliance reviews rather than engage in extemporaneous interpretations of intent where there are ambiguities in the standard and, therefore, when expectations associated with reliability standards appear to exceed what is clearly identified in the approved standard, NERC must make all registered entities aware of such expectations;

g. NERC and Regional Entities should, through a single coordinated process, provide transparent information to help registered entities better understand compliance requirements and processes, while still protecting confidentiality rights and due process, by publicly sharing lessons learned,
h. NERC and Regional Entities should review compliance resource requirements to target resource additions to resolve key bottleneck areas in the processing of alleged violations, while simultaneously seeking greater efficiencies by prioritizing cases, increased automation, etc.;

i. NERC and Regional Entities should adopt risk-based approaches to prioritize compliance monitoring, particularly auditing, and enforcement activities and focus resources on a smaller number of requirements most important to reliability;

j. NERC and Regional Entities should adopt procedures for the expedited processing of minor or document-related violations;

k. For uncomplicated cases, such as those that have relatively low penalty amounts, NERC should establish baseline penalty amounts as a guide for each requirement violated, thereby reducing the disproportionate burden of effort and minimizing inconsistencies in determining penalties for minor violations with penalties on the order of a few thousand dollars;

l. For more serious violations, NERC should have the expectation that penalties will vary from case to case based on the facts of the case and judgment of the Regional Entity staffs; although the penalties should be scaled to the seriousness of the violation and should consider all of the aggravating and mitigating factors;

m. The NERC Board Compliance Committee should select unique cases with precedential value and issue their decision, either approving or remanding a case, to all Regional Entities (non publicly) and regardless of whether the board develops a written opinion on a case, all decisions of the board, including remands, should be shared with all of the Regional Entities as a method of further distinguishing minimum expectations;

n. With respect to the proposal raised in the NERC self-assessment that NERC staff should be consulted earlier in the process to settle on a reasonable penalty, the Regional Entities believe this approach would be unnecessary and of little value, if the more prospective steps outlined above are taken to establish standing guidance to the regions, and furthermore that such an approach could compromise the independence of NERC’s subsequent review and approval of the compliance action, as well as NERC’s ability to entertain appeals on the case.

10. Regional Entities recommend that FERC should indicate that it will provide the forum for determining legal challenges of jurisdiction between federal agencies and not expect that such matters should be heard by a Regional Entity hearing body or a NERC appellate body.
Summary of Existing Regional Entities

Background on Delegation
A Regional Entity is an organization that has been delegated certain statutory functions of the ERO. The ERO and each Regional Entity consummate the delegation through the execution of a delegation agreement, which must be approved by the applicable government authority (e.g., FERC in the United States). By entering into such an agreement, the Regional Entity becomes subject to the jurisdiction of the applicable government authority, the rules of procedure of the ERO, and any reliability standards applicable to the Regional Entities.

The scope of the delegation of authority to each Regional Entity encompasses three principal statutory functions: (i) development of regional reliability standards, (ii) monitoring and enforcement of mandatory reliability standards, and (iii) reliability assessment. NERC has identified several additional functions that are necessarily implied in the role of an ERO, including training and education, event analysis, performance analysis, and critical infrastructure protection. The Regional Entities perform the three principal delegated functions and most have activities in the additional functions, in support of NERC’s defined programs.

Description of Existing Regional Entities
As shown in Figure 1, the existing eight Regional Entities provide full geographic coverage for the jurisdictional scope of NERC as the international ERO.

Figure 1 – Map of Regional Entities within NERC
Each Regional Entity previously existed as a voluntary, member-based regional reliability council or organization. The origins of many of the regional councils date back at least several decades, some as early as the late 1960’s, when NERC was formed in response to the 1965 Northeast Blackout. The value of preserving aspects of the regional councils while adapting to the new regime of mandatory reliability standards and compliance enforcement cannot be understated, as will be described later in this report.

Despite the long history of some of the regional organizations, there has been a clear recognition that the Regional Entities carry substantially different responsibilities and authorities under the new reliability regime of delegated, government-approved authorities to monitor and enforce compliance with mandatory standards for the purpose of protecting the public interest in a reliable bulk power system. As briefly described below, each Regional Entity has in this initial three-year period of review taken actions to successfully transform itself to meet these new obligations, including changes to governance, independence, procedures, and staffing:

- **Florida Reliability Coordinating Council (“FRCC”)** was formed in 1996. Its sole purpose is to ensure and enhance the reliability and adequacy of the bulk power system in Florida. Since becoming a Regional Entity, the FRCC has made significant changes in its governance and organizational structure. The FRCC amended its Bylaws to create two membership divisions – Regional Entity Division (statutory functions) and Member Services Division (non-statutory functions), added a new General Sector to its membership sectors, added new employees strictly dedicated to the compliance and standards functions, and made changes in its organizational reporting structure. All staff are independent of registered entities, and the organization is governed by a balanced stakeholder board. The FRCC has also implemented internal controls in its accounting procedures to ensure there is no cross subsidization of funds between statutory and non-statutory activities.

- **Midwest Reliability Organization (“MRO”)** was formed from the former Mid-Continent Area Power Pool (“MAPP”) regional council and a portion of Mid-America Interpool Network (“MAIN”) as a new corporation for the purpose of becoming a Regional Entity under the Energy Policy Act of 2005 and the Bilateral Principles. The region spans eight states and two Canadian provinces. MRO is comprised of municipal utilities, cooperatives, investor-owned utilities, a federal power marketing agency, Canadian Crown Corporations, large and small end-users, and independent power producers. MRO is independent of all bulk power system owners, operators, and users, and has no shared employees with any third party. MRO performs only responsibilities delegated from the ERO and similar functions through arrangements with Saskatchewan and Manitoba. MRO has a balanced stakeholder board whereby no two sectors can control a vote and membership is at no cost. The Board has adopted procedures to ensure that they carry out their responsibilities in a non-discriminatory manner, free of conflicts.

- **Northeast Power Coordinating Council (“NPCC”)** was established as the voluntary, international regional reliability organization for Northeastern North
**ReliabilityFirst ("RFC")** was formed from parts of the former East Central Area Reliability Council ("ECAR"), MAIN, and the Mid-Atlantic Area Council ("MAAC") Regional Reliability Councils on January 1, 2006. The organization was specifically designed to address changes required by the Energy Policy Act of 2005 and to support the ERO in a self-regulating model by which the industry participants establish their own standards and independent Regional Entities determine compliance to those standards. The organization was modified from top to bottom compared to the legacy reliability councils it replaced, and exists only to serve as a FERC-approved Regional Entity performing only those functions delegated to it by NERC as the ERO. For example, all staff are independent of registered entities, the organization is now governed by a hybrid board of directors, which includes both independent and balanced industry sector directors, the corporate headquarters were moved, and the organization is now funded (through the ERO) by all load-serving entities in the footprint as opposed to members (membership is free).

**SERC Reliability Corporation ("SERC")** was incorporated in April 2005, replacing the regional reliability council previously in existence since 1969. The new organization was redesigned to meet Section 215 of the Federal Power Act and FERC criteria for delegating statutory authorities and responsibilities. SERC’s scope includes only statutory functions delegated by NERC. The organization does not perform any registered entity functions and has no business affiliations with any registered entities. SERC adopted new bylaws, approved by FERC in April 2007, that provide for a balanced stakeholder board with seven sectors. In June 2007, SERC relocated its headquarters to an unaffiliated office space in Charlotte, North Carolina. SERC has increased staffing from 13 payroll employees in January 2007 to 43 today and all staff are independent of registered entities. The organization is funded through the ERO. Membership is free and open to all jurisdictional owners, operators, and users in the region, and end-use customers.

**Southwest Power Pool Regional Entity ("SPP or SPP RE")** has made fundamental governance and organizational changes necessary to carry out its delegated responsibilities. In response to the Energy Policy Act of 2005, SPP, Inc., created a new department to perform all compliance activities over SPP registered entities. SPP RE began engaging NERC to lead SPP, Inc. audits in 2007. In April 2007, FERC approved changes to the SPP, Inc. Bylaws creating three independent
• **Texas Regional Entity ("Texas RE or TRE")** was formed in late 2006, in response to the Energy Policy Act of 2005, as a functionally separate division of Electric Reliability Council of Texas, Inc. ("ERCOT ISO"), for the purpose of enhancing and ensuring reliability of the bulk power system in the region. TRE monitors and enforces compliance with NERC reliability standards, while also monitoring and reporting to the Public Utility Commission of Texas ("PUCT") on compliance with the reliability-based ERCOT Protocols and Operating Guides. TRE made significant changes in its governance and organizational structure to separate all operations from ERCOT ISO to independently carry out its statutory functions. In 2007, the ERCOT Bylaws were revised to create the functionally separate TRE reporting directly to a hybrid board of directors. TRE has grown from a staff of nine employees in January 2007 to a current staff of thirty. All TRE employees are required to be independent of any registered entity or ERCOT market participant. Texas RE has implemented policies, procedures, and internal controls to ensure its independence from owners, operators, and users of the bulk power system.

• **Western Electricity Coordinating Council ("WECC")** is the successor to the Western Systems Coordinating Council ("WSCC"), which was formed in 1967. WECC's geographic area is the Western Interconnection – an area encompassing all or parts of 14 U.S. states, two Canadian provinces, and a portion of Baja California Norte, Mexico. WECC was formed in April 2002 from the merger of the WSCC, the Southwest Regional Transmission Association, and the Western Regional Transmission Association. WECC modified its governance and structure prior to its approval in April 2007 by FERC as a Regional Entity, transitioning from a stakeholder board to a hybrid board consisting of 32 independent and stakeholder directors, and expanding membership classes from six to seven to accommodate the Canadian representatives. WECC substantially increased staffing to accommodate compliance and enforcement activities and all compliance staff are independent of users, owners, and operators of the bulk power system. WECC maintains organizational separation between compliance and other statutory activities. Starting in 1997, WECC implemented a regional Reliability Coordination Plan and funded three Reliability Coordination Offices (RCOs) that contractually provided WECC the ability to issue reliability directives to operating entities. In January 2009, WECC completed the consolidation of the RCOs from three to two, making the remaining two WECC-staffed RCOs more effective and efficient.
Framework of Self-Regulation and Delegation

Effectiveness of Self-Regulation
In the Energy Policy Act of 2005, the United States Congress enacted sweeping changes to how regulatory oversight is provided to meet the public’s interest in ensuring the reliability of the Nation’s bulk power system. Among the most significant changes was to establish FERC as the United States government agency with the authority to approve mandatory reliability standards and to enforce compliance with those standards by owners, operators, and users of the bulk power system, subject to penalties of up to one million dollars per day, per violation.

With wisdom and foresight, Congress chose a self-regulatory model that allows FERC to certify an industry-based ERO and to delegate to the ERO the responsibility and authority to propose reliability standards for FERC approval, to enforce compliance with those standards, and to assess reliability performance. In Order No. 672, FERC established its criteria for certifying the ERO and in July 2006 conditionally certified NERC as the ERO.

Congress further allowed for the delegation of certain responsibilities and authorities from the ERO to Regional Entities. FERC codified the essential criteria for delegation to the Regional Entities in Part 39 of its regulations and in April 2007 conditionally approved delegation agreements between NERC and the existing eight Regional Entities.

Congress chose a model that combines strong federal authority with industry self-regulation in lieu of other possible regulatory approaches and the first three years of experience have demonstrated this approach to be an effective fit for the unique characteristics of the North American bulk power system. The electric power system is unique in that it is physically interconnected across North America and every owner, operator, and user has a vested interest in the reliability of every other owner, operator, and user – the system is only as strong as the weakest link.

An interconnected, cross-border bulk power system requires an international ERO to manage reliability. Providing for an international, industry-based ERO, rather than a government-only form of regulation, enables a single organization to develop a common set of North American bulk power system reliability standards and to enforce compliance with those standards uniformly across international and provincial boundaries. To complete this framework, in the time since its certification as the ERO, NERC has worked successfully with Canadian federal and provincial governments to

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10 [Citation]
11 North American Electric Reliability Corp., 116 FERC ¶ 61,062, order on reh’g and compliance, 117 FERC ¶ 61,126 (2006), order on compliance, 118 FERC ¶ 61,030, order on clarification and reh’g, 119 FERC ¶ 61,046 (2007).
establish the cross-jurisdictional framework necessary to enforce standards across all of North America.

In addition to its interconnectedness, the bulk power system in North America is one of the most complex engineering feats in the history of humankind. Knowledge of how that system works is principally vested with the engineers and operators who plan and operate the system on a daily basis. In adopting the self-regulatory model, Congress recognized that the unique expertise available only to experienced practitioners was necessary to ensure that enforceable requirements for planning and operation of the bulk power system respect the laws of physics and consider the practical risks, technical challenges, and benefits of operating interconnected electric systems. The self-regulatory model complements FERC’s strong regulatory authority with the industry expertise necessary to develop effective reliability standards and perform other reliability improvement functions envisioned by Congress. Moreover, the expert volunteers are typically provided at no cost to the ERO, allowing the ERO and the Regional Entities to be more cost-effective.

Finally, the self-regulatory model has demonstrated in the first three years that it serves to actively engage bulk power system owners, operators, and users with vested interests in reliability through active development of the reliability organizational structures and rules, and constructively improving reliability, rather than assuming a passive approach and waiting to be regulated. In the reliability context, the public interest is best served by an industry that is willfully and actively engaged in improving and ensuring reliability rather than one that is simply expected to follow minimum requirements that have been imposed upon it. It is this active industry engagement that presents the best opportunity for sustainable reliability excellence over the long-term.

For the reasons outlined above, the Regional Entities strongly endorse the self-regulatory model by which the industry participants develop their own standards and independent ERO and Regional Entity staffs determine compliance to those standards, as designed by Congress. The Regional Entities believe the model is working effectively today, because it provides the necessary controls and checkpoints offered by strong regulatory government authority (FERC in the U.S. and the provinces in Canada) overseeing an international, North American reliability organization assisted by eight Regional Entities. This approach of strong central controls through rules of procedure, delegation agreements, and a uniform Compliance Monitoring and Enforcement Program, and auditing, as well as final approvals at NERC before filing of reliability standards and compliance actions, is a sustainable long-term model for the ERO.

The self-regulatory model has proven to be effective as designed, notwithstanding the many opportunities to improve performance that are outlined in this report and the NERC self-assessment. The model works because it combines the best of legacy reliability infrastructures, expertise of the industry, and balanced stakeholder perspectives, with strong, effective regulatory controls and audits of results.
Effectiveness of Regional Entity Delegation

Congress allowed self-regulatory responsibilities and authorities to be further delegated by the ERO to the Regional Entities, in recognition of the long-standing reliability structures that had been in place for many decades. The industry had long recognized the value of increasingly interconnected operations, formation of power pools and reserve sharing groups, coordination of planning and system protection, and establishment of inter-area operating agreements. In the self-regulatory model described above, the Regional Entities are not simply additional contracted staff to augment the ERO. The Regional Entities are, along with NERC, a key part of the historical fabric of how the industry has collaborated over many decades to provide a reliable bulk power system. What was previously missing was mandatory and enforceable reliability standards and strong regulatory oversight authority. However, the most effective path forward, at the time of the legislation and still today, is to build from the substantial reliability structures that have existed for decades.

This report, coupled with the individual Regional Entity self-assessments, evaluates the overall effectiveness of the Regional Entities in executing their delegated responsibilities and authorities. Although delegation can be said to have worked as intended in the first three years of the ERO, there are opportunities for improvement. The existing delegation agreements were blueprints for getting started, but experience has highlighted a number of areas for improvement.

Before reviewing specific improvements to the delegation process, however, it should be acknowledged that perfecting delegation was not at the forefront of priorities during the first three years and should not have been expected. It was instead a priority to transform NERC and the Regional Entities into organizations with the governance, resources, rules, procedures, and tools necessary to perform the delegated statutory functions – and that was accomplished. Another priority was processing the thousands of compliance violations reported leading up to and after the standards became mandatory on June 18, 2007 and reviewing and verifying completion of plans to mitigate those violations – and significant progress has been made on that front. A third priority has been establishing the appropriate due processes for registered entities, such as required notices, rules regarding settlements, hearing procedures and the like – and that has been accomplished.

Delegation as it relates to the ERO is a conscious choice between centralizing or decentralizing certain ERO functions. A careful evaluation of the benefits as well as the drawbacks and risks of delegation provide insight into which functions should be delegated and how delegation should be managed. The industry, as well as Congress, FERC, and Canadian authorities saw significant benefits to delegation, some of which have been previously described, and allowed delegation of certain functions to the Regional Entities in the statutes and regulations. The benefits of delegating, or performing certain ERO functions in a decentralized manner, may be further described as follows:

- A primary advantage of a decentralized business model for certain statutory functions is that it leverages local knowledge, resources, and understanding of the
Decentralization has succeeded in leveraging existing reliability structures and preserved historical bases for reliability within the Regional Entities. The ERO would not have been able to get this far today without the effective implementation of the Regional Entities. As a result, NERC has been able to timely implement the transition from voluntary to mandatory reliability standards.

Each Regional Entity, within clear boundaries established by delegation, has an opportunity to create innovative solutions and continuously improve performance and efficiency. These solutions can and should be shared among Regional Entities and with NERC.

Each Regional Entity, once again within the boundaries of delegation criteria, can adapt its operations according to the bulk power system physical attributes and priorities, the planning and operating practices in the region, and the needs of diverse stakeholders and ownership models that exist across North America.

Regional Entities with cross-border relationships can effectively work across international boundaries to ensure consistent implementation of reliability standards, compliance monitoring and enforcement, and reliability data gathering and sharing. With substantial differences even from one province to the next, the local knowledge and relationships are invaluable in the day-to-day execution of delegated functions.

Reliability stakeholders have historically been active in greater numbers in the regions than in NERC. The decentralized model effectively extends NERC’s reach to involve thousands of stakeholders that would not otherwise be actively engaged.

Effective delegation of statutory responsibilities and authorities helps to bridge the distance (physical and literal) between national policy and decision-making and the day-to-day implementation at the ground level.

Although efficiency can also be a disincentive for decentralization, with proper process controls and definition of desired outcomes, decentralized operations can actually be more efficient by shortening lines of communications with registered entities and keeping the day-to-day tasks close to where the problems and solutions are.

There are also potential disadvantages and risks associated with delegation, some of which have been evident in the first three years of operation of the ERO. These may include:

- Divergent visions and directions that may arise through lack of clarity and specificity in the delegation process, or simply through differences of opinion regarding the most effective way to solve a problem.
- Inconsistencies in processes, interpretations of standards, definitions of terms, etc.
• Inefficiencies resulting from duplication of efforts, both between the ERO and Regional Entities and among Regional Entities.

• Inefficiencies resulting from a “not invented here” mentality, in which regions (and sometimes NERC) believe they need to have unique tools or procedures to perform their work.

• Confusion over roles between the ERO and the Regional Entities, including difficulty distinguishing between oversight roles and execution roles. Taken to extremes, lack of clarity in roles could lead to “turf battles.”

• Incomplete communications and missing information that would help each party perform better.

• Divergent or disconnected information management systems and tools.

To maximize the benefits and minimize the risks of delegation, one must understand the factors that can make delegation from the ERO to the Regional Entities successful:

• A strong conviction and singularity of purpose at the executive and board levels of all organizations involved.

• Clear division of responsibilities, both related to the division of performance of the statutory functions and the oversight of those functions.

• Strong, clear standardized procedures, active controls, clearly articulated performance metrics, and checks or audits of performance.

• Clear, frequent communications and transparency among the organizations.

• A cooperative spirit that promotes mutual success and recognizes that failure is indivisible – any failure is collectively shared by the ERO and all Regional Entities.

• Mechanisms to resolve conflicts.

Examples of Existing Tensions and Opportunities for Improvement

It is clear that the current implementation of delegation presents numerous opportunities for improvement. The three-year assessment provides an excellent opportunity to identify necessary improvements and to address the tensions that naturally exist in the startup of the ERO and the Regional Entities. As in almost any organizational environment some tension is normal and healthy – a lack of any tension would probably be a sign an organization is not adapting, improving and facing up to challenges.

Although there are other tensions in the implementation of the ERO, the principal area of tension between the ERO and the eight Regional Entities has been in compliance monitoring and enforcement. The central tension stems from differing views of the meaning of the delegation of responsibilities from NERC to the Regional Entities. NERC staff appears to believe that Regional Entity staffs work for them, while the Regional Entity staffs believe they have been delegated certain responsibilities. This central tension then leads to the manifestation of other tensions. This issue should be addressed through improved clarity of roles and responsibilities achieved by updating
the delegation agreements, which are due for renewal in May 2010 and in the rules of procedure.

One example is a tension caused by the Regional Entities’ perception that some of the work of their staffs is essentially performed a second time by NERC staff before approval, creating substantial duplication of effort. The Regional Entities have the responsibility to discover and investigate possible violations. However, NERC staff appears to Regional Entities to perform a de novo review of every case and make its own independent recommendation to the NERC Board Compliance Committee. Instead of deference to the Regional Entity that the investigation has been conducted in accordance with the rules of procedure and delegation agreement, NERC appears to employ an assumption that each Regional Entity investigation is likely flawed and must be independently reviewed and in many cases revised. Oversight review and clear feedback that is shared with all of the Regional Entities would be much more efficient and effective.

There is also tension regarding the degree of consistency among the Regional Entities and how consistency should be achieved. NERC expects consistent results among the Regional Entities, which is a reasonable expectation. Yet, at the time the reliability standards became mandatory, there was not a complete and consistent set of model cases to use as examples or templates from which to work. For example, the scope and requirements for what constitutes the record of a case continued to experience substantive changes through December 2008. The sense of a continuously moving target of expectations has frustrated the Regional Entity staffs, while a perception of inconsistency in outcomes has equally frustrated the NERC staff. The solution is a clear set of expectations with examples to guide Regional Entity staffs, with an effective change management process that incorporates inputs from Regional Entities, and greater deference focus on review of Regional Entity work rather than replication of efforts.

The Regional Entities have worked vigorously through numerous interregional working groups to develop common procedures, templates and tools. NERC has elected for the past year not to participate in this collaborative process to develop consistency. NERC uses two principal methods to guide consistency: the use of non-public bulletins directed to the Regional Entities to instruct how a process should be performed, and remanding compliance cases. In any delegation model, as in any supervisor-worker relationship, limiting interactions to these two methods is not a formula for achieving consistent results and efficiency. More interactive, transparent, and supportive approaches are needed in the relationships between NERC and Regional Entity compliance staffs.

These are just but a few of the opportunities for improving the execution of the delegation process. This partial list of issues is described here for the purpose of underscoring the need to update the delegation agreement and processes to address a number of tensions experienced to date.
To alleviate these and other tensions, NERC should implement a decentralized model of oversight, which is what the Regional Entities believe Congress intended. In order to successfully implement a decentralized model over the long term and truly leverage the existing infrastructure, resources and knowledge in the Regional Entities, NERC must establish and clearly communicate systems, procedures and processes, performance metrics and controls, and training. These should be developed through effective policy research and discourse with Regional Entities.

NERC needs to establish transparent controls to ensure decentralized implementation will deliver consistent outcomes. Identical outcomes in compliance and enforcement decisions should not be expected because of the limitless variation in facts and circumstances combined with the discretionary judgment necessary in such decisions. Effective controls, such as establishing written procedures for the conduct of compliance audits, developing an integrated information management system, and requiring standardized financial reporting accounts, are just a few examples of essential elements for successful implementation in a decentralized model and are fundamental to exercising effective oversight.

NERC should emphasize comprehensive training for the Regional Entities to establish a common view towards compliance and enforcement. The comprehensive training should be developed on a coordinated basis using the knowledge gained by the Regional Entities. By establishing a comprehensive training program, NERC would provide an added level of control in the implementation.

Finally, the Regional Entities need to refocus their efforts on the day-to-day responsibilities of administrating a compliance program. Compliance monitoring and enforcement requires the specialized knowledge and training possessed by the Regional Entities. In the event of a large-scale investigation across regions, NERC should be in the lead. Even in this circumstance, however, the process would benefit from including Regional Entity staff to provide localized insight.

In summary, NERC needs to bolster the skills and tools necessary in order to improve implementation of the decentralized model that Congress intended. More effective controls coupled with a clarification of roles and responsibilities will create better, more consistent results.

Regional Entity Governance

The Regional Entities believe Regional Entity governance is working as allowed and intended by Congress and the Commission. However, in its self-assessment, NERC states that:

“... while stakeholder and hybrid boards are appropriate and have proven successful for most of the delegated activities, NERC believes the time has come for all compliance programs to report to independent directors.”
All of the Regional Entities are deeply concerned with the possible misperception underlying this proposal. Each Regional Entity is currently governed in a manner completely consistent with Section 215 of the Federal Power Act, which specifically allows for balanced stakeholder, hybrid, or independent boards at Regional Entities. As stated previously, the ERO model was carefully designed and already provides sufficient checks and balances by requiring that all compliance actions and penalties, including mitigation plans and remedial action directives, must be approved by NERC before filing with FERC in the U.S. The Regional Entities fully understand the need to avoid any actual or perceived conflicts of interest, but believe the current structures and procedures provide those safeguards without requiring modifications to the existing governance structures of the Regional Entities.

Each Regional Entity, even those with balanced stakeholder boards, has in place effective controls to ensure that independent staff performs the compliance monitoring and discovery processes, evaluates potential violations and makes initial determinations, evaluates the seriousness of the violation and its impacts, and determines appropriate penalties and remedial actions. Regional Entity staffs also evaluate mitigation plans and perform independent reviews of the completion of the mitigation.

The Regional Entity boards, whether they are stakeholder or not, are not involved in the operational decisions surrounding the compliance program. In some instances, they provide oversight regarding internal processes of the region and, for some Regional Entities, the board or a committee or subset of the board may be involved in the final review and approval of compliance actions before submittal to NERC. In all cases, however, development of the specific facts, conduct of audits, analysis of evidence, basis for determining violations, negotiation of settlements, and determination of penalties are conducted totally by independent staff without involvement of board members. The final review and approval by some of the Regional Entity board level panels is specifically allowed by FERC and the ERO rules of procedure and is a necessary step to making it clear that submittals are from the corporation, not individuals on staff, much the same as the NERC board committee provides final approval of NERC actions filed with FERC.

Furthermore, experience to date within the regions indicates that final review of compliance outcomes has improved results. Stakeholders have a vested interest in the reliability of the bulk power system and realize that the weakest link in reliability presents a risk to all. Board level review often results in approval of staff decisions, but in the cases where actions are remanded, the purpose of the remand is typically to gather additional information and substantiation, or to ensure consistency of penalties in different cases. The Regional Entities unequivocally agree that the existing Regional Entity governance models have worked in practice to act in the interest of the public with regard to bulk power system reliability. When potential conflicts of interest do arise,

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each Regional Entity has procedures and controls in place to ensure recusal of any conflicted parties.

There is little reason to conclude that the current compositions of the Regional Entity boards are inadequate. Stakeholder representation on Regional Entity boards is required by FERC to be balanced. The possibility that a particular class of entities might engage in self-serving activities is foreclosed by the balance of representation on the boards from all stakeholder sectors, including end-use customers. Finally, the fact that all actions must be reviewed and approved by the independent directors and staff at NERC and FERC in the U.S., eliminates any residual risk of impaired governance reaching improper conclusions regarding compliance actions.

**Regional Entity Non-Statutory Functions**

Performance of non-statutory functions by the Regional Entities is permissible under the statutes and regulations.16 Four of the Regional Entities have chosen to perform or have affiliations with Registered Entities for various reasons. In some cases, these were legacy activities performed by a precursor regional reliability organization. In some cases, as NERC has found with E-Tagging, the Interconnection Distribution Calculator (“IDC”), and the synchro-phasor project, there simply isn’t a better organization available to perform an important task in support of reliability.

NERC has proposed in its self-assessment to require the compliance monitoring and enforcement program to be managed entirely independently of the users, owners, and operators:

“Further, the Compliance Monitoring and Enforcement Program must be managed independently of the users, owners, and operators. While it is appropriate, indeed important, that Regional Entities in some instances are users, owners, and operators of the bulk power system, those activities must be kept entirely separate from the Regional Entity’s management and implementation of the compliance program. In addition, for NERC to delegate authority to a Regional Entity, NERC will insist that the delegated functions be either the exclusive functions or the vast majority of the functions reporting to the Regional Entity executive.”

MRO, NPCC, RFC, SERC, SPP, and TRE believe they currently meet this proposed requirement. Each of these regions except SPP and TRE has no affiliated registered entity functions, and plans to continue operating in this manner independent from any registered entity functions. SPP RE meets this requirement because it has independent

16 See 18 C.F.R. § 39.4(b); see also Order No. 672 at P 656 (“While the ERO may not delegate other statutory functions to a Regional Entity, the Commission will not prohibit a Regional Entity from performing other reliability-related functions in service to its region. As commenters indicate, regional reliability councils currently perform a number of functions beyond the proposal and enforcement of Reliability Standards. A Regional Entity may conduct such activities, provided that they do not conflict or interfere with the performance of a delegated function, which we view as the primary mission of a Regional Entity.”)
governance over its delegated functions and only delegated functions report to the Regional Entity executive. TRE meets the requirement because it is separate from the owners, operators, and users through functional separation and independence from the ERCOT ISO operations.

The remaining two Regional Entities -- FRCC and WECC -- believe that NERC’s proposal is unnecessary and would be detrimental to reliability, as all of their non-statutory functions are performed in the pursuit of improving reliability. These Regional Entities note that there is no conflict if all elements of a Regional Entity’s scope have a common goal of reliability improvement. In previous orders, FERC has confirmed that Regional Entities may perform non-statutory functions, as long as there are clear procedures in place to avoid conflicts, and NERC and FERC conduct audits to provide that assurance.

All of the Regional Entities agree that conflicts of interest with statutory functions should not exist and that the issue of whether a potential conflict of interest exists should be resolved on a case-by-case basis with the affected Regional Entity. The Regional Entities furthermore agree that a change in policy is unnecessary to address the issue.

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Regional Reliability Standards
In the section that follows, the Regional Entities provide a brief overview of the regional reliability standards process and scope, and discuss the purpose of a regional reliability standards model and what has been achieved to date.

Regional Reliability Standards Processes
The Regional Entities agree with NERC’s assessment and the comments of registered entities that the existing reliability standards development process at NERC is working and is effective for the development of bulk power system reliability standards. Although the open and inclusive nature of the standards development process may extend the time to develop a standard, it is undoubtedly necessary for due process – the deliberative aspects of the standards development process ensure standards that are fair and reasonable to the owners, operators, and users who must often invest substantially to achieve and maintain compliance.

Each Regional Entity has submitted a regional reliability standards development procedure that meets NERC’s essential criteria, as defined in the NERC rules of procedure. Each regional reliability standards development procedure has been approved by NERC and FERC. Therefore, each of the Regional Entities has fulfilled the obligation to provide an open, fair, balanced, and inclusive process for the development of regional reliability standards.

It should be noted that development of regional reliability standards is not necessarily a goal of the ERO. First and foremost, the ERO should promote consistent North American reliability standards. Regional reliability standards address unique requirements in a particular interconnection or geographic region of the bulk power system, typically driven by physical differences in the electric system. Therefore, there should not be an expectation there will be a large number of regional reliability standards over time and the relatively small number of regional reliability standards approved in the initial ERO review period should not in itself be a concern.

Nevertheless, there have been a small number of regional reliability standards submitted to NERC for approval. The Regional Entities believe that the procedures approved by the Commission have been followed in developing these standards, but recognize that there are areas for improvement in the process, in particular with respect to communications with NERC staff. Specific descriptions of recommendations for improvement are provided in the WECC, RFC, and MRO regional self-assessments.

The Regional Entities recognize the value of the Regional Reliability Standards Working Group sponsored by NERC and recommend that this group continue its activities of coordinating standards development across all regions.

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Regional Fill-in-the-Blank Standards and Regional Criteria

When the Commission approved 83 reliability standards in Order No. 693, it withheld a decision on certain standards that referred to regional requirements that were not specifically noted within the standards.19 These were referred to as “fill-in-the-blank”, meaning the entity had to refer to a regional document for the answer of what level of performance was required. Such requirements cannot be made enforceable until approved by the Commission in the United States. The Regional Entities are concerned because the regional “fill-in-the-blank” reliability standards have not been completed and this creates reliability risks. A number of stakeholders also commented on this issue, noting the lack of clarity and risks faced by registered entities caused by approved FERC standards that refer to regional criteria that are either nonexistent or not approved by FERC.

The delay in completing the “fill-in-the-blank” standards may be attributable to the relatively low priority with which they have been considered by NERC. In this area, the Regional Entities must operate within the bounds of NERC’s three-year work plan schedule and, in some cases, must await the completion of NERC performance criteria before completing the regional standards. This has created a risk of the occurrence of a significant system event for which there are no enforceable criteria. The area of greatest concern is in under-frequency load shedding, but there are several other key areas, including contingency response reserves, disturbance monitoring equipment, and relay mis-operation reporting. In some instances, NERC has questioned whether regional standards are still necessary in these areas, creating further hesitation in the regional development efforts. The Regional Entities request that NERC finalize any North American criteria for each of these areas as soon as possible, which may include a determination that regional standards are not required, and set a schedule for completion of any required regional reliability standards so that this area of risk can be eliminated.

NERC is also required to collect regional criteria from the Regional Entities and maintain a catalog of these criteria. It is not apparent that this has been an activity NERC has addressed in the first years of the ERO, beyond any initial criteria that might have been submitted by the Regional Entities.

Prioritization of Standards Work

The Regional Entities share a concern that was a common theme among many stakeholders that resources are stretched very thin in the current standards development activity. There are over 300 volunteers working at any point in time on over 30 standards development projects. Additionally, there are hundreds more who review proposed standards and provide comments and vote. The Regional Entities agree that the NERC work plan may be too ambitious in that it attempts to address too many standards development activities at once and that there has been an insufficient prioritization of reliability standards.

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19 See Order No. 693 at P 297.
Furthermore, the Regional Entities support the view of many stakeholders that there are currently too many standards and requirements, with many of them not based on performance and that accordingly should not be high priorities in ensuring the reliability of the bulk power system. NERC’s approach has been to incorporate every standard translated from the pre-ERO operating policies and planning standards, and then to simply add more requirements and specificity. Some stakeholders note in their comments that even what they view to be commercial standards, such as those related to ATC and TTC, were swept into the process.

This may actually be harmful to reliability because resources that could be dedicated to ensuring compliance with the discrete set of reliability requirements necessary to avoid wide-area cascading failures are dissipated through an undiscriminating effort to equally promulgate and enforce all requirements, including those that have very little impact on reliability or are only ancillary to those requirements that do. Not every standard and requirement is equal in its relationship to reliability, and the Regional Entities believe that work should be prioritized to recognize that. NERC should also consider reviewing existing standards for an opportunity to retire less important requirements or convert them to guides or reference materials.
Compliance Monitoring and Enforcement

The compliance monitoring and enforcement program has been a great success in the first three years of the ERO but it is also an area that presents the greatest need for additional work, both within Regional Entities and NERC. The compliance monitoring and enforcement authorities, including imposing penalties up to $1,000,000 per day per violation, are a significant change from the past, where standards were voluntary. This substantial change at the onset of the ERO has presented a number of growing pains, but at the same time, NERC and the Regional Entities have established a strong foundation from which to build.

A fact that is easily overlooked in an evaluation of the compliance program is that it is unique in both its design and the speed of its growth. The Regional Entities believe that there is no regulatory precedent for moving, in a matter of months, from a period of voluntary compliance to the processing of over 6,000 possible violations of mandatory reliability standards. Indeed, many details in the program had to be addressed and adjustments implemented by NERC and the Regional Entities where necessary, while processing actual alleged violations.

Although the focus of this section is on areas for improvement, it is clear that the first three years of the compliance program must be considered a success. Achievements include establishing the registration criteria and registering 1845 bulk power system owners, operators, and users, processing over 5,000 pre-June 18, 2007 violations and mitigation plans, establishing procedures and templates for improving consistency in the processing of alleged violations, conducting over 500 audits, and training compliance staffs. The industry survey indicates strong support from registered entities that NERC and the Regional Entities have been effective in promoting a culture of compliance and internal self-assessment by registered entities.

The issues described in the remainder of this section offer opportunities to further improve the compliance program in the next five-year assessment period.

Compliance Registry

On the whole, the compliance registry has been one of the more successful aspects of the compliance monitoring and enforcement program. The registration criteria establish benchmarks for including, or excluding, entities within the jurisdiction of mandatory reliability standards. The registration criteria provided an essential first step to implementing the broad language of EPAct 2005’s applicability. The registry serves to provide clear notice to entities on the list that they must comply with standards applicable to the functions for which they are registered. It also provides notice to entities that are not registered that their facilities fall below the level of materiality to bulk power system reliability. Although there have been several appeals of registration status, the vast majority of registrations have been accepted by owners, operators, and users.

There are several possible improvements that should be evaluated:
There is a need to more efficiently address multi-regional entities. There are instances where an entity straddles two or more regions, and thus is subject to requirements to report compliance information to multiple regions and multiple compliance programs. In fact, there are even national or North American businesses that operate facilities in all eight regions. NERC and the Regional Entities, in concert with stakeholders, should devise approaches to efficiently manage the compliance monitoring of multi-regional entities, such as cross-delegation (assigning one region to monitor compliance). This approach should be designed to focus on consistent results and maximizing efficiency by avoiding duplication of effort.

At this point, a sufficient number of audits and compliance actions have been processed to legitimately consider whether the scope of the registration criteria has been appropriately defined to protect reliability in a cost effective manner. This issue is raised by many stakeholders in the survey who believe that the registration criteria have captured many smaller entities near the radial ends of the bulk power system that have no reliability impacts on anyone other than themselves and their own customers. Some registered entities note in the survey that both NERC and regional drafting teams are adopting applicability criteria that extend beyond those defined in the registration criteria, which could be problematic if there are standards that apply to entities not registered. NERC and the Regional Entities, in consultation with stakeholders, should review the registration criteria to determine if there should be a different threshold for materiality to the reliability of the bulk power system and to determine if compliance resources could be better prioritized by changes to the registration criteria.

There have been instances in which entities requested to change in registration (and membership) from one Regional Entity to another. Although there may be legitimate business reasons for such requests, there is a possibility that such entities may be “forum shopping” or seeking different treatment with respect to regional reliability standards or the compliance monitoring and enforcement program. NERC and the Regional Entities should develop a procedure to provide a registered entity a fair process to present justifications for moving from one region to another and for NERC and/or the Regional Entities involved to make an informed decision. Improving consistency among regions should further minimize any inappropriate motives for relocating from one region to another.

In the industry survey, commenters noted that one of the greatest challenges with compliance registration is that the definitions provided in the Functional Model are conceptual and registered entities have for historical or business reasons often aligned their operations differently. Sometimes certain responsibilities tied to a portion of the reliability standards are delegated to another organization, such as an RTO/ISO or a Generation & Transmission (“G&T”) membership organization. There has been some discussion among stakeholders regarding whether there is a need to revise the Functional Model. However, redefining the terms of various functions may be impractical as it is unlikely to ever resolve the immense diversity of organizational structures in the industry. A long-term solution for possible consideration is to increase the granularity of registration so that it focuses on the requirement level,
One issue that remains unresolved at the end of the initial three-year assessment period is the registration status of U.S. government agencies, such as the U.S. Army Corps of Engineers, that operate facilities that fall within the registration criteria. Although FERC has directed that these facilities and organizations must be included within the jurisdiction of the mandatory reliability standards, this issue has not been finally resolved due to the potential for appeals of compliance actions on the basis of jurisdiction. The Regional Entities believe that these types of appeals should not be addressed within the regional hearing process because that process is not designed to handle matters of law. The ERO hearing process instead is designed to evaluate facts to determine whether or not there has been a violation of a reliability standard, and if so, what the penalty and corrective actions should be. Regional Entities recommend that FERC should indicate that it will provide the forum for determining legal challenges of jurisdiction between federal agencies and not expect that such matters should be heard by a Regional Entity hearing body or a NERC appellate body.

Consistency and Use of Discretion in Application of Penalties

One expectation of the compliance program is that there should be consistency in the application of penalties for violation of standards across various regions and that the amount of a penalty should reasonably fit the nature and circumstances of the violation. This is a reasonable expectation and NERC and the Regional Entities have worked toward this goal.

The Penalties and Sanctions Guideline provided in the ERO rules of procedure create a range of penalties, with general bounds, for various risk factors and violation severity levels. However, the ranges within the tables are wide and leave significant discretion, with sometimes order of magnitude differences. NERC has developed a penalty calculator tool as an aid for determining consistent outcomes in light of aggravating or mitigating circumstances surrounding a possible violation, such as the value to assign a registered entity’s self-report or degree of cooperation. There has been some tension with stakeholders, confirmed by the survey results, who believe that there is too much uncertainty in the penalty guidelines (allowable ranges are too wide) and that the penalty calculator tool should be made public. However, the tool is simply a guide and most Regional Entities have proceeded to apply a more rigorous analytical assessment of the penalty, rather than relying solely on the tool.

With or without the penalty calculator tool, the fact is that there is a wide range of penalties possible for a violation of a particular requirement in the standards. NERC and the Regional Entities can take several steps to ensure consistency. First, the Notices of Penalty that have been accepted by FERC and made public provide

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20 See, e.g., Southeastern Power Administration, 125 FERC ¶ 61,294 (2008).
precedent for the Regional Entities to consider in future cases. The advantage of providing a more complete record for each case, as has been required by the Commission, is that Regional Entities and registered entities can understand the detailed facts of a case and how those facts were considered in determining an appropriate penalty. Future cases should be guided by these outcomes and over time hundreds and thousands of completed cases will provide a richer base of precedent.

For uncomplicated cases, such as those with relatively low penalty amounts, NERC should establish baseline penalty amounts as a guide for each requirement. These baseline penalty amounts should distinguish between self-reported violations and those not self-reported, and between violations caused by a lack of documentation and those caused by a lack of performance. Establishing baseline penalty expectations for lower level violations without complicating circumstances would substantially simplify the enforcement process and increase certainty in the negotiation of settlements.

It should not be expected, however, that the Regional Entities will produce identical penalty outcomes for all violations of a particular requirement. The variations in the facts and circumstances of each case are unique; this is a basic proposition that underlies the rationale for the flexibility and mitigating factors of the Violation Risk Factors that are necessary for due process. For lower priority violations, there may be value to sacrificing efforts to closely match penalty outcomes with the facts of a case, in order to achieve consistent outcomes across the regions. For example, reliability goals are not furthered by spending $50,000 in resources to resolve whether a penalty for a low priority violation should be $2,000 or $4,000. However, for more complex and serious cases, there should be an expectation that penalties will vary from case to case based on the facts of the case and judgment of the Regional Entity staffs. The penalties should be scaled to the seriousness of the violation and should consider all of the aggravating and mitigating factors. But if the Regional Entity produces a reasonable outcome consistent with the broad guidelines established by NERC, there should not be an expectation of identical or imitative results from one case to another.

During the three-year assessment period, NERC has implemented a practice of reviewing every violation submitted by a Regional Entity in detail, with NERC staff presenting its own independent recommendation to the NERC Board Compliance Committee. This approach may be suitable for more serious cases, but is very duplicative and inefficient for most low priority violation cases. NERC should establish procedures to more effectively prioritize cases for review. Based on case history to date, a conservative estimate is that at least a third or more of all cases would be suitable for standardized penalties, as suggested above, greater deference to the region, and for approval at NERC through a consent agenda of the Board Compliance Committee or delegation to NERC staff.

Consistency in penalties could be further enhanced if the NERC Board Compliance Committee would select unique cases with precedential value and issue their decision, either approving or remanding a case, to all Regional Entities (non publicly). This approach would be informative to the regional staffs in enforcement who developing the
cases and penalties and would be helpful in conducting settlements. These “guideposts” would be a very beneficial method for the Board Compliance Committee to set expectations by providing opinions on a select number of cases with unique value in setting expectations or boundaries of reasonable outcomes. Regardless of whether the board develops a written opinion on a case, all decisions of the board, including remands, should be shared with all of the Regional Entities as a method of further distinguishing minimum expectations.

With respect to the proposal raised in the NERC self-assessment that NERC staff should be consulted earlier in the process to settle on a reasonable penalty, the Regional Entities believe this approach would be unnecessary and of little value, if the more prospective steps outlined above are taken to establish standing guidance to the regions. Furthermore, intervening at the formative stage of determining a violation and a penalty would undermine the delegated authority of the Regional Entity and minimize the credibility of the Regional Entity. Moreover, this approach would compromise the independence of NERC’s subsequent review and approval of the compliance action, as well as NERC’s ability to entertain appeals on the case – a critical role in which NERC should be unbiased and not have a predetermined notion of the proper outcome.

Compliance Monitoring and Enforcement Process Consistency
Many stakeholders have expressed concerns, both through the survey and over the past two years, with inconsistencies in the implementation of the compliance monitoring and enforcement program across the eight regions. The Regional Entities agree with the stakeholders and NERC that this is an important issue to address.

The underlying reason for inconsistencies is that the rules of procedure, delegation agreements, and existing regulations do not provide guidance in many cases on how to implement the program. For example, there have been many discussions among regions and NERC regarding what information is required to be within the record to substantiate a violation. FERC added further guidance in its July 3, 2008 Order on Filing Reliability Notices of Penalty. In addition, there were a number of templates that were developed “just in time” through experience in the early cases.

The Regional Entities believe consistency has improved with experience, but are taking proactive steps to continue improving consistency. The Regional Entity staffs have formed the Regional Entity Management Group to steer the regions toward consistent and effective implementation of delegated responsibilities. The Regional Entities have also formed the Regional Compliance Implementation Group and over a dozen working groups to coordinate various aspects of the compliance process implementation. The Regional Entities believe this interregional coordination activity will be most effective in achieving the goal of consistency if NERC compliance staff actively participates in helping to set priorities, provide guidance, and review results.

As the ERO, NERC has an opportunity to improve consistency and efficiency by publishing forms, procedures, and other documents that would aid in removing variation in program implementation among the Regional Entities. However, this guidance should be developed in collaboration with the Regional Entities because practical experience with audits and compliance enforcement will provide valuable feedback on the best set of tools to improve the process. NERC should also develop consistent performance metrics for the regions and audit performance. Such activities by NERC should be done in an oversight role and not as a duplication of the regional effort; an inspection and determination of acceptability against predetermined criteria is preferred.

NERC can also further enhance consistency through more open and transparent communications with the Regional Entities.

Over the next few years, there should be an expectation that process consistency will be further enhanced by the introduction of compliance information management systems that provide seamless flow of compliance information from registered entities, through the regions, to NERC.

**Compliance Audit Consistency**

NERC and the Regional Entities have made significant progress in ensuring consistency of compliance audits, although substantial work remains in this area as well. Most registered entities agree in the survey that NERC and Regional Entity staffs are professional, thorough, and efficient in the conduct of audits.

NERC has published, with the assistance of the regions, a set of Reliability Standards Audit Worksheets to guide the audit process. These guides have been made public and are available to registered entities in preparing for audits. These forms are a helpful step toward ensuring audits are consistent to the extent they provide guidance on what standards will be reviewed, what questions will be addressed, and how evidence of compliance is noted.

A second activity to ensure consistency has been auditor training. NERC has provided face-to-face training sessions as well as an online training module for auditors. To date, however, the training is somewhat limited in its ability to train personnel with utility experience and knowledge of the bulk power system in techniques for being an effective auditor. Several regions have initiated supplemental training to reinforce the NERC training. However, NERC needs to develop substantially more training for auditors; an “auditor academy,” consisting of several weeks of comprehensive training, could be an adequate solution. The training should include auditing methods and ethics, the NERC audit procedures, and, even more importantly, how to arrive at decisions that are consistent in their presentation of sufficient evidence to demonstrate compliance.

NERC and FERC have sometimes provided observers when a Regional Entity is auditing a registered entity. This approach has led to some confusion in responsibilities and is somewhat inefficient. In some cases, the NERC and FERC staffs have engaged in the audit process and exceeded the inquiries that would have been asked by the
Regional Entity staff; in other cases, NERC and FERC staff are simply observers. A preferred approach would be for NERC to set expectations and provide them through procedures or training, and then to selectively audit the results after the fact are within guidelines. Even if this approach is adopted, the Regional Entities would continue to welcome NERC and FERC staff presence at audits, as well as the occasional sharing of audit staff among Regional Entities, as a means of sharing best practices and improving performance.

Consistency in Interpretation of Reliability Standards

NERC and the Regional Entities understand the need to promote consistency in compliance activities to the greatest extent possible. Consistency will add certainty and inspire confidence in registered entities and will result in a higher level of compliance and better performance across the industry. To that end, NERC developed a series of Reliability Standard Audit Worksheets (RSAWs) to provide a common basis and guidance for regional auditor teams. These audit worksheets also greatly benefit the registered entities, as they serve as guides to help identify the types and degrees of evidence typically necessary to demonstrate compliance with reliability standards. Registered entities are encouraged to use the RSAWs in their internal compliance programs and to prepare for compliance audits conducted by the Regional Entities. In addition, registered entities are required by Regional Entities to complete the questions in the RSAWs and submit their responses to the Regional Entity prior to the on-site audit in order to increase the efficiency of the auditing process and reduce time spent on-site.

The RSAWs are not definitive, as noted in their disclaimer, but intended rather as guidance, and registered entities should be able to present alternative evidence of compliance. Some commenters in the industry survey indicate that improvements could be made in the RSAWs by providing clearer expectations of evidence to show compliance and by ensuring RSAWs do not expand the requirements of the standards.

NERC has undertaken an initiative to review and update the current RSAWs and create new RSAWs for standards and requirements that need them. This effort should bring a higher level of consistency and uniformity in compliance audits (as well as addressing other concerns that registered entities have raised concerning the form and organization of the RSAWs). It should also allay concerns raised by stakeholders that the tools that auditors rely upon to audit compliance should not extend beyond the terms of the FERC-approved standards. Continuous improvement based upon feedback and lessons learned in the field is an important goal in the compliance program and the periodic updating of the RSAWs fits within this construct.

Regional Entities believe that their auditors must apply the plain language of the standard when conducting compliance reviews rather than engage in extemporaneous interpretations of intent where there are ambiguities in the standard. When questions arise regarding the application of standards, NERC and its Regional Entities confer to determine how to consistently and correctly apply the plain language of the standard. If agreement cannot be reached, if the standard is too unclear to be practically applied, or
if the standard is deficient and must be amended before it can truly promote and safeguard reliability, then the Regional Entities have worked with and will work with NERC staff to employ the ANSI-accredited NERC standards development process to effect the necessary changes or to seek a formal interpretation.

Some registered entities note in their comments that NERC and FERC seem to have much stricter interpretations of requirements and that these interpretations sometimes seem to adopt best practices or even future requirements. Regional Entities recognize that when FERC issued Order No. 693 approving the standards it also applied interpretations that expanded the plain language of the requirements developed through the industry-based open standards process. When expectations associated with reliability standards appear to exceed or at the very least are not clearly identified in the approved standard, NERC must make all registered entities aware of such expectations. This must be done centrally, to promote consistency of the message and issuance, and it must be done publicly so that registered entities can meet these expectations and demonstrate compliance. Keeping increased expectations confidential is inconsistent with reducing the processing of backlogged violations and with maintaining the reliability of the bulk electric system.

Compliance Case Load Backlog

NERC (collectively across all eight regions) currently has over 1,800 alleged violations being processed and continues to receive on average nearly 150 new allegations of reliability standard violations per month. Of these, a portion typically are dismissed after review indicates they are not violations, thus leaving approximately 115 new allegations to be processed each month on top of the existing case load. The ensuing process is very formal, with each violation processed through the CMEP in the same manner regardless of its significance to the reliability of the bulk power system, thereby affording the registered entity full due process.

Many commenters expressed concerns regarding the volume of compliance work facing the Regional Entities and NERC, as well as a desire to see violations, and settlements to completion, and therefore made public, in a more expeditious manner. Making these enforcement actions public provides valuable “lessons learned” to the industry stakeholders and provides guidance to all registered entities that will improve performance and future compliance with the reliability standards. However, the protections established to safeguard the confidentiality of registered entities with alleged violations of reliability standards prohibit publishing the violations until NERC’s review is complete and the violation has been filed with FERC, which, to date, typically takes a minimum of five to six months.

An alternative way to provide guidance to registered entities while still protecting confidentiality rights and due process is to publicly share lessons learned, to provide examples of what is necessary to demonstrate sufficient evidence of compliance, and to list common mode failures that have led to past non-compliance. Such a proactive approach to promoting compliance will reduce pressures on processing the backlog of alleged violations by helping registered entities avoid becoming non-compliant in the
first place. This approach has the added benefit of achieving higher levels of reliability in a more expeditious manner.

There are additional steps that can be taken to improve the speed and effectiveness of violation processing, as listed below and discussed in subsequent sections of this report.

1. NERC and Regional Entities should adopt a risk-based approach and focus on auditing requirements that are most important to bulk power system reliability, and those experiencing chronic problems.

2. More resources must be added at Regional Entities and NERC to address key bottleneck areas in the processing of alleged violations.

3. Time and effort must be spent to help registered entities better understand compliance requirements to avoid being found non-compliant in the first place.

4. More tools are necessary to expedite the administration of minor infractions.

5. Documentation-related violations may not always need to be addressed via the entire existing compliance process.

The Regional Entities learned many valuable lessons over the past three years as they processed an initial wave of alleged violations. Regions and NERC should make it a priority to share these lessons with each other so that mistakes will not be repeated.

1. Violations must be processed with an approach that prioritizes their review according to their risk to reliability.

2. NERC should strive to avoid performing de novo review of violations that are processed by the Regional Entities, or, at a minimum, limit such review to violations of those standards with the highest priority.

3. New or modified compliance and enforcement processes must be tested prior to implementation and feedback loops must be established to continually improve these processes based upon field experience.

4. New or modified compliance and enforcement processes and expectations must be clearly communicated to registered entities prior to implementation.

**Treatment of Minor Violations**

To date, approximately 50% of all violations have been documentation-related violations, meaning that the entity is performing the task required by the standard (including having a required document), but may not have sufficiently documented evidence to demonstrate compliance to the standard. Processing these violations using the same degree of rigor and same procedures as non-documentation violations can result in a less efficient program and slower average processing time due to the sheer volume of documentation violations. Each requirement in the standard is given a Violation Risk Factor and many of the documentation requirements are assigned a "lower" violation risk factor. The Regions offer the following recommendations to address this situation.
As part of the review of the standards, it is fair to question if all documentation requirements in a standard should rise to the level of being an enforceable requirement in the standard. This review should be part of the Standards Work Plan. Identifying and removing from standards any requirements related to documentation that are not necessary will reduce the volume of work and focus the compliance monitoring and enforcement activities on those requirements of the standards where an entity is required to perform a function or a task. The compliance administration elements could then include the data retention requirements and documentation necessary to demonstrate compliance.

The processing of each alleged violation of a reliability standard carries with it full due process for the registered entity in accordance with the process steps included in the CMEP. Processing all alleged violations in this manner is inefficient, particularly for those violations of much less significance to the reliability of the bulk-power system. However, the ability to issue a “speeding ticket” or “warning ticket” type of notice would afford increased efficiency while maintaining the program integrity. Such a notice would not carry with it any penalty or sanction, or would carry a pre-specified, minor penalty. Both approaches are discussed below.

NERC and the Regional Entities have developed a pro-forma settlement agreement designed to work within the construct of the existing rules of procedure, to be used for a set of standards and requirements where the entity is performing the necessary task, but certain documentation may be missing or incomplete. For a pre-defined set of reliability standard requirements and for a given set of circumstances, a pro-forma settlement agreement can be presented to the registered entity stating the terms and conditions of the settlement, including a pre-defined penalty. Use of the pro-forma settlement agreement eliminates a good deal of the process paperwork and investigation necessary to bring a violation to the filing stage and there would be an abbreviated record. This process will streamline and shorten settlement negotiations while providing certainty to registered entities that the bilateral agreement reached with the Region will be approved unchanged by NERC.

Suggestions have been made that NERC should have the ability to issue a warning to a registered entity that is not complying with a reliability standard. The concept would eliminate all processing of the alleged violation and only record the warning as being issued. Issuing such a warning would not be materially different than issuing a Notice of Confirmed Violation or settlement agreement as described above with a zero dollar penalty, with one exception: under the NERC Sanction Guidelines, in the event of future violations by the registered entity, the fact that the entity had previously committed violations would be a factor taken into account in determining whether the penalty assessed should be increased over the base penalty amount for the violation.

A separate process for issuing warnings is not warranted at this time. As with the pro-forma settlement agreement, mitigation of the alleged violation would be necessary and tracking the warnings issued would be required so that Regional Entities and NERC would be aware if the registered entity had previously been issued a warning. Such
tracking will need to be conducted across all regions where the registered entity operates and would need to track whether the registered entity had received numerous prior "warnings," including multiple warnings concerning the same standard and/or requirement. The process would require considerable reporting and oversight to ensure fair, appropriate, and consistent application and to meet regulators’ expectations.

**Compliance Information Management Tools**

NERC and the Regional Entities implemented the mandatory Compliance Monitoring and Enforcement Program on June 18, 2007 with a series of data management tools based on a variety of data platforms and tools. These tools were generally extensions of the tools in existence prior to the standards becoming mandatory and consisted to large degree of simple databases or spreadsheets.

Lacking a common compliance information management platform from NERC, all eight Regional Entities have adopted online, secure tools for electronic management of compliance information received from registered entities. Six of the regions (FRCC, NPCC, RFC, SERC, TRE, and WECC) have converged on a single software platform for the management of compliance information. MRO and SPP have adopted a different program with a similar scope. NERC is in the process of developing its own data platform and tools for management of compliance information, utilizing the same vendor as the six-region consortium.

Regional Entities agree with NERC that a single, integrated information systems approach should be implemented. The ERO’s data management and records must be developed and maintained as a seamless flow of data from and, as appropriate, to, all Regional Entities, registered entities, and regulators. The entire platform should be developed on a common database design to provide consistency of information and ease of communication. For example, when an entity is alleged to have violated a standard in one region, the ability to quickly review the entity’s performance across NERC with regard to reliability standard violations should be available to all Regional Entities. Such a system requires seamless interfaces and data sharing. Further, registered entities have expressed a desire for a single reporting system to improve consistency in application of the programs and to avoid the need to train their personnel to work with multiple reporting systems and schedules.

Some stakeholder comments highlighted issues with reporting compliance information to the Regional Entities. Recent changes in reporting software and tools should help improve the reporting and management of compliance data and information from the registered entities and to regulatory authorities and the Regional Entities are encouraged that NERC is seeking to employ and expand the tools jointly developed by a collaboration of six of the Regional Entities.

**Compliance Process Transparency**

In order to achieve the best possible results – both from an efficiency standpoint and from a reliability standpoint – the compliance process must be as transparent as practical without disclosing the confidential information of a particular compliance case prior to filing of an action with FERC. There are two aspects to the needed
transparency: within the ERO and the Regional Entities and between the ERO and its registrants.

Within the ERO and the Regional Entities

The initial oversight approach tested by the ERO stresses an independent review of compliance actions conducted by the Regional Entities. While this certainly provides an independent verification of facts and judgment, the efficiency and effectiveness can also be questioned. While such an approach may have made sense initially, it appears to be extremely inefficient in a stable program.

Because NERC basically conducts its own de novo review of every violation, it requires duplication of effort in the determination of the record, the level of the financial sanction, and the appropriate mitigating actions. The duplication, as opposed to oversight, causes significant delay in processing violations, requires extra resources, and can undermine the credibility of the process as registered entities are not certain of outcomes until the process has been run twice.

NERC does not openly share feedback across the Regional Entities when it reviews compliance actions submitted to it. Such feedback would be extremely valuable and is necessary to avoid repeats of the same mistakes across all of the Regional Entities. The delegation agreements provide NERC the flexibility and authority to share this information and binds the Regional Entities to protect its confidentiality.

NERC does not consult with Regional Entity staff or share the results of their reviews of submitted compliance actions until after they are reviewed by the NERC Board Compliance Committee. This practice causes delays and repeat effort among the regions, NERC and its Board that could be avoided by simply communicating deficiencies to the Regional Entities and requesting modification prior to submittal for approval.

The Regional Entities suggest the following:

1. NERC staff should provide oversight rather than duplicative review on the vast majority of confirmed violations they receive from their Regional Entities. Many of the violations are routine and need only a review of key outcomes for consistency purposes.

2. NERC staff and its Board Compliance Committee should provide a more in-depth review on an exception basis, based upon the severity of the violation, the uniqueness of it, the impact to reliability, etc.

3. NERC must openly communicate its expectations, the deficiencies found in regional submittals, and other necessary information to all Regional Entities.

4. Regional Entities should be permitted to interface with the Board Compliance Committee when they do review a violation to properly explain the violation and its resolution.
The ERO and its Registrants

Neither the ERO nor its Regional Entities can or should instruct a registered entity on how best to be compliant with Reliability Standards. But some transparency in the compliance process will at least manage the expectations of the registered entities. Comments received from stakeholders indicate that to them, the compliance process is a “black box” into which they submit information and receive a response many, many months later. Information can and must be shared to improve the quality and efficiency of the process:

1. How do the Regional Entities and NERC process compliance violations? What is the process and how long does the entire process take?
2. How are penalties determined and applied?
3. What standards are violated with the greatest frequency? Why? What is being done to address this?
4. Are there common modes of failure that can be avoided by simply better educating industry stakeholders regarding the expectations of the standards?

Waiting until public filings of confirmed violations occurs may be too late; the Regional Entities encourage NERC to share non-confidential information with registered entities much earlier in the process to reduce the number of non-compliances encountered which will improve reliability and reduce violation backlogs. The Regional Entities have already collaborated on forensics for Reliability Standard PRC-005 violations and pledge their support to help NERC with other highly violated standards.

Hearings and Appeals

Experience with hearings and appeals is very limited, as only one or two alleged violations have reached the hearing stage; even in those cases, settlements were later reached. No appeals of alleged violations or penalties have been sought to date.

The Regional Entities jointly developed common hearing procedures and shared these with NERC who also adopted them. Additionally, the Regional Entities have shared their hearing officers among themselves and with NERC, and have conducted practice sessions to test the hearing process and held workshops for their hearing bodies. The procedures are rigorous and legalistic but must be so in order to properly protect the rights of registered entities.

The Regional Entities encourage NERC to test its own hearing and appeal processes prior to implementation. Many lessons can be learned and improvements made after such a session. In certain circumstances, the NERC Compliance and Certification Committee is designated as the hearing body and the Regional Entities ask NERC to consider whether that is an optimal arrangement. An alternative approach is that, in such situations, a disinterested Regional Entity can act as the hearing body because it has the benefit of independent hearing officers, a well-designed process, and the independence associated with regions governed by NERC’s rules of procedure and delegation agreements.
Other Statutory Functions

Reliability Assessment
In accordance with §215(g) of the Federal Power Act, NERC as the ERO is charged with conducting periodic assessments of the reliability and adequacy of the bulk power system in North America. To fulfill this mandate, NERC prepares three reliability assessment reports each year. NERC prepares its reliability assessments, including its independent evaluation, with detailed data, information, and regional self-assessments from the Regional Entities, as well as the active support of an industry-based Reliability Assessment Subcommittee, which is under the direction of the balanced stakeholder NERC Planning Committee with additional review from the NERC Operating Committee.

The NERC Planning Committee approved a Reliability Assessment Improvement Plan to provide clearer definitions and metrics, and through its Reliability Assessment Guidebook Task Force is establishing guidelines to: (i) improve consistency and transparency of assessments; (ii) provide for more granular assessments; (iii) outline the process to assess emerging industry issues; and (iv) establish a core framework for NERC when conducting comprehensive and independent assessments. These actions have significantly enhanced the quality of the reliability assessments.

In its evaluations of the Regional Entities with respect to reliability assessments, NERC provided specific performance information and suggestions for improvement in each of the Regional Entities in the following areas: (i) data checking and validation; (ii) reliability assessment process and procedures; (iii) stakeholder/member involvement; and (iv) overall quality and timeliness. It is the view of the Regional Entities that the collaborative work of finalizing the Reliability Assessment Guidebook will collectively and consistently address any identified areas for improvement. Regional Entities believe that the reliability assessment process that is currently in place is effective and has improved during the initial review period of ERO performance, and this view is supported by stakeholder comments from the industry survey.

One additional source of tension is a lack of clarity regarding the role and importance of the Operating and Planning Committees at NERC. Some stakeholders have expressed a concern that the ERO programs are managed by staff and stakeholder groups have a minimal role. Transparency of policy, procedures, and decision-making would substantially reduce stakeholder tensions and enhance the effectiveness of the self-regulatory model. The ERO and the Regional Entities will be more effective by embracing what industry experts and stakeholders have to offer to help improve the reliability of the bulk power system.

Events Analysis
NERC's Event Analysis and Information Exchange program performs analysis of outages and disturbances to determine root causes and lessons learned; to detect
emerging trends; and to communicate results, recommendations, and alerts to those in
the industry responsible to take actions.

A number of industry concerns were expressed as a part of the survey regarding the
lack of timeliness and specificity of information in the dissemination of lessons learned
and alerts, as well as the need to prioritize and establish threshold criteria for the
analysis of events. The Regional Entities support these comments and recommend that
the Event Analysis Coordinating Group directly interface with the NERC Operating
Committee to enhance stakeholder, regional and NERC staff collaboration to address
these issues.

Situation Awareness
NERC and the Regional Entities are actively participating with FERC to enhance situational
awareness. In support of this initiative, Reliability Coordinators are developing procedures to
provide near-real time overviews of operating information for their respective footprints to
FERC, NERC and the Regional Entities in order to permit the FERC to “measure the health”
of the Interconnections and to monitor parameters which may warn of a developing crisis.
The geographic displays that will be transmitted will be a dynamically updated view of near-
real time system conditions.

While this project, which is to be in place by June 2009, has the strong support of the
Regional Entities, it is essential that the necessary communication protocols be put in place
and adhered to in order to prevent this effort from being a detriment to system reliability by
exposing system operators to distracting inquiries during emergency situations.

Critical Infrastructure Protection
NERC has an essential role in the education of the industry regarding the applicability of
the Critical Infrastructure Protection Standards. The Regional Entities, however,
recommend that any Technical Feasibility Exception (TFE) requests should in the first
instance go to the Regional Entity, and not to NERC as proposed in an amendment to
the Rules of Procedure. The Regional Entities further recommend that the TFE process
be structured similar to the mitigation plan process, wherein the registered entity works
with the Regional Entity which would have knowledge of the local issues in order to
establish an acceptable plan. In preparing to conduct audits of the CIP standards, the
Regional Entities have been and are hiring CIP expertise and will be in a position to
address TFE requests. Part of the draft TFE review process calls for an operational
reliability assessment and the Regional Entities are best qualified to make this
determination.