

149 FERC ¶ 61,141
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

North American Electric Reliability Corporation

Docket No. RR14-5-000

ORDER ON THE ELECTRIC RELIABILITY ORGANIZATION'S
FIVE-YEAR PERFORMANCE ASSESSMENT

(Issued November 20, 2014)

1. On July 21, 2014, North American Electric Reliability Corporation (NERC) filed its Five-Year Electric Reliability Organization Performance Assessment Report (Performance Assessment) in accordance with the requirements of the Commission's regulations.¹ The Performance Assessment is the second such assessment filed by NERC as the Commission-certified Electric Reliability Organization (ERO). The Performance Assessment discusses whether and how NERC satisfies the criteria for ERO certification under 18 C.F.R. § 39.3(b), evaluates the effectiveness of each Regional Entity in carrying out its delegated functions, and addresses stakeholder comments on NERC's performance as the ERO. NERC highlights activities and accomplishments demonstrating how the ERO is improving the performance of, and mitigating risks to, the Bulk-Power System as related to avoidable outages, and how NERC's compliance monitoring and enforcement efforts have matured to provide industry with greater certainty on actions, outcomes, and reliability consequences.

2. In this order, we accept NERC's Performance Assessment, find that NERC continues to satisfy the statutory and regulatory criteria for certification as the ERO, and find that the Regional Entities continue to satisfy applicable statutory and regulatory criteria. In addition, we find that NERC should take several actions to continue improving its performance as the ERO. Specifically, we direct NERC to submit an informational filing addressing specific matters and direct or encourage NERC to take certain additional actions as discussed in this order. These action items provide practical

¹ 18 C.F.R. § 39.3(c) (2014).

steps to improve the effectiveness of the ERO and Regional Entity functions and programs, and to improve the quality of NERC's Performance Assessment process going forward. These action items address important concerns, such as continued development of performance and reliability metrics for the ERO and Regional Entities; improvement in the development and periodic review of Reliability Standards; and improvement in efforts to ensure appropriate consistency across and coordination among all regions.

I. Background

A. Section 215 of the Federal Power Act

3. Section 215 of the Federal Power Act (FPA) requires the Commission to issue regulations that, among other things, provide for certification of an entity as the ERO if it meets certain criteria.² Specifically, FPA section 215(c) establishes that an ERO candidate must have the ability to develop and enforce mandatory Reliability Standards that provide for an adequate level of reliability of the Bulk-Power System.³ The statute also requires that an ERO candidate have established rules that: (1) assure independence, while assuring fair stakeholder representation and balanced decision-making; (2) equitably allocate reasonable dues, fees, and other charges; (3) provide fair and impartial procedures for enforcing Reliability Standards through imposition of penalties; (4) provide reasonable notice and opportunity for public comment, due process, and balance in developing Reliability Standards and otherwise exercising its duties; and (5) provide appropriate steps to gain recognition in Canada and Mexico.

4. Additionally, FPA section 215(e)(4) provides that the ERO may delegate authority to a Regional Entity for the purpose of proposing regional Reliability Standards and enforcing Reliability Standards. Regional Entities must meet the same statutory criteria as those required for Commission certification of an ERO, except that more flexibility is allowed in the composition of a Regional Entity board of directors. The Commission must approve a delegation agreement between the ERO and a Regional Entity, and the Commission is authorized to modify such delegation.

² 16 U.S.C. § 824o (2012).

³ *Id.* § 824o(c).

B. Order No. 672

5. On February 3, 2006, the Commission issued Order No. 672, which, among other things, amended the Commission's regulations to implement the requirements of FPA section 215.⁴ Order No. 672 sets forth the process for certifying a single independent ERO to oversee the reliability of the United States' portion of the interconnected North American Bulk-Power System, subject to Commission oversight. Further, in Order No. 672, the Commission mandated that the ERO submit periodic assessments of its performance that require the ERO to "affirmatively demonstrate to the Commission that it satisfies the statutory and regulatory criteria for an ERO and is not only maintaining but improving the quality of its activities and those of the Regional Entities to which it has delegated such activities."⁵

6. In Order No. 672, the Commission also stated that the performance assessments should employ regular and systematic measurement and reporting of the ERO's performance, including information regarding: (1) the ERO's ability to develop and enforce Reliability Standards providing for an adequate level of reliability of the Bulk-Power System; (2) how the ERO effectively enforced Reliability Standards, including statistical information on its investigations, findings, and assessments of penalties, on a regional and continent-wide basis; and (3) how the ERO provided for fair and impartial procedures for enforcement of Reliability Standards and provided for openness, due process, and balance of interests in developing Reliability Standards.⁶

7. The specific requirements for the performance assessments are set out in the Commission's regulations at 18 C.F.R. § 39.3(c), and provide that the ERO file an assessment of its performance three years from the date of initial certification, and every five years thereafter. Each performance assessment filing is required to include the following: (1) an explanation of how the ERO satisfies the requirements of § 39.3(b); (2) recommendations by Regional Entities, users, owners, and operators of the Bulk-Power System, and other interested parties for improvement of the ERO operations, activities, oversight and procedures, and the ERO's response to such recommendations; and (3) the ERO's evaluation of the effectiveness of each Regional Entity, recommendations by the

⁴ *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards*, Order No. 672, FERC Stats. & Regs. ¶ 31,204, *order on reh'g*, Order No. 672-A, FERC Stats. & Regs. ¶ 31,212 (2006).

⁵ Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 186.

⁶ *Id.* P 189.

Electric Reliability Organization, users, owners, and operators of the Bulk-Power System, and other interested parties for improvement of the Regional Entity's performance of delegated functions, and the Regional Entity's response to such evaluation and recommendations.⁷

8. The specific requirements in section 39.3(c)(2) of the Commission's regulations explain that the Commission will review the periodic performance assessments and may require follow-up actions by the ERO to comply or improve compliance with the statutory and regulatory qualifications for the ERO, if the Commission determines that the ERO has not satisfied specific criteria. Moreover, that subsection requires the Commission to assess the performance of each Regional Entity and issue an order addressing Regional Entity compliance.⁸

C. Certification of NERC as the ERO

9. On July 20, 2006, the Commission certified NERC as the ERO for the continental United States under FPA section 215(c).⁹ The Commission found that NERC satisfied the criteria to be the ERO responsible for developing and enforcing mandatory Reliability Standards for the United States.

10. In April 2007, in accordance with FPA section 215(e)(4) and the Commission's regulations at 18 C.F.R. § 39.8, NERC entered into a separate delegation agreement with each of the eight Regional Entities¹⁰ by which NERC delegated certain authority to the

⁷ 18 C.F.R. § 39.3(c) (2014).

⁸ *Id.* § 39.3(c)(2); *see also* Order No. 672, FERC Stats. & Regs. ¶ 31,204 at PP 33, 187.

⁹ *North American Electric Reliability Corp.*, 116 FERC ¶ 61,062 (ERO Certification Order), *order on reh'g and compliance*, 117 FERC ¶ 61,126 (2006), *order on compliance*, 118 FERC ¶ 61,030, *order on compliance*, 118 FERC ¶ 61,190, *order on reh'g*, 119 FERC ¶ 61,046 (2007), *aff'd sub nom. Alcoa Inc. v. FERC*, 564 F.3d 1342 (D.C. Cir. 2009).

¹⁰ The eight Regional Entities currently are: Florida Reliability Coordinating Council, Inc. (FRCC); Midwest Reliability Organization (MRO); Northeast Power Coordinating Council, Inc. (NPCC); ReliabilityFirst Corporation (RFC); SERC Reliability Corporation (SERC); Southwest Power Pool, Inc. (SPP); Texas Reliability Entity (TRE); and Western Electricity Coordinating Council (WECC).

Regional Entities.¹¹ Specifically, NERC delegated authority to the Regional Entities to audit, investigate, and otherwise ensure that users, owners, and operators of the Bulk-Power System comply with NERC's mandatory Reliability Standards, subject to ERO oversight.¹² In addition, the delegation agreements address such matters as: (1) regional Reliability Standards development; (2) registration of entities that must comply with Reliability Standards; and (3) other services supporting NERC's statutory reliability functions, including reliability assessments, event analysis, and training and education.

D. NERC Initial Performance Assessment

11. On July 20, 2009, NERC filed its Initial Performance Assessment in accordance with the Commission's regulations.¹³ On September 16, 2010, the Commission accepted NERC's Initial Performance Assessment and found that NERC continued to satisfy the statutory and regulatory criteria for ERO certification, and that each of the Regional Entities met the relevant statutory and regulatory criteria.¹⁴ The Commission also directed NERC to submit an informational filing to address specific concerns discussed in the 2010 Performance Assessment Order.¹⁵

12. The Commission also explained, among other things, that according to Order No. 672, the purpose of the ERO's performance assessments is not only to determine whether the ERO is satisfying the statutory criteria for certification, but also to identify areas in which the ERO can improve performance. The Commission also noted that it sees the performance assessments as an opportunity not only to demonstrate that the ERO has maintained, but also is improving, the quality of its activities and those of the Regional Entities.¹⁶ In that vein, NERC identified in its Initial Performance Assessment filing

¹¹ See *North American Electric Reliability Corp.*, 119 FERC ¶ 61,060 (2007), *order on reh'g*, 120 FERC ¶ 61,260 (2007).

¹² See Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 654.

¹³ *North American Electric Reliability Corp.*, Filing, Docket No. RR09-7-000 (filed July 20, 2009) (Initial Performance Assessment).

¹⁴ *North American Electric Reliability Corp.*, 132 FERC ¶ 61,217, at P 35 (2010) (2010 Performance Assessment Order).

¹⁵ *Id.* P 1 and Appendix A.

¹⁶ 2010 Performance Assessment Order, 132 FERC ¶ 61,217 at P 5 (citing Order No. 672, FERC Stats. & Regs. ¶ 31,204 at PP 186-188).

specific “action items” to address “opportunities for improvement” in the various NERC programs. The Commission stated that “generally, the action items are reasonable and provide practical steps to improve the effectiveness of the ERO and Regional Entity functions and programs,” addressing important concerns such as accelerating and prioritizing the Reliability Standards development process, enhancing stakeholder communications, improving registration consistency across regions, eliminating the backlog of audit reports and compliance violations, promoting self-reporting of non-compliance, and providing compliance guidance to registered entities.¹⁷

II. NERC Five-Year Performance Assessment

13. On July 21, 2014, NERC submitted its Performance Assessment as required by the Commission’s regulations. NERC states that the Performance Assessment describes NERC’s efforts to maintain and improve the quality of its activities as the ERO since its Initial Performance Assessment. Specifically, NERC explains how it continues to meet the criteria for ERO certification under 18 C.F.R. § 39.3(b), evaluates the effectiveness of each Regional Entity in carrying out its delegated functions, and addresses stakeholder comments on NERC’s performance as the ERO.

14. NERC explains that, unlike its Initial Performance Assessment, NERC is not presenting a program area-by-program area discussion of its activities; rather, NERC highlights activities and accomplishments in support of its strategic plan initiatives for the Performance Assessment period, which include reforming the Reliability Standards program, developing the Reliability Assurance Initiative, and revising the “bulk electric system” definition. NERC also states that the Performance Assessment demonstrates how the ERO is improving the performance of, and mitigating the risks to, the Bulk-Power System as related to avoidable outages, and how NERC’s compliance monitoring and enforcement efforts have matured to provide industry with greater certainty on actions, outcomes, and reliability consequences.

15. NERC’s Performance Assessment includes attachments that provide additional information on the following matters: how NERC meets the ERO certification criteria (Attachment 1); joint Regional Entity self-assessments (Attachment 2); NERC’s assessment of Regional Entity delegated functions (Attachment 3); NERC’s

¹⁷ *Id.* P 4.

consideration of industry feedback (Attachment 4); status of areas for improvement identified in the 2010 Performance Assessment Order (Attachment 5); and NERC's plans and initiatives for improving coordinated operations across the ERO Enterprise (Attachment 6).¹⁸

III. Notice and Responsive Pleadings

16. Notice of NERC's filing was published in the *Federal Register*, with comments due on or before August 20, 2014.¹⁹ On August 18, 2014, Eric S. Morris filed a motion to intervene and request for extension of time, identifying a number of issues raised by NERC's filing and requesting additional time to more fully respond to those issues. On August 19, 2014, the Commission granted Mr. Morris's request, extending the comment deadline for all interested parties to August 29, 2014.

17. Timely motions to intervene were filed by the National Rural Electric Cooperative Association, American Public Power Association, Eric S. Morris, and, jointly, the eight Regional Entities.

18. Mr. Morris, who identifies himself as a ratepayer, was the only party to submit comments on NERC's Performance Assessment, both in his motion to intervene filed on August 18, 2014, and in subsequent comments filed on August 26, 2014. On August 27, 2014, NERC filed Reply Comments to Mr. Morris's August 18, 2014 Comments.

IV. Procedural Matters

19. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, the timely, unopposed motions to intervene serve to make the entities that filed the motions parties to this proceeding.²⁰ Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to an answer or protest unless otherwise ordered by the decisional authority.²¹ We will accept NERC's Reply Comments because they have provided information that assisted us in our decision-making process.

¹⁸ NERC states that the term "ERO Enterprise" encompasses both NERC and the eight Regional Entities.

¹⁹ 79 Fed. Reg. 44,761 (Aug. 1, 2014).

²⁰ 18 C.F.R. § 385.214 (2014).

²¹ *Id.* § 385.214(a)(2).

V. Discussion

A. NERC's Satisfaction of the Criteria for Certification as the ERO and Evaluation of the Regional Entities

20. Under section 215(c) of the FPA and section 39.3(b)(1) of the Commission's regulations, the ERO must demonstrate that it has the ability to develop and enforce Reliability Standards that provide for an adequate level of Bulk-Power System reliability.²² In addition, the ERO must show that it has established rules that: (1) assure independence, while assuring fair stakeholder representation and balanced decision-making; (2) equitably allocate reasonable dues, fees, and other charges; (3) provide fair and impartial procedures for enforcing Reliability Standards through imposition of penalties; (4) provide reasonable notice and opportunity for public comment, due process, and balance in developing Reliability Standards and otherwise exercising its duties; and (5) provide appropriate steps to gain recognition in Canada and Mexico.²³

21. In addition, the ERO is required under section 39.3(c)(1)(ii) of the Commission's regulations to provide a response to recommendations by the Regional Entities and users, owners, and operators of the Bulk-Power System for improvement in the ERO's operations. In addition, under section 39.3(c)(1)(iii), the ERO is required to evaluate each Regional Entity's effectiveness, including how the Regional Entity responded to recommendations for improvement as suggested by the ERO and by users, owners, and operators of the Bulk-Power System.

NERC Performance Assessment

22. NERC provides a detailed narrative describing how it satisfies the statutory and regulatory requirements for certification on an ongoing basis.²⁴ NERC explains that, as the ERO, it has undertaken initiatives during the Performance Assessment period to "enhance the reliability of the [Bulk-Power System] and to increase the effectiveness and efficiency of the operations of the ERO Enterprise."²⁵ NERC states that these initiatives have included, among other things: (1) development of clear, reasonable, and technically sound Reliability Standards; (2) registration of entities with functional responsibilities for

²² *Id.* § 39.3(b)(1).

²³ *Id.* § 39.3(b)(2).

²⁴ *See* Performance Assessment at 82-89.

²⁵ *Id.* at 7.

Bulk-Power System reliability; (3) monitoring and enforcing compliance with Reliability Standards; (4) identification and prioritization of, and communicating information on, risks to Bulk-Power System reliability; and (5) collecting and sharing information on threats to the cyber and physical security of the Bulk-Power System. According to NERC, it started several initiatives during the Performance Assessment period to further improve the Reliability Standards, including: (1) the results-based Reliability Standards initiative; (2) the removal of duplicative or otherwise unnecessary provisions from Reliability Standards, referred to as the “Paragraph 81” project; (3) internal reorganization of NERC’s Reliability Standards department; and (4) establishment of the Independent Experts Review Panel. In addition, NERC states that during this Performance Assessment period, it addressed 128 directives by year-end 2013, reducing the number of open directives involving Reliability Standards to 107. NERC also states that it anticipates that 90 percent of Commission directives issued to date will be resolved during the first half of 2015.²⁶

23. NERC provides a detailed evaluation of the Regional Entities’ effectiveness at performing their delegated functions and of NERC’s response to recommendations for improvement, as required by the Commission’s regulations.²⁷ In addition, NERC provides a joint evaluation conducted by the Regional Entities, which includes self-evaluations and suggestions for improvements.²⁸ NERC also includes suggestions for improvement from users, owners, and operators of the Bulk-Power System, and other interested parties, as well as NERC’s and the Regional Entities’ responses to these suggestions.²⁹

1. Development and Enforcement of Reliability Standards under Section 39.3(b)(1)

24. Section 39.3(b)(1) of the Commission’s regulations requires that the ERO have the ability to develop and enforce Reliability Standards that provide for an adequate level of Bulk-Power System reliability. In the Performance Assessment, NERC states that it “continues to have the ability to develop and enforce, subject to 18 C.F.R. § 39.7, Reliability Standards that provide for an adequate level of reliability of the [Bulk-Power

²⁶ *Id.* at 7-12.

²⁷ *See* Performance Assessment, Att. 3.

²⁸ *See* Performance Assessment, Att. 2.

²⁹ *See* Performance Assessment, Att. 4.

System].”³⁰ NERC notes that as of December 1, 2013, NERC developed and submitted to the Commission a total of 293 continent-wide Reliability Standards that have been approved by the Commission, a number which have been retired or superseded by revised Reliability Standards. In addition, NERC approved and submitted to the Commission a total of 23 regional Reliability Standards that have been approved by the Commission.³¹ These Reliability Standards encompass a broad range of subjects relating to Bulk-Power System reliability. NERC states that it made improvements to the Commission-approved, American National Standards Institute-accredited Standard Processes Manual during the Performance Assessment period and that the “Reliability Standards development process contains the essential attributes of the standards development process as set forth in prior Commission orders.”³² NERC indicates that it systematically manages the development and revision of Reliability Standards in the areas of highest need and importance through the rolling three-year Reliability Standards Development Plan.

25. NERC states that monitoring and enforcing compliance with the mandatory Reliability Standards is conducted through the Compliance Monitoring and Enforcement Program (CMEP). NERC explains that section 6(a) of the Regional Delegation Agreements between NERC and each of the eight Regional Entities requires each Regional Entity to enforce mandatory Reliability Standards within its specific geographic boundaries. NERC states that, to further that effort, NERC and the Regional Entities have increased the number of budgeted compliance program staff approximately 191.72 percent from 2009 to 2014, and increased the budgeted compliance program direct expenses by 175.84 percent over the same period.³³ In addition, NERC explains that it conducts an audit at least once every five years to evaluate each Regional Entity’s implementation of the NERC CMEP, in addition to spot checks, as required by section 402.1.1.3 of the NERC Rules of Procedure.³⁴

³⁰ Performance Assessment at 83.

³¹ Performance Assessment, Att. 1 at 7.

³² Performance Assessment at 83.

³³ Performance Assessment, Att. 1 at 16.

³⁴ *See id.* at 9-17.

2. **Certification Criteria under Section 39.3(b)(2)**

a. **Independence and Fair Stakeholder Representation**

26. NERC states that it “continues to have in place rules that assure its independence from users, owners, and operators of the [Bulk-Power System] while assuring fair stakeholder representation in the selection of its directors and balanced decision making in any ERO committee or subordinate organizational structure.”³⁵ Specifically, NERC states that its Bylaws provide that NERC’s business and affairs are managed by a Board of Trustees consisting of ten independent trustees plus the President of NERC. NERC explains that, pursuant to the Bylaws, a NERC trustee cannot be an officer, director, or employee of any entity “that would be perceived as having a direct financial interest in the outcome of board decisions, and may not have any other relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of a trustee.”³⁶ Candidates for a trustee role are selected by a nominating committee, which is established annually, composed of the independent trustees whose terms will not expire during the current year, and at least three members of the NERC Member Representatives Committee. In addition, the NERC *Conflict of Interest and Business Ethics Policy for Trustees, Officers and Employees* provides that NERC representatives shall refrain from participation in situations where there is an actual conflict of interest or where there is the appearance of a conflict of interest.³⁷

b. **Equitable Allocation of Reasonable Dues, Fees, and Other Charges**

27. NERC explains that, under its Bylaws and Rules of Procedure, the annual funding requirements for the statutory activities of NERC and the Regional Entities are allocated based on net energy for load.³⁸ In instances where a direct assignment of costs to a specific interconnection, Regional Entity, or group of entities is appropriate, NERC states

³⁵ Performance Assessment at 85.

³⁶ Performance Assessment, Att. 1 at 18.

³⁷ See generally Performance Assessment, Att. 1 at 17-23.

³⁸ NERC defines net energy for load as “[n]et generation of an electric system plus energy received from others less energy delivered to others through interchange. It includes system losses but excludes energy required for the storage of energy at energy storage facilities.” Performance Assessment, Att. 1 at 24 (citing NERC Rules of Procedure, App. 2).

that such costs are assigned to the appropriate entities based on net energy for load. NERC explains further that the allocation of the annual assessments based on net energy for load is submitted to the Commission for approval in NERC's annual business plan and budget filing.³⁹

c. **Rules that Provide Fair and Impartial Procedures for Enforcing Reliability Standards Through Imposition of Penalties**

28. NERC states that it has established rules that provide fair and impartial procedures for monitoring and enforcing compliance with Reliability Standards, set forth in section 400 of the NERC Rules of Procedure, NERC's CMEP, and the individual CMEP of each Regional Entity. NERC explains that the CMEP includes provisions allowing registered entities to participate in settlement discussions with NERC or the Regional Entity related to notices of alleged violations, proposed penalties or sanctions, and mitigation plans.⁴⁰

29. NERC states that the CMEP includes rules regarding the determination and imposition of financial penalties on registered entities that have violated Reliability Standards. NERC explains that penalties are to be commensurate to the reliability impact of the violation and to those levied for similar violations, but still reflect any unique facts and circumstances related to the registered entity or specific violation. NERC states that it "evaluates the facts and circumstances of every violation that is part of a settlement to ensure that the penalty for that violation, and for the group of violations in the settlement, is within a range of reasonableness that displays consistency."⁴¹

30. With regard to the penalty determination, NERC explains that the Commission-approved Sanction Guidelines establish a base penalty amount established by the associated Violation Risk Factor (VRF) and Violation Severity Level (VSL) tables. The base penalty amount can be adjusted up or down based on factors such as a registered entity's compliance history, the violation time horizon, entity size, the operating condition of the Bulk-Power System at the time of the violation, and any mitigating factors. NERC explains that a penalty may be mitigated based on factors such as the quality of the registered entity's internal compliance program, amount of cooperation in resolving the violation, and whether the registered entity self-reported the violation.

³⁹ See Performance Assessment at 86; and Att. 1 at 23-24.

⁴⁰ Performance Assessment, Att. 1 at 24-25.

⁴¹ *Id.* at 27.

31. NERC also describes the hearing procedures included in the uniform CMEP that apply when a registered entity requests a hearing concerning a disputed notice of alleged violation, disputed proposed penalty or sanction, disputed mitigation plan provisions, or disputed remedial action directive. NERC also explains that it adopted guidelines in 2013 to provide practical guidance to the Regional Entity hearing body members regarding the hearing process. NERC states that the guidelines outline the duties of the hearing officer and hearing body, and discuss the appropriate standard of review to be used throughout the hearing process.⁴²

d. **Rules that Provide Notice and Opportunity for Public Comment, Due Process, and Balance in Developing Reliability Standards and Otherwise Exercising Duties**

32. NERC states that it has established rules, reflected in its Bylaws, Rules of Procedure, and Standard Processes Manual, that provide for reasonable notice and opportunity for public comment, due process, openness, and balance of interests in developing Reliability Standards and exercising its other duties, such as compliance monitoring and enforcement. NERC explains that participation in the development of Reliability Standards is open to all persons who are directly and materially affected by the reliability of the North American Bulk-Power System. NERC states that the ballot body established for voting on a proposed Reliability Standard is organized in ten segments to reflect a balance of interests.⁴³

33. NERC provides a detailed description of the Reliability Standards development process, which is overseen by a Standards Committee. NERC explains that the Standards Committee, which represents the interests of the industry as a whole, was established to ensure stakeholder interests are fairly represented in the Reliability Standards development process. NERC further explains that the Standard Processes Manual details the steps for developing a new or modified Reliability Standard. NERC states that once a draft Reliability Standard has been developed, NERC posts the proposed new or revised Reliability Standard for public comment, and the Reliability Standard drafting team must address any comments received. After the comment period is complete, the ballot pool for that Reliability Standard votes on the final proposed new or revised Reliability Standard. Approval of a proposed new or revised Reliability Standard requires both a

⁴² *Id.* at 25.

⁴³ *Id.* at 28-30.

quorum, consisting of 75 percent of the ballot pool membership submitting a vote, and an affirmative vote by a two-thirds majority of the weighted-segment votes.⁴⁴

34. NERC states that other rules provide for reasonable notice and opportunity for public comment, due process, openness, and a balance of interests in other areas of NERC's duties. NERC explains that these rules apply to, among other things, the election of trustees, revisions to the NERC Rules of Procedure, meetings of the Board of Trustees and associated committees, development of NERC's annual business plan and budget, and compliance monitoring and enforcement process.⁴⁵

e. **Appropriate Steps to Gain Recognition in Canada and Mexico**

35. NERC states that it continues to engage in significant efforts to gain and maintain recognition as the ERO in Canada and Mexico. With respect to Canada, NERC explains that, depending on the particular circumstances of each Canadian province, it gained recognition as the ERO through statutes or other provisions of provincial law, or through a memorandum of understanding with the appropriate provincial entities. In addition, NERC explains that it also signed a memorandum of understanding with the Canadian National Energy Board, which has jurisdiction over international transmission lines within Canada. As for Mexico, NERC states that the Comisión Federal de Electricidad, which is responsible for reliable operation of the electric system in Mexico, and the Area de Control Baja California have entered into a membership and operating agreement with WECC with respect to the portion of the grid in Baja California Norte that is part of the Western Interconnection. NERC explains that WECC monitors compliance with the ten approved Mexico Reliability Standards, but does not have enforcement or registration authority within Mexico. NERC explains further that as to Mexico, WECC "provides compliance monitoring, reviews proposed and completed mitigation plans, and provides assessment recommendations with respect to alleged violations."⁴⁶

Commission Determination

36. We find that NERC's Performance Assessment demonstrates that NERC continues to satisfy the statutory and regulatory requirements set forth in section 215(c) of the FPA and section 39.3(b) of our regulations. As discussed above, NERC provides a

⁴⁴ *Id.* at 30-32.

⁴⁵ *Id.* at 33-34.

⁴⁶ Performance Assessment at 88-89.

detailed description of how it meets the statutory and regulatory requirements established for the Commission-approved ERO. We conclude that NERC demonstrated that it has the ability to develop and enforce Reliability Standards. In addition, the Performance Assessment reflects improvements made to NERC's processes and procedures since our issuance of the 2010 Performance Assessment Order, such as revisions to the Standard Processes Manual to streamline the Reliability Standards development process and the adoption of standardized hearing procedures.

37. We also find that each of the Regional Entities continues to meet the relevant statutory and regulatory criteria. As directed in the 2010 Performance Assessment Order, NERC addressed each Regional Entity's performance in light of the relevant statutory and regulatory criteria.⁴⁷ We particularly note the increase in budgeted compliance program staff across NERC and the eight Regional Entities, demonstrating the increased commitment to monitoring and enforcement as the entities mature to a "steady state."⁴⁸

38. While we acknowledge the improvements that NERC and the Regional Entities have made with regard to their compliance and enforcement responsibilities over the Performance Assessment period, we believe that there are still opportunities for additional improvement. With regard to compliance enforcement processing, NERC and the Regional Entities have made significant efforts to prioritize and reduce their outstanding pre-2012 caseload. According to NERC's Performance Assessment, as of December, 2013, only 65 violations older than 24 months remain to be processed.⁴⁹ However, the average violation age has only marginally improved, from 11.86 months in 2012 to 11.2 months in 2013.⁵⁰ In light of increased enforcement staffing and improved enforcement processes at NERC and the Regional Entities, we expect that violation processing times and the average violation age will continue to decline. In addition, to ensure that the ERO Enterprise and the Commission are both able to effectively perform their duties under section 215 of the FPA, we expect NERC to continue to cooperate with and share all appropriate data and information with Commission staff.

⁴⁷ See *North American Electric Reliability Corp.*, 132 FERC ¶ 61,217, at P 36 (2010).

⁴⁸ NERC and the Regional Entities' approved business plans and budgets for 2009 provided for approximately 158 full-time staff in compliance, monitoring, and enforcement programs. For 2014, the number of full-time staff devoted to compliance, monitoring, and enforcement programs increased to 303.

⁴⁹ Performance Assessment at 49, Att. 3 at 63.

⁵⁰ *Id.*

39. Additionally, it is unclear from NERC's Performance Assessment whether the compliance and enforcement program is effectively reducing repeat violations in a meaningful way. Monitoring recidivism among registered entities can provide a key indicator of whether NERC's CMEP is effective in deterring and mitigating violations. Therefore, we direct NERC to include an analysis of repeat violations in its next Performance Assessment that will allow NERC, the Regional Entities, and the Commission to evaluate whether NERC's compliance and enforcement efforts have been effective in improving registered entities' compliance and overall reliability.

40. With regard to the equitable allocation of reasonable dues, fees and other charges, we continue to agree with NERC that its allocation based on net energy for load is a reasonable and equitable allocation method.⁵¹ The Commission found application of the net energy for load allocation methodology in Order No. 672 to be fair and reasonable,⁵² and approved NERC's specific net energy for load proposal in the ERO Certification Order.⁵³ Thus, we believe that NERC's continued use of the net energy for load methodology is well justified, and we note its equitable benefits (including the elimination of double counting), and its relatively simple application compared to other apportionment methods. Further, we believe that NERC's budget development process and the Commission's approval of the ERO and Regional Entity annual business plans and budgets support the reasonableness of the charges.

41. Likewise, the Commission generally is satisfied with other features of NERC's Rules of Procedure, including rules that provide fair and impartial procedures for enforcing Reliability Standards and rules that provide for broad participation, notice, and opportunities for comment in developing Reliability Standards. Pursuant to FPA section 215(f), the Commission approved the initial submission of the NERC Rules of Procedure, as well as each subsequent revision. Thus, along with the individual findings that the NERC Rules of Procedure are just, reasonable, not unduly discriminatory or preferential, and in the public interest, we conclude here that the NERC Rules of Procedure are fair

⁵¹ See, e.g., Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 213; ERO Certification Order, 116 FERC ¶ 61,062, at P 167; *North American Electric Reliability Corp.*, 128 FERC ¶ 61,025, at P 38 (2009); *North American Electric Reliability Corp.*, 132 FERC ¶ 61,217, at P 56 (2010).

⁵² See Order No. 672, FERC Stats. & Regs. ¶ 31,204 at PP 35, 213.

⁵³ ERO Certification Order, 116 FERC ¶ 61,062 at P 167. The net energy for load allocation method was upheld on appellate review. See *Alcoa Inc. v. FERC*, 564 F.3d 1342 (D.C. Cir. 2009).

and impartial and generally support the varied functions and programs of the ERO. Further, we recognize NERC's efforts to gain and maintain recognition as the ERO in Canada and Mexico, and urge NERC to continue its efforts to support the reliability of the North American Bulk-Power System through work with our international partners.

42. We also find that NERC and the Regional Entities responded to suggestions for improvement from users, owners, and operators of the Bulk-Power System and other interested parties as required by section 39.3(c) of our regulations. However, we believe that having access to the original comments from stakeholders in addition to the comment summaries provided by NERC will aid the Commission in its evaluation of the ERO and Regional Entities.⁵⁴ Therefore, we will direct NERC to include the original comments from interested stakeholders in its future performance assessment filings, beginning in 2019.

B. Assessment of NERC's Performance and Areas for Improvement

1. Commenter Concerns

Comments

43. Mr. Morris, the sole commenter, identified three areas of concern in his August 18, 2014 comments. First, Mr. Morris raises questions about NERC's protection of confidential information, and asks questions concerning one specific instance in which an Unidentified Registered Entity's identity was revealed in a separate penalty proceeding.⁵⁵ Second, Mr. Morris questions the consistency of penalties as imposed across the regions, and as compared to NERC's VRF and VSL tables and other penalty guidelines.⁵⁶ To address these concerns, he asks that NERC provide (1) an analysis of the penalties imposed on a per dollar per day basis as compared to the VRF and VSL tables; (2) an analysis to show that NERC is treating multiple violations appropriately and consistently

⁵⁴ See Performance Assessment, Att. 4 (which, in table format, includes a "Summary of Key Stakeholder Comments").

⁵⁵ Mr. Morris cites Docket No. NP12-27-000, which he believes inadvertently revealed the identity of the Unidentified Registered Entity sanctioned for violations of the Critical Infrastructure Protection (CIP) Reliability Standards in Docket No. NP12-16-000.

⁵⁶ Morris August 18, 2014 Comments at 2 ("I am really seeking data that [NERC's] penalty guidelines are being followed, and whether they are being applied consistently across the regions.").

across regions; and (3) tables providing information on a regional basis similar to that provided in NERC's "Violations for all Regional Entities 2009-2013 by Year Reported to NERC U.S. Violations Only" and "Data on Regional Entity Compliance Resources" reports. Third, Mr. Morris questions whether the entire regional model is appropriate, given "its inherent administrative cost," and asks that NERC provide a cost-benefit analysis of the Regional Entity model as compared to a single unified ERO.⁵⁷

44. In his August 26, 2014 Comments, Mr. Morris requests that NERC use net energy for load in developing its comparison of penalty amounts among the regions. In addition, he reiterates his request for a cost-benefit analysis of the regional model versus a single ERO model, pointing to NERC's statements about the difficulty of developing and analyzing Regional Entity compliance program data as evidence that "managing these entities in an oversight capacity is probably more trouble than it is worth."⁵⁸ In addition, he supports the need for such a cost-benefit analysis based on NERC's own statements regarding the need for consistency in the ERO Enterprise's compliance, enforcement, and event analysis program. Finally, he suggests that "a significant portion" of the current levels of compensation for senior leadership of the Regional Entities would not be necessary under a unified ERO.⁵⁹

45. On August 27, 2014, NERC filed Reply Comments to Mr. Morris's August 18, 2014 Comments. NERC responds to Mr. Morris's request for a cost-benefit analysis of the Regional Entity model by noting that FPA section 215 and Commission regulations implementing that section contemplate the delegation of certain authority from the ERO to a Regional Entity.⁶⁰ In addition, NERC states that its Performance Assessment meets the requirements of FPA section 215(e)(4) and its implementing regulations, none of which require submission of a cost-benefit analysis. NERC responds to Mr. Morris's questions about NERC's protection of confidential information by stating that it improved its internal procedures on redaction guidelines since the 2012 incident referenced by Mr. Morris, and notes that its procedures for protecting confidentiality are

⁵⁷ Morris August 18, 2014 Comments at 2.

⁵⁸ Morris August 26, 2014 Comments at 1.

⁵⁹ *Id.*

⁶⁰ NERC states that Mr. Morris's August 26 Comments reiterated his concern with the regional model and that Mr. Morris cited a single Internal Revenue Service Form 990 for ReliabilityFirst Corporation to suggest that the regional model is unnecessarily wasteful. *See* NERC Comments at fn.5.

reviewed at least once per year.⁶¹ Finally, NERC maintains that the comparison of actual penalties imposed by the Regional Entities, versus NERC's VRF and VSL tables, would not be meaningful in assessing the fairness of NERC's and the Regional Entities' enforcement methods. NERC asserts that the tables provide base penalty amounts only, while NERC's Sanction Guidelines contemplate that NERC and the Regional Entities consider a number of other factors in setting penalty amounts. In addition, NERC states that it encourages the Regional Entities to consider the imposition of non-monetary sanctions or acceptance of certain activities "above and beyond those required to ensure compliance . . . in lieu of full monetary penalties permitted by the NERC *Sanction Guidelines* (where it is appropriate)."⁶²

46. On August 28, 2014, Mr. Morris submitted additional comments responding to NERC's Reply Comments. First, Mr. Morris requests that NERC withdraw its comment that he stated that "the benefits of managing the Regional Entities are grossly outweighed by the costs," and "the [R]egional [E]ntity model is inherently wasteful." Rather, Mr. Morris states that he made no arguments regarding the outcome of a cost-benefit analysis, and merely believes that it should be done.⁶³ Second, responding to NERC's statement that Mr. Morris provided limited data to support the need for a cost-benefit analysis, Mr. Morris provides additional information on key leader compensation of the Midwest Reliability Organization.⁶⁴

Commission Determination

47. With respect to concerns and questions raised regarding NERC's protection of information deemed to be confidential, particularly as related to cybersecurity incidents or CIP violations, we believe that NERC currently has adequate rules and procedures in place to protect against improper disclosure of sensitive information, and note that NERC

⁶¹ NERC acknowledges it has an obligation to ensure that the disposition of each violation or alleged violation that relates to a cybersecurity incident will remain nonpublic. NERC also states that the Rules of Procedure provide that NERC will not disclose any confidential information, including cybersecurity incidents, and will redact such information in any public filings unless disclosure is otherwise permitted by the Rules of Procedure.

⁶² NERC Comments at 1 (footnotes omitted).

⁶³ Morris August 28, 2014 (citing NERC Comments at 2).

⁶⁴ *Id.*

improved its redaction procedures since the dockets referenced by Mr. Morris were filed with the Commission.⁶⁵

48. Regarding Mr. Morris's requests for a comparison of penalty amounts imposed across regions as compared to NERC's VRF and VSL tables, we agree with NERC that such a comparison would have limited utility, as it fails to reflect the many other penalty factors that NERC and the Regional Entities must consider under NERC's Sanction Guidelines. These factors include, among other things, the violator's compliance history, degree of cooperation during the enforcement process, quality of the entity's overall compliance program, and whether the violation was self-reported. We have repeatedly endorsed this approach to the imposition of penalties,⁶⁶ and find that, as long as NERC continues to oversee the Regional Entities' application of the Sanction Guidelines to promote consistency as and when appropriate, NERC is satisfying its obligations with respect to enforcement.⁶⁷

49. With respect to concerns about the value of the Regional Entity model, we decline to grant Mr. Morris's request for NERC to perform a cost-benefit analysis. As an initial matter, we do not find that such an analysis is required under FPA section 215 or our implementing regulations as part of NERC's performance assessment obligations. Also, FPA section 215 explicitly contemplates the delegation of certain enforcement and other authorities by the ERO to Regional Entities.⁶⁸ Mr. Morris provides no evidence to support his request other than implying that the costs of a unified ERO could be lower than the current Regional Entity model due to fewer salaries, and a suggestion that the Regional Entity model is more costly due to "its inherent administrative cost."

⁶⁵ NERC notes that the dockets referenced in Mr. Morris's August 18, 2014 comments were filed in 2012, and that NERC "improved its internal procedures when it documented its redaction guidelines in early 2013 and incorporated them by reference into its internal Compliance Enforcement Manual." NERC Reply Comments at 5.

⁶⁶ *See, e.g., North American Electric Reliability Corp.*, 132 FERC ¶ 61,182 (2010) (providing guidance on the application of one of the aggravating factors identified in NERC's Sanction Guidelines); *see also North American Electric Reliability Corp.*, 141 FERC ¶ 61,241, at P 71 (2012) (accepting revised Sanction Guidelines, and their nine adjustment factors for use in determining penalties).

⁶⁷ We continue to encourage NERC to develop performance metrics that will be meaningful in evaluating the consistency of the various Regional Entities' approaches to enforcement and imposition of penalties, as further discussed below.

⁶⁸ *See* 16 U.S.C. § 824o(e)(4).

Accordingly, we conclude that the comments are not persuasive and do not provide adequate support to direct NERC to take further action on the matter.

2. ERO Enterprise Performance Metrics

NERC Performance Assessment

50. NERC states that it made substantial progress in structuring the ERO Enterprise and improving the reliability of the Bulk-Power System during this Performance Assessment period. NERC explains that, “despite the achievements to date, the ... ERO Enterprise ... is not without certain challenges and risks. Going forward, NERC needs and intends to focus attention on actions necessary to reach an end-state of a fully-integrated ERO Enterprise that can exercise effective and well-coordinated reliability oversight that mitigates reliability risks to the BPS.”⁶⁹ NERC states that in order to achieve this end-state, it must increase clarity about the allocation of roles and responsibilities between NERC and the Regional Entities, improve coordination of goals, and establish more uniform work processes, tools, and performance.⁷⁰

51. NERC states that “coordinated strategic planning” is one of five areas that NERC needs to focus on to achieve excellence in the oversight and execution of its statutory functions. NERC explains that its Board of Trustees recently approved ERO Enterprise Performance Metrics that will be used to assess the overall effectiveness of the ERO Enterprise in achieving the goals and objectives outlined in the ERO Enterprise Strategic Plan for 2014-2017, which include addressing risk to the Bulk-Power System, achieving reliability results, assuring Reliability Standards and compliance effectiveness, and improving risk mitigation and program execution.⁷¹ NERC explains that the ERO Enterprise Performance Metrics include four overarching metrics that focus on the overall effectiveness in addressing Bulk-Power System risks and improving reliability, and a number of supporting measures that focus on the effectiveness of key operational elements of the ERO Enterprise.⁷² NERC states that its intent is to report the results of

⁶⁹ Performance Assessment at 96.

⁷⁰ *Id.*

⁷¹ Performance Assessment at 98 (citing ERO Enterprise Performance Metrics, approved by the NERC Board May 2014, *available at* <http://www.nerc.com/gov/bot/FINANCE/Hidden%20Documents/ERO%20Enterprise%20Performance%20Metrics%20-%20Board%20Approved%2005%2007%202014.pdf>).

⁷² *Id.* See also Performance Assessment, Attachment 4 at 24-25, 33.

these metrics on an ERO Enterprise-wide basis, and distinguish results for NERC and individual Regional Entities.⁷³

Commission Determination

52. The Commission supports NERC's goal of improving coordinated operations across the ERO and Regional Entities by, among other things, developing a set of common performance measures focused on Bulk-Power System reliability outcomes and effectiveness of statutory programs. The Commission explained in Order No. 672 that the ERO should "affirmatively demonstrate to the Commission that it satisfies the statutory and regulatory criteria for an ERO and is not only maintaining but improving the quality of its activities and those of the Regional Entities to which it has delegated such activities" and continued that it "expects the performance assessment to include regular and systemic measurements and reporting of the ERO's performance."⁷⁴ NERC's Performance Assessment has demonstrated that it is improving the quality of its activities. However, we believe that NERC's future Performance Assessments could be improved by including regular and systematic measurements of its performance, including setting performance targets. Accordingly, as discussed further below, we will direct NERC to include its performance measures in future assessment filings.

53. The Board of Trustees' recent adoption of ERO Enterprise Performance Metrics, which will be used to compare performance with future targets and objectives as set forth in the ERO Strategic Plan, and NERC's intent to regularly report the results, should help NERC improve coordinated operations across the ERO and Regional Entities. Additionally, we believe that a common set of performance metrics that will serve as indicators of the overall effectiveness of the ERO in achieving its mission and goals will help both NERC and the Commission assess ERO performance and identify any areas for improvement. Therefore, we encourage NERC to continue tracking, measuring, and reporting its performance using the ERO Enterprise Performance Metrics as adopted by the Board of Trustees. Further, we will direct NERC to incorporate the ERO Enterprise Performance Metrics, and any associated performance measures into its future

⁷³ Performance Assessment at 98, 102.

⁷⁴ Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 187.

performance assessment filings, beginning in 2019. More immediately, we expect NERC will continue to post these ERO Enterprise Performance Metrics as the metrics are further developed, and associated metrics, measures, and targets on at least an annual basis.⁷⁵

3. Reliability Metrics

54. In addition to the ERO Enterprise Performance Metrics discussed above, NERC uses certain reliability metrics to assess the performance of the Bulk-Power System. NERC's State of Reliability 2014 Report discusses two primary types of metrics: (1) event-driven metrics that measure the cumulative stress on the grid from events resulting in transmission loss, generation loss, and load loss; and (2) condition-driven metrics that quantify deviations from the adequate level of reliability established by NERC. Along with these two groups of metrics, NERC is also creating a new metric to quantify the impact of violations of Reliability Standards that are considered to have serious risk to the Bulk-Power System. NERC states that, in addition to reliability metrics, NERC's State of Reliability 2014 Report assesses grid reliability based on performance trends identified through data and analysis of system disturbances.⁷⁶

55. The Commission supports NERC's efforts to develop reliability performance metrics and recognizes the benefit of such metrics, as NERC analyzes the emerging risks facing the Bulk-Power System, such as a rapidly changing fuel mix, unit retirements, continued advancement of variable resources, and a growing dependence on demand side management programs. Beyond assessing the overall reliability of the Bulk-Power System and identifying trends that could affect the industry's risk profile, reliability metrics that measure grid performance can also assist in evaluating the effectiveness of Reliability Standards. Therefore, we encourage NERC to continue developing its reliability metrics as described in its Performance Assessment and State of Reliability 2014 Report, and tie the results of grid performance-related metrics to ongoing Reliability Standards development efforts. Creating this feedback loop to the Reliability Standards development process will further support NERC's goal of developing results-based Reliability Standards.

⁷⁵ See Performance Assessment at 98 (“[t]he intent is to report the results of these metrics on an ERO Enterprise-wide basis, and also as applicable, distinguish results for NERC and individual Regional Entities”).

⁷⁶ See Performance Assessment at 69-71 (citing NERC's State of Reliability 2014 Report, *available at* http://www.nerc.com/pa/RAPA/PA/Performance%20Analysis%20DL/2014_SOR_Final.pdf).

56. We also encourage NERC to continue its effort to develop metrics to address other areas, such as situational awareness measures. Situational awareness was identified as a significant contributing factor in major events and as such, continued improvement in this area will further improve reliability.⁷⁷ In addition, we encourage NERC to refine its current reliability metrics to more effectively analyze risks to the Bulk-Power System. For example, NERC could refine its current metrics to incorporate additional data, such as an analysis of cause codes from the event analysis program, transmission availability data system, generating availability data system, protection system misoperations reporting, and progress of resolution of any gaps found in Reliability Standards. In addition, NERC could consider developing performance targets (i.e., normal or acceptable levels of performance) and tying such targets to the reliability metrics in order to enhance understanding of the state of reliability across the Bulk-Power System. Finally, as NERC continues its efforts to refine these reliability metrics, the Commission encourages NERC to collaborate with Commission staff in this area.

4. Reliability Standards Development

Performance Assessment

57. In its Performance Assessment, NERC addresses how it satisfies the requirements of section 39.3(b) of the Commission's regulations regarding NERC's ability to develop Reliability Standards that provide for an adequate level of reliability.⁷⁸ NERC also describes at length the improvements in its Reliability Standards development program since filing its Initial Performance Assessment.⁷⁹ Specifically, NERC highlights its efforts to transform Reliability Standards to a steady-state (i.e., a "stable set of clear, concise, high-quality, and technically sound Reliability Standards"),⁸⁰ including efforts to complete revisions to Reliability Standards in response to Commission directives and a comprehensive review of all Reliability Standards by the Independent Experts Review Panel. NERC adds that, "to set the foundation for a steady-state body of Reliability Standards, NERC established the [Independent Experts Review Panel] to evaluate the existing families of Reliability Standards and Requirements."⁸¹ NERC explains that five

⁷⁷ See, e.g., FERC and NERC Joint Staff Report, *Arizona-Southern California Outages on September 8, 2011* at 85 (2012).

⁷⁸ Performance Assessment, Att. 1 at 1-9.

⁷⁹ Performance Assessment at 22-32.

⁸⁰ *Id.* at 7.

⁸¹ *Id.* at 14.

independent consultants with an array of electric industry experience presented a report to the NERC Board of Trustees in August 2013 that outlined a vision for transforming the NERC Reliability Standards to a steady-state, including short-term and long-term recommendations, recommending retirement of certain provisions, identification of “gaps” not currently addressed by Reliability Standards, and recommendation of a new construct to consolidate Reliability Standards and required actions.

58. NERC describes the Paragraph 81 project, a Commission-initiated project to identify and remove requirements from existing Reliability Standards that either: (1) provide little protection for Bulk-Power System reliability or (2) are redundant with other aspects of the Reliability Standards. NERC highlights other improvements to the Reliability Standards development process, including revisions to NERC’s Standard Processes Manual to provide for a more efficient development process, formation of the Reliability Issues Steering Committee, and realignment of NERC’s resources to “focus[] resources on the production of Reliability Standards rather than on executing and monitoring the development process.”⁸²

Commission Determination

59. The development of Reliability Standards is a fundamental responsibility of the ERO and a function that must be addressed as part of NERC’s periodic performance assessment filings.⁸³ We recognize NERC’s efforts to improve both the efficiency of its Reliability Standards development process as well as the quality of the Reliability Standards developed. While it appears that many of the initiatives described in NERC’s Performance Assessment improved (or will improve) NERC’s Reliability Standards development process, we believe NERC must continue to improve its programs as it moves forward into the next performance assessment period, as further discussed below.

60. We believe that NERC’s formation of the Independent Experts Review Panel was particularly valuable. NERC tasked the Independent Experts Review Panel with evaluating the entire existing set of Reliability Standards, making recommendations on how to transition to a steady state, and identifying high-level gaps in reliability not currently addressed by existing Reliability Standards. As NERC states, the Independent Experts Review Panel’s recommendations have been “pivotal” in NERC’s evaluations of Reliability Standards by the Reliability Standard drafting teams. We are encouraged that the Independent Experts Review Panel’s recommendations are, according to NERC,

⁸² *Id.* at 30; *see generally id.* at 7-24.

⁸³ *See, e.g.*, 2010 Performance Assessment Order, 132 FERC ¶ 61,217 at P 67; Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 189.

either assigned to active drafting projects or to teams that conduct periodic reviews of Reliability Standards for future consideration.⁸⁴

61. We also commend NERC on the improvements in the efficiency of its Reliability Standards development process, as reflected in the reduction of average time to revise or develop a new Reliability Standard. Specifically, NERC states that the average time for revising an existing Reliability Standard and development of a new Reliability Standard fell from a historical baseline of 27 and 40 months, respectively, to a period of 6 and 10 months, respectively, for projects completed since approval of NERC's revised Standard Processes Manual in 2013.⁸⁵

62. Despite these apparent improvements to NERC's Reliability Standards processing times, the process for developing interpretations of Reliability Standards does not appear to be experiencing similar improvements in total processing time. Rather, over the Performance Assessment period, the average time for NERC to process a request for interpretation (i.e., time between the initial interpretation request and subsequent filing of the interpretation with the Commission) is approximately 21 months,⁸⁶ with processing times ranging from approximately 6 months to 50 months.

63. We understand that the processing time for interpretations may be affected by other considerations, including a possible preference for addressing ambiguities through the Reliability Standards development process. However, with NERC's stated goal of bringing the Reliability Standards program to a "steady state" (i.e., with fewer Reliability Standards under development or modification), the ability to efficiently resolve possible ambiguities through the interpretation process may take on added importance. Accordingly, we encourage NERC to explore ways to reduce the time needed to process a request for interpretation.

64. In addition, we believe that additional granularity in the measurement of Reliability Standards development would be beneficial. First, we note that the six and ten month average development time reported for recent projects includes projects for which

⁸⁴ See Performance Assessment at 16-17.

⁸⁵ *Id.* at 25.

⁸⁶ These statistics are derived from data filed in each petition for Commission approval during the Performance Assessment period. See also Quarterly Reports on Standards Development submitted in compliance with the 2010 Performance Assessment Order (Docket No. RR09-7-001).

the Commission imposed a specific deadline.⁸⁷ While we recognize the significant effort put in by NERC and stakeholders in meeting those deadlines, it is not clear whether these projects are representative of the improvements to the Reliability Standards process more generally. Instead, as we noted in the 2010 Performance Assessment Order, information regarding average total processing times for the development of Reliability Standards is of limited use where it reflects both “urgent” and “non-urgent” projects.⁸⁸ We continue to believe that total time for development as reported may need to reflect the overall complexity of the project and be compared to the initial expected time for completion. Thus, we will direct NERC to track, on a going-forward basis, actual project completion times as compared to estimated time for completion at the outset of a given project. We will also direct NERC to incorporate these more granular measures into its future performance assessment filings, beginning in 2019, and post them as developed prior to 2019.

65. Finally, we recognize that NERC made significant improvements in its Reliability Standards development process through redeployment of its and stakeholders’ resources and other adjustments to the Reliability Standards development process. Among other things, NERC revised the composition of Reliability Standard drafting teams to include legal and compliance experts, and incorporated quality review and compliance assessment tool development in parallel or in conjunction with the Reliability Standards development process.⁸⁹ In addition to the technical expertise provided by industry volunteers, we believe NERC technical staff has an important role to play in providing feedback on proposed Reliability Standards throughout the development process.⁹⁰

⁸⁷ See, e.g., *Reliability Standards for Physical Security Measures*, 146 FERC ¶ 61,166 (2014) (requiring NERC to develop and submit within 90 days a proposed Reliability Standard addressing threats and vulnerabilities to the physical security of critical facilities on the Bulk-Power System).

⁸⁸ See 2010 Performance Assessment Order, 132 FERC ¶ 61,217 at PP 81, 85.

⁸⁹ Performance Assessment at 23. NERC staff is responsible for conducting a quality review of a Reliability Standard under development, prior to posting for formal comment and ballot to assess whether the documents are within the scope of the associated Standard Authorization Request, whether the Reliability Standard is clear and enforceable as written, and whether the Reliability Standard meets the criteria specified in NERC’s Benchmarks for Excellent Standards and criteria for governmental approval. NERC Standards Process Manual, Section 4.3.

⁹⁰ For example, NERC staff submitted useful comments on several draft Reliability Standards during the Performance Assessment period. See, e.g.,

(continued...)

Among other things, we believe NERC staff has unique expertise based on its compliance and enforcement experience, and unique insight into emerging reliability issues gained through NERC's administration of the events analysis program. Therefore, we encourage NERC's technical staff to provide feedback to the Reliability Standard drafting teams as early as possible in the drafting process so the drafting team can consider NERC staff's unique insights, particularly prior to comment or ballot periods.

5. Regional Entity Performance and Coordination
Performance Assessment

66. In its Performance Assessment, NERC explains its ongoing efforts to increase consistency and promote coordination throughout the ERO Enterprise. NERC states that the ERO Enterprise has been effective in mitigating important risks to the Bulk-Power System since its inception in 2006. NERC highlights the ability of the Regional Entities to identify trends and leading indicators of potential reliability problems to be addressed. NERC notes efforts to address protection system misoperations and transmission right-of-way clearances as examples of situations where the ERO Enterprise was able to use information from the Regional Entities to develop strategies to address potential risks.⁹¹

67. NERC states that the compliance monitoring and enforcement program implemented by NERC and the Regional Entities "has been effective in ensuring that compliance violations are identified and mitigated, thereby reducing reliability risk."⁹² NERC states that the ERO Enterprise has uniform procedures for compliance and enforcement, including standardized penalty guidelines. For example, NERC states that all Regional Entities utilize the Find, Fix, Track and Report (FFT) process to resolve a high number of minimal risk issues and that NERC, through its monthly reviews and annual spot checks, verifies that the parameters for identifying minimal risk issues are consistently applied throughout the ERO Enterprise.

68. NERC also states the Reliability Assurance Initiative will help NERC foster greater consistency and efficiency in its compliance monitoring and enforcement process, providing a greater level of predictability for registered entities to understand how the

Docket Nos. RM14-13-000 (COM-001-2 and COM-002-4), RM13-15-000 (CIP Version 5), and RM12-16-000 (Generator Requirements at the Transmission Interface).

⁹¹ Performance Assessment, Att. 6 at 5.

⁹² *Id.* at 6.

Reliability Standards are applied and enforced.⁹³ Moreover, NERC explains that it and the Regional Entities no longer create nine separate CMEP implementation plans, but rather have consolidated these documents into a single, integrated CMEP implementation plan for the ERO Enterprise, which eliminates redundant information, improves transparency of CMEP activities, and promotes consistency among Regional Entities.⁹⁴

69. NERC states that, in order to achieve excellence in the oversight and execution of its statutory functions, it must improve coordinated operations across the ERO Enterprise by focusing on six areas relating to the relationships and allocations of responsibilities between and among NERC and the Regional Entities. These areas include (1) clarifying roles and responsibilities, (2) coordinating strategic planning, (3) coordinating operational decision-making, (4) achieving consistency, (5) sharing tools and infrastructure for delegated functions, and (6) coordinating communications.⁹⁵ NERC identifies 11 action items aimed at achieving these goals. NERC also states that, to improve the delegation process, NERC and the Regional Entities should work together to update and refine the regional delegation agreements, which are due for renewal in May 2015, to provide a clearer division of responsibilities.⁹⁶ In the development of the Performance Assessment, numerous stakeholder comments focused on the need for consistency and coordination across the ERO Enterprise.⁹⁷

Commission Determination

70. The Commission recognizes and supports NERC's efforts to increase consistency and promote coordination across the ERO Enterprise. A key element of consistency is the transparency of the ERO Enterprise's processes and its outcomes. Improved consistency and coordination helps to clarify the roles and responsibilities of NERC and the Regional Entities and should lead to more efficient and uniform work practices. Specifically, we believe that a focus on achieving consistent compliance and enforcement outcomes (e.g., monetary penalties, registration decisions, and consistent understanding of Reliability Standard requirements) while not equating consistency with a "lowest common denominator" approach would provide the greatest benefit to registered entities.

⁹³ *Id.*

⁹⁴ Performance Assessment at 55.

⁹⁵ Performance Assessment, Att. 6 at 7-8.

⁹⁶ *See id.*, at 7-16.

⁹⁷ *See* Performance Assessment, Att. 4 at 13-15, 21, 29, and 32.

Accordingly, we are pleased to see NERC's efforts in this area such as the adoption of a single, integrated CMEP implementation plan for the ERO Enterprise. We believe that actions such as the integrated CMEP are a step toward addressing the concerns raised by stakeholders regarding potential inconsistencies across the Regional Entities.⁹⁸

71. However, to better understand NERC's ongoing efforts, we direct NERC to submit an informational filing within 12 months of the date of this order that describes NERC's progress in increasing consistency and promoting coordination across the ERO Enterprise. Specifically, NERC should address how it is improving coordinated operations and describe any efforts it has made to improve such operations, including, but not limited to the 11 action items described in Attachment 6 of the Performance Assessment.

72. In addition, NERC should continue to promote transparency in its enforcement programs, particularly as it moves forward with its Reliability Assurance Initiative, given the value of transparency in encouraging full and adequate mitigation practices and in providing assurance to the Commission, registered entities, and the public that the program is being fairly and consistently implemented across all regions. We note that the FFT program created efficiencies in the ERO Enterprise's enforcement process, without the need to sacrifice any degree of transparency in the form of current public disclosure regarding FFT-processed violations. Therefore, we expect NERC to continue making information publicly available concerning possible non-compliance (other than those involving physical security or cybersecurity concerns) resolved through any and all processing methods.

73. We also support NERC's efforts to develop metrics to measure the overall effectiveness of the ERO Enterprise. While we recognize that enforcement metrics developed to date aid in promoting consistency and measuring the performance of NERC and the individual Regional Entities,⁹⁹ they represent only one aspect of consistency across the ERO Enterprise. Therefore, we will direct NERC to continue developing performance metrics that measure consistency, coordination, and efficiency between and among NERC and the Regional Entities in order to achieve predictable, timely, and consistent results across the ERO Enterprise and incorporate these metrics into its future performance assessment filing, beginning in 2019. In developing such metrics, we

⁹⁸ We note that the Commission also supported such efforts in the 2010 Performance Assessment Order. *See* 2010 Performance Assessment Order, 132 FERC ¶ 61,217 at P 138.

⁹⁹ *See* Performance Assessment, Att. 5 at 24-26.

encourage NERC to focus on achieving consistent outcomes on issues such as assessing monetary penalties, assessing non-monetary penalties, registering entities, and exhibiting a consistent understanding of requirements in the auditing process.

The Commission orders:

(A) The Commission hereby accepts NERC's Performance Assessment and finds that NERC continues to meet the statutory and regulatory requirements for ERO certification set forth in section 215(c) of the FPA and section 39.3(b) of our regulations, as discussed in the body of this order.

(B) The Commission hereby finds that the Regional Entities continue to meet the statutory and regulatory requirements set forth in section 215(e) of the FPA and section 39.3(c) of our regulations, as discussed in the body of this order.

(C) NERC is hereby directed to submit an informational filing within 12 months of the date of this order, as discussed in the body of this order.

(D) NERC is hereby directed to include additional information in its future performance assessment filings, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.