137 FERC ¶ 61,028
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

North American Electric Reliability Corporation

Docket Nos. RR10-11-003
RR07-8-005
RR07-8-004
RR07-7-008
RR07-3-005
RR07-3-004
RR06-1-026
RR06-1-025
RR06-1-024

ORDER ON COMPLIANCE FILING

(Issued October 7, 2011)

1. On February 18, 2011, the North American Electric Reliability Corporation (NERC) submitted a compliance filing in response to the Commission's October 21, 2010 order[1] pertaining to NERC's Rules of Procedure, NERC's *Pro Forma* Delegation Agreement, Delegation Agreements between NERC and the eight Regional Entities, and Bylaws of the Florida Reliability Coordinating Council (FRCC) and Midwest Reliability Organization (MRO) (Compliance Filing). For the reasons discussed below, we conditionally accept NERC's submission, effective as of the date of this order. We direct NERC to submit an additional compliance filing within 30 days of the date of this order.

2. The Commission separately approves amendments proposed by NERC and the Western Electricity Coordinating Council (WECC) to the WECC Hearing Procedures and terminates the quarterly reporting requirements pertaining to the use of technical

[1] *North American Electric Reliability Corp.*, 133 FERC ¶ 61,061 (2010) (October 2010 Order), *reh'g denied*, 134 FERC ¶ 61,179 (2011).

committee consultations by the Northeast Power Coordinating Council (NPCC) and compliance committee review by FRCC.[2]

I. Background

3. On June 9, 2010, as supplemented on June 17, 2010, NERC filed a petition pursuant to sections 215(e)(4) and 215(f) of the Federal Power Act (FPA)[3] for the Commission to approve revisions to NERC's Rules of Procedure, NERC's *Pro Forma* Delegation Agreement, Delegation Agreements between NERC and the eight Regional Entities, and Bylaws of FRCC and MRO (June 9, 2010 Petition).

4. In the October 2010 Order, the Commission conditionally approved NERC's June 9, 2010 Petition and directed NERC to submit a compliance filing containing revisions to the NERC Rules of Procedure, NERC's *Pro Forma* Delegation Agreement, Delegation Agreements between NERC and the eight Regional Entities, and Bylaws of FRCC and MRO.

II. NERC Compliance Filing

5. On February 18, 2011, NERC submitted its Compliance Filing in response to the October 2010 Order. The Compliance Filing contains proposed changes to NERC's Rules of Procedure, NERC *Pro Forma* Delegation Agreement, the Delegation Agreements between NERC and the each of the eight Regional Entities, and the Bylaws of FRCC and MRO.

6. In the Compliance Filing, NERC also proposes to amend the WECC Hearing Procedures, which are found in Exhibit D to the NERC-WECC Delegation Agreement, to include a shortened hearing procedure. The Compliance Filing references a filing made

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[2] The Commission did not direct the proposed amendments to the WECC Hearing Procedures in the October 2010 Order, nor were the amendments proposed in NERC's initial petition. As discussed below, we conclude that it is appropriate to address the proposed amendments in this order, as the WECC Hearing Procedures are an exhibit to the NERC-WECC Delegation Agreement. We also find that it is appropriate to address NERC's requests, made in separate compliance filings to the Commission on June 30, 2010, to end certain quarterly reporting requirements for FRCC and NPCC. *See* North American Electric Reliability Corp., Compliance Filing, Docket Nos. RR06-1-024, RR07-8-004, RR07-8-005 (filed June 30, 2010); North American Electric Reliability Corp., Compliance Filing, Docket Nos. RR06-1-025, RR07-3-004, RR07-3-005 (filed June 30, 2010).

[3] 16 U.S.C. § 824o (2006).

by NERC and WECC in Docket Nos. RR06-1-026 and RR07-7-008. NERC and WECC submitted a report in those dockets to inform the Commission that they intended to propose a shortened hearing procedure in the WECC Hearing Procedures.[4] In the report, NERC and WECC indicated that they would submit the proposed amendments in the Compliance Filing after the WECC and NERC Boards approved the amendments. NERC states that it has included the proposed amendments in the Compliance Filing in the "interests of efficiency and to reduce the number of WECC and NERC Board actions and Commission filings otherwise needed."[5]

III. Notice of Filing

7. Notice of NERC's Compliance Filing was published in the *Federal Register*, 76 Fed. Reg. 10,890 (2011), with interventions and protests due on or before March 11, 2011. No motion to intervene or protest was filed.

IV. Discussion

8. The Commission conditionally accepts the Compliance Filing submitted by NERC in response to the October 2010 Order. With respect to NERC Rules of Procedure section 402.1.3.2, we direct NERC to submit an additional compliance filing within 30 days of the date of this order.

9. The Commission approves the proposed amendments to the WECC Hearing Procedures, as they promote effective and efficient administration of Bulk-Power System reliability. The Commission also grants the requests to terminate certain quarterly reporting requirements pertaining to the use of "technical committee consultations" by NPCC and "compliance committee review" by FRCC.

A. Responses to October 2010 Order Directives

1. Revisions to the Regional Entity Delegation Agreements; Amendments to the FRCC Bylaws

a. Background

10. Beginning in 2008, Commission staff audited FRCC to help the Commission determine whether FRCC, the Regional Entity, is sufficiently independent from FRCC's Member Services Division. The Member Services Division provides services to its

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[4] North American Electric Reliability Corp., Report, Docket Nos. RR06-1-026, RR07-7-008 (filed Dec. 23, 2010).

[5] NERC Compliance Filing at 11.

members, including taking responsibility for FRCC's Reliability Coordinator and Planning Authority functions – functions that must comply with the Commission-approved Reliability Standards.[6] To ensure FRCC's independence and provide adequate separation between its Regional Entity functions funded pursuant to section 215 of the FPA[7] (statutory functions) and non-statutory Member Services Functions, staff's audit report recommended that FRCC revise its Bylaws to clarify that "the FRCC [Regional Entity] is responsible for the operations of the [Regional Entity] and the effective and efficient implementation of the [Compliance Monitoring and Enforcement Program (CMEP)] to meet the guidance of NERC and the Commission."[8] In response to the audit report, FRCC provided clarification and concurred with the report's recommendations.

11. On June 23, 2010, after NERC filed its June 9, 2010 Petition, the Commission approved staff's audit report. In its June 23, 2010 order, the Commission directed FRCC to implement the actions recommended in the audit report "as clarified in the body of this Order," and found that, among other things, upon implementation of the recommendations, FRCC will prospectively satisfy the requirement that it demonstrate "a strong separation between oversight and operational functions."[9]

b. <u>October 2010 Order</u>

12. In its June 9, 2010 Petition, NERC requested that the Commission approve amendments to section 5.4 of FRCC's Bylaws concerning FRCC's stakeholder Compliance Committee. The Compliance Committee reports directly to FRCC's Board of Directors. Prior to its amendment, section 5.4 stated that the Compliance Committee is charged with "responsibility for the development and implementation of programs to ensure compliance for both FRCC Regional Reliability Standards and NERC Reliability Standards."[10] NERC and FRCC sought Commission approval to strike this phrase and substitute for it "responsibility of promoting reliability of the bulk power system within the FRCC through compliance related activities."[11] NERC and FRCC explained that the proposed amendment eliminates the stakeholder Compliance Committee's responsibility

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[6] *Florida Reliability Coordinating Council, Inc.*, 131 FERC ¶ 61,262, at P 2 and Attachment A (2010) (FRCC Independence Audit Order).

[7] 16 U.S.C. § 824o (2006).

[8] FRCC Independence Audit Order, 131 FERC ¶ 61,262, Attachment A at 10.

[9] *Id.* P 22 and Ordering Paragraph (B).

[10] NERC June 9, 2010 Petition at 36.

[11] *Id.* at 36-37.

"for developing and implementing the compliance program, which is a staff function, and replaces this responsibility with a broader charge to focus on promoting the reliability of the bulk power system within FRCC."

13. In the October 2010 Order, the Commission stated that the amendment to Section 5.4 should be consistent with the recommendations made as a result of the FRCC Independence Audit Order. The Commission directed NERC and FRCC to further revise section 5.4 "to include language specifying FRCC's authority over the CMEP, as recommended in the FRCC Audit Report and consistent with FRCC's concurrence."[12]

c. Compliance Filing

14. In its Compliance Filing, NERC proposes to amend section 5.4 of FRCC's Bylaws to insert the following sentence: "The FRCC Regional Entity compliance staff is responsible for the effective and efficient implementation of the NERC Compliance Monitoring and Enforcement Program to meet the guidance of NERC and FERC."[13]

d. Commission Determination

15. The purpose of the October 2010 Order's directive was to revise the FRCC Bylaws to be consistent with the FRCC Independence Audit Order that we issued after NERC filed its June 9, 2010 Petition. The Compliance Filing inserts into section 5.4 of the Bylaws a statement that FRCC's Regional Entity compliance staff will be responsible for the effective and efficient implementation of the CMEP. The subject of Section 5.4 of the Bylaws is FRCC's stakeholder Compliance Committee, the portion of FRCC's Member Services Division that parallels the activities of the FRCC compliance staff. We understand that "compliance staff" represents the department within the FRCC Regional Entity that is responsible for the statutory delegated function of compliance monitoring and enforcement and that includes executive management of FRCC, up to and including the Chief Executive Office (CEO), as they supervise and manage FRCC's Regional Entity functions. Compliance staff does not include members of the Compliance Committee who are registered entity stakeholders. We accept FRCC's choice to amend section 5.4 to address the responsibilities of the FRCC compliance staff to implement the CMEP and how these activities necessarily differ from activities of the Compliance Committee. The provisions of the Delegation Agreement and FRCC's Bylaws combine to establish that FRCC, including its Board of Directors, the CEO, and its agents and employees who report to the CEO, to the extent they implement FRCC's duties pursuant to FPA section 215, is responsible for the operations of the Regional Entity and effective implementation of the CMEP.

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[12] October 2010 Order, 133 FERC ¶ 61,061 at P 32.

[13] NERC Compliance Filing at 9.

2. Rules of Procedure Section 402.1.3.2

a. October 2010 Order

16. In its June 9, 2010 Petition, NERC proposed to delete section 402.1.3.2 of its Rules of Procedure, which requires NERC to establish a program to audit registered entities to verify the findings of previous compliance audits and evaluate how Regional Entities' enforcement programs are meeting their delegated authority and responsibilities. In the October 2010 Order, the Commission did not approve eliminating this "audit validation" provision. The Commission found that NERC did not support its reason for eliminating the provision, i.e., that Regional Entity audit validation is "a burden to the registered entities that were re-audited."[14] NERC offered no evidence that Regional Entity audit validation requires significant participation by registered entities so as to make the process unduly burdensome to such entities. In the October 2010 Order, moreover, we noted that the audit validation's purpose is to test the audit techniques and robustness of the Regional Entity's audit program—it is not to review the compliance of a registered entity. Accordingly, the October 2010 Order directed NERC to provide further explanation and justification for eliminating the audit validation requirement, including an explanation of what other tools NERC has that it believes are sufficient to monitor the effectiveness of the Regional Entities' Compliance Enforcement Programs.[15]

b. Compliance Filing

17. In the Compliance Filing, NERC states that Regional Entities have expressed the opinion that NERC's audit validation process imposes burdens on registered entities. NERC also states that even with the elimination of section 402.1.3.2, audit validation remains an important tool to assess the performance of the Regional Entities in carrying out the compliance audit function as well as in improving the consistency of compliance audits. NERC claims that it will continue oversight of the compliance audits conducted by the Regional Entities, but it now intends to do so in a more focused manner than under the current audit validation process.

18. NERC references its December 23, 2010 Informational Filing[16] to the Commission describing its intent to, *inter alia*, restructure the Regional Entity audit validation process. NERC states that the validation of Regional Entity compliance audits

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[14] NERC June 9, 2010 Petition at 66.

[15] October 2010 Order, 133 FERC ¶ 61,061 at P 50.

[16] North American Electric Reliability Corp., Informational Filing, Docket Nos. RR09-7-000, RR10-11-000 (filed Dec. 23, 2010).

will be conducted in a more focused manner through Spot Checks of the Regional Entity's auditing of key Reliability Standards and key registered functions. According to NERC, this effort will include validation of a Regional Entity's Spot Checks of registered entities.

19. NERC states that is has initiated the key reliability Spot Check Program with a Spot Check focused on Reliability Standard PRC-005, Transmission and Generation Protection System Maintenance and Testing. NERC states that the results were presented to the NERC Board of Trustees Compliance Committee in January 2011, to the stakeholders on February 16, 2011, and that a final public report would be targeted for release in March 2011.[17]

c. Commission Determination

20. The October 2010 Order did not approve NERC's proposal to delete section 402.1.3.2. Rather, the Commission directed NERC to justify the elimination of the audit validation requirement in section 402.1.3.2. NERC's initial response, i.e., that Regional Entities have expressed the opinion that NERC's current audit validation process imposes burdens on registered entities, is unsupported. Moreover, as we stated in the October 2010 Order, the current audit validation process is meant to audit the Regional Entities not the registered entities. Accordingly, NERC has not provided persuasive evidence that the current audit validation process imposes any undue burden on registered entities. Accordingly, we reject NERC's proposal to remove section 402.1.3.2 from its Rules of Procedure. NERC is directed to submit a compliance filing within 30 days of the date of this order reinstating section 402.1.3.2 to the Rules of Procedure.

21. The October 2010 Order provided NERC with the opportunity to explain how its other tools are sufficient to monitor the effectiveness of the Regional Entities' Compliance Enforcement Programs. In response, NERC identified its new program of focused Spot Checks of Regional Entities, including of the Regional Entities' compliance audit functions. While NERC outlines the new program's goals in the Compliance Filing, it does not provide enough evidence to conclude, at this time, that the new program is sufficient to monitor the effectiveness of the Regional Entities' Compliance Enforcement Programs. Moreover, the new program has not been incorporated into NERC's Rules of Procedure, as it has only been submitted in the Compliance Filing. We note that the Spot Check Report NERC recently posted provides insights about how the Regional Entities have conducted audits of compliance with a single Reliability Standard, and identifies possible areas of improvement. While the focused Spot Check program

[17] On September 14, 2011, NERC posted on its website the final public report on its Key Reliability Standard Spot Check on PRC-005-1 (Spot Check Report).

could provide a meaningful tool for NERC to oversee the Regional Entities' compliance audits, it does not provide a sufficient basis at this time for eliminating the audit validation process.

22. NERC's proposal lacks the level of detail to demonstrate how NERC might be held accountable to achieve effective oversight. In addition, as NERC's new program has not been incorporated into NERC's Rules of Procedure, elimination of section 402.1.3.2 is premature at this time. Because effective compliance audits are essential to implement mandatory and enforceable Reliability Standards, we are not inclined to make any changes in NERC's oversight activities now that could adversely affect the quality of these audits. We encourage NERC to complete its development of this alternative approach to measuring the performance of the Regional Entities and to include a clear set of goals that will be attained that would allow performance of NERC's oversight to be measured. Once it does so, should NERC wish to delete section 402.1.3.2 from its Rules of Procedure, it may propose to do so in the compliance filing directed herein or in another proceeding.

3. CMEP Section 3.1.5.3

a. October 2010 Order

23. In its June 9, 2010 Petition, NERC proposed to add new CMEP section 3.1.5.3 to address participation in a Regional Entity compliance audit by persons other than the audit team of the Regional Entity conducting the audit. Specifically, this subsection addressed participation by: (i) NERC staff, which may include NERC contractors; (ii) members of the Regional Entity's compliance staff, in addition to the audit team; (iii) with permission of the Regional Entity, compliance staff from other Regional Entities; (iv) representatives of Applicable Governmental Authorities, including the Commission, to whose reliability jurisdiction the registered entity is subject; and (v) at the request of the registered entity, representatives of other registered entities to attend the audit for educational purposes.

24. NERC stated in its June 9, 2010 Petition that the audit team leader, or other staff of the Regional Entity conducting the audit:

> will communicate in advance with any observers or other attendees to ensure there are no undue disruptions to the audit . . . no conflicts of interest, and no other considerations that in the judgment of the Compliance Audit team leader may be detrimental to the conduct and quality of the audit. . . . If the Compliance Audit team leader identifies any such issues, he/she shall work with the proposed observers or attendees to facilitate

> observation in a less disruptive manner; or, alternatively . . . to schedule their participation in, observation of, or attendance at a different Compliance Audit in which such issues are not presented.[18]

25. In the October 2010 Order, the Commission rejected NERC's proposal to allow representatives of other registered entities to attend compliance audits.[19] The Commission recognized potential benefits of the proposal from, for example, faster dissemination of lessons learned from compliance audits. The Commission, however, found that the proposal could reduce the overall effectiveness of compliance audits because the frank exchange of information and views, particularly confidential information, between the Regional Entity auditors and the audited registered entity may be hindered by the presence of another registered entity. It was also not clear to the Commission how a possible violation that is discovered during a compliance audit attended by representatives of other registered entities could remain non-public until NERC files a Notice of Penalty with the Commission, as required by section 39.7(b)(4) of the Commission's regulations.[20]

b. <u>Compliance Filing</u>

26. In its Compliance Filing, NERC removed its proposed language in section 3.1.5.3 that would have allowed participation in compliance audits by persons other than the audit team of the Regional Entity. NERC, however, included the following proposed amendment to section 3.1.5.3:

> In addition, at the request of the Registered Entity being audited, the Regional Entity may allow attendance at the compliance audit by:
> (1) representatives of corporate affiliates of the Registered Entity being audited that are Registered Entities or that provide compliance services, support or oversight to the Registered Entity being audited, and
> (2) representatives of Registered Entities whose compliance activities are conducted by the Registered Entity being audited or by the same corporate entity that conducts the compliance activities of the Registered Entity being audited (e.g., representatives of other members of a Joint Registration Organization or of participants in a Coordinated Functional Registration

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[18] NERC June 9, 2010 Petition at 103.

[19] October 2010 Order, 133 FERC ¶ 61,061 at P 110. The Commission otherwise approved section 3.1.5.3.

[20] 18 C.F.R. § 39.7(b)(4) (2011).

> pursuant to Section 500 of the Rules of Procedure). Each such additional attendee must execute a confidentiality agreement approved by the Regional Entity.

27. NERC states that it included the proposed amendment in response to comments that identified several scenarios where entities other than the registered entity being audited could have a legitimate interest (or even a role) in the compliance audit. According to NERC, these scenarios include: (1) where an affiliate of the registered entity being audited provides compliance-related services, support or oversight to the registered entity; (2) where an affiliate of the registered entity being audited is also a registered entity; and (3) where the registered entity being audited is responsible for the compliance activities of other entities through a Joint Registration or a Coordinated Functional Registration.

28. NERC also states that with respect to the situation in which one or more affiliates of the audited registered entity being audited are also registered entities, the Commission has directed NERC expressly to consider in Notices of Penalty the compliance record and performance of those affiliated registered entities.[21] NERC contends that in such scenarios, participation by representatives of such affiliates may be necessary to present the audited registered entity's evidence of compliance in the compliance audit. Furthermore, NERC believes it is important that affiliated registered entities share their compliance information and experiences with the objective that the same or similar instances of noncompliance are not repeated by different registered entities within the same corporate organization.

29. NERC further states that in each of the scenarios contemplated, the additional attendees would have a direct, substantive, legitimate interest in the compliance audit, but the scope of additional attendees would be much more limited than what NERC earlier proposed. NERC states that the direct and substantive interest in the compliance audit of the attendees it now proposes, along with the requirement that they execute confidentiality agreements approved by the Regional Entity, should not hinder the free exchange of information and views between the Regional Entity auditors and the registered entity being audited.

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[21] NERC cites *North American Electric Reliability Corp.*, 132 FERC ¶ 61,182, at P 7 (2010), in which the Commission stated that future Notices of Penalty should explain how NERC and the Regional Entities assessed whether the instant violations may reflect recurring conduct "by the same registered entity or by an affiliate or department that is operated by the same corporate entity or whose compliance activities may be conducted by that entity."

c. Commission Determination

30. We accept NERC's revised CMEP section 3.1.5.3. NERC is responsive to the Commission's concerns articulated in the October 2010 Order. First, the revised provision provides that "at the *request* of the Registered Entity being audited, the Regional Entity *may* allow attendance at the compliance audit" by corporate affiliates. This language makes clear that the ability to have corporate affiliates in attendance is not a right but, rather, must be requested by the registered entity and be subject to the discretion of the Regional Entity at all times during the audit. Second, the revised Section 3.1.5.3 requires that such affiliates, if permitted to attend a compliance audit by the Regional Entity, must execute a confidentiality agreement approved by the Regional Entity. This language addresses the concern stated in the October 2010 Order to assure that any possible violations identified during an audit will remain non-public until NERC files a Notice of Penalty with the Commission. Accordingly, we accept this revised provision, subject to the discussion below.

31. NERC's Compliance Filing states that the audit team leader, or other staff of the Regional Entity conducting the audit "shall work with the proposed observers or attendees to facilitate observation in a less disruptive manner; or, alternatively . . . to schedule their participation in, observation of, or attendance at a different Compliance Audit in which such issues are not presented."[22] We understand this provision as allowing an audit team leader flexibility to structure the audit to avoid any disruptions.

B. WECC Hearing Procedures

1. Compliance Filing

32. NERC and WECC propose to amend the WECC Hearing Procedures to include a shortened hearing procedure and bring WECC's Hearing Procedures in conformity with section 1.3.2 of NERC's *Pro Forma* Hearing Procedures. NERC and WECC state that they informed the Commission, in a report submitted in Docket Nos. RR06-1-026 and RR07-7-008, of their intention to include the proposed amendments in the Compliance Filing, after they obtained approval for the amendments from the WECC and NERC Boards.

2. Commission Determination

33. The Commission approves the amendments to the WECC Hearing Procedures, which are included in Exhibit D to the NERC-WECC Delegation Agreement, to include a

[22] NERC Compliance Filing, Attachment 12A at 10.

shortened hearing procedure consistent with Commission-approved section 1.3.2 of NERC's *Pro Forma* Hearing Procedure.

C. NPCC and FRCC Quarterly Reporting Requirement

1. NERC Correspondence

34. In separate compliance filings to the Commission dated June 30, 2010, NERC and NPCC and NERC and FRCC requested the termination of their quarterly reporting requirements that were established in a December 19, 2008 Commission Order.[23] With respect to NPCC, the reporting requirement involved information concerning the use of "technical committee consultations." For FRCC, the reporting requirement involved information concerning the use of a "compliance committee review process."

35. NERC and NPCC maintain that the reporting requirement is no longer necessary because the provision formerly allowing the use of "technical committee consultations" in enforcement proceedings was deleted from the version of the NERC-NPCC Delegation Agreement that was approved by the Commission in the October 2010 Order.[24]

36. Similarly, NERC and FRCC maintain that the reporting requirement is no longer necessary because the provisions governing the use of a "compliance committee review process" were subsequently deleted in the version of the NERC-FRCC Delegation Agreement filed on March 10, 2010,[25] which was approved by the Commission on July 12, 2010.[26] Specifically, NERC and FRCC assert that FRCC has now adopted the NERC CMEP with no deviations, the NERC-FRCC Delegation Agreement specifically states that there are no deviations, and there is no longer an FRCC-specific CMEP included as an attachment to the NERC-FRCC Delegation Agreement.[27]

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[23] *North American Electric Reliability Corp.*, 125 FERC ¶ 61,330 (2008).

[24] North American Electric Reliability Corp., Compliance Filing, Docket Nos. RR06-1-025, RR07-3-004, RR07-3-005, at 2 (filed June 30, 2010).

[25] North American Electric Reliability Corp., Petition, Docket No. RR10-7-000 (filed March 10, 2010).

[26] *North American Electric Reliability Corp.*, 132 FERC ¶ 61,024, at P 28 (2010), *order on reh'g*, 133 FERC ¶ 61,190.

[27] North American Electric Reliability Corp., Compliance Filing, Docket Nos. RR06-1-024, RR07-8-004, RR07-8-005, at 2 (filed June 30, 2010).

2. Commission Determination

37. With the elimination of the referenced provisions in the current NERC-NPCC Delegation Agreement and NERC-FRCC Delegation Agreement, we conclude that it is appropriate to discontinue the subject quarterly reporting requirements.

The Commission orders:

(A) NERC's Compliance Filing is hereby conditionally accepted, as discussed in the body of this order.

(B) NERC is hereby required to submit a compliance filing within 30 days from the date of this order, as discussed in the body of this order.

(C) The Commission hereby approves the proposed amendments to the WECC Hearing Procedures, as discussed in the body of this order.

(D) The Commission hereby terminates the quarterly reporting requirements for NERC, NPCC and FRCC, as discussed in the body of this order.

By the Commission. Commissioner Spitzer is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.