

143 FERC ¶ 61,052
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

North American Electric Reliability Corporation

Docket No. FA11-21-000

ORDER ON COMPLIANCE

(Issued April 19, 2013)

1. On February 1, 2013, the North American Electric Reliability Corporation (NERC) filed written criteria for determining whether a NERC activity can be funded under section 215 of the Federal Power Act (FPA),¹ in compliance with the Commission's November 2, 2012 order in this audit proceeding.² NERC developed the proposed criteria in response to Recommendation No. 37 in the Office of Enforcement's May 4, 2012 Audit Report (Audit Report).³ As discussed in this order, the Commission approves NERC's proposed criteria with modifications. Going forward, NERC will apply these criteria, as modified, in determining whether its activities are eligible for funding under FPA section 215.

I. Background

A. Regulatory History

2. FPA section 215 requires the Commission to certify an Electric Reliability Organization (ERO) to develop mandatory and enforceable Reliability Standards, subject

¹ 16 U.S.C. § 824o (2006).

² *North American Electric Reliability Corp.*, 141 FERC ¶ 61,086, at P 30 (2012) (November 2 Order).

³ *North American Electric Reliability Corp.*, Docket No. FA11-21-000 (May 4, 2012) (delegated letter order with Audit Report attached).

to Commission review and approval. In July 2006, the Commission certified NERC as the ERO.⁴

3. FPA section 215(c)(2)(B) provides that the ERO must have rules that “allocate equitably reasonable dues, fees, and other charges among end users for all activities under this section.”⁵ On February 3, 2006, the Commission issued Order No. 672 to implement the requirements of FPA section 215, generally providing for Commission authorization of funding for “statutory” functions (i.e., those functions carried out pursuant to FPA section 215).⁶

B. Financial Performance Audit of NERC

4. On August 22, 2011, the Division of Audits in the Commission’s Office of Enforcement (Enforcement) informed NERC by letter that it was commencing a financial performance audit of NERC pursuant to FPA section 215 to evaluate its “budget formulation, administration, and execution.”⁷

5. On May 4, 2012, Enforcement issued its performance Audit Report by delegated letter order. The delegated letter order stated that the Audit Report covered the period from August 23, 2006 to March 14, 2012, and contained eleven findings of fact and 42 recommendations.

6. On May 15, 2012, NERC filed with the Commission a proposed schedule for a paper hearing process to address the 42 recommendations made in the Audit Report. Also on May 15, 2012, NERC filed a request for rehearing of the delegated letter order issued by Enforcement, but NERC stated that its rehearing request would be rendered moot if the Commission adopted NERC’s proposed hearing process. On June 4, 2012,

⁴ *North American Electric Reliability Corp.*, 116 FERC ¶ 61,062 (2006) (ERO Certification Order), *order on reh’g and compliance*, 117 FERC ¶ 61,126 (2006), *order on compliance*, 118 FERC ¶ 61,030 (2007), *order on clarification and reh’g*, 119 FERC ¶ 61,046 (2007), *aff’d sub nom. Alcoa Inc. v. FERC*, 564 F.3d 1342 (D.C. Cir. 2009).

⁵ 16 U.S.C. § 824o(c)(2)(B) (2006).

⁶ *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 (2006), *order on reh’g*, Order No. 672-A, FERC Stats. & Regs. ¶ 31,212 (2006).

⁷ 16 U.S.C. § 824o (2006); 18 C.F.R. § 39.2(d) (2012). The August 22, 2011 audit letter to NERC is available on the Commission’s eLibrary document retrieval system in Docket No. FA11-21-000.

the Commission issued an Order on Procedures adopting NERC's proposed paper hearing process with modifications.⁸

7. The Audit Report noted that NERC did not have written criteria in place to determine whether activities should be funded under FPA section 215. Enforcement concluded that written criteria could assist in the evaluation of NERC's budgets and guide decisions as to what should be funded under FPA section 215. The Audit Report recommended that NERC do the following:

Recommendation No. 37: Establish written criteria for determining whether a reliability activity should be funded under section 215 through coordination and discussion with Commission staff and stakeholders. Submit to audit staff the criteria established through this collaborative process.

Recommendation No. 38: Identify all ERO activities funded under section 215, detailing at a minimum: the purpose of the activity, a description, and the justification for using section 215 finding. Submit all documentation to audit staff for these reliability activities.

8. In its initial brief, NERC contested all of the Audit Report's eleven findings and 22 of the 42 recommendations, and NERC proposed revisions to several recommendations.⁹ In its responsive brief, Enforcement accepted or conditionally accepted ten of NERC's proposed revised recommendations.¹⁰ NERC, in its reply brief, accepted many of Enforcement's proposed conditions, including, *inter alia*, Audit Report Recommendation No. 37, that NERC should develop written criteria in an open stakeholder process.¹¹

⁸ *North American Electric Reliability Corp.*, 139 FERC ¶ 61,179 (2012) (Order on Procedures).

⁹ *North American Electric Reliability Corp.*, Docket No. FA11-21-000, July 19, 2012 Initial Brief.

¹⁰ Office of Enforcement, Docket No. FA11-21-000, August 20, 2012 Response Brief.

¹¹ *North American Electric Reliability Corp.*, Docket No. FA11-21-000, September 10, 2012 Reply Brief at 46.

9. On November 2, 2012, the Commission issued an order addressing Recommendation Nos. 37 and 38, as well as NERC's 2013 business plan and budget.¹² In the November 2 Order, the Commission directed NERC to develop and file by February 1, 2013, written criteria for determining whether a NERC reliability activity is eligible to be funded under FPA section 215.¹³ The Commission concluded that the criteria should be specific enough so that when the criteria are applied to NERC's future business plans and budgets, the Commission can ensure that all NERC's activities funded pursuant to FPA section 215 are statutory.¹⁴ The Commission stated its intent to issue an order expeditiously, to ensure application of the criteria to NERC's 2014 business plan and budget.¹⁵

10. On January 16, 2013, the Commission approved a settlement agreement between Enforcement and NERC over the audit. The order approving the settlement stated:

The Settlement Agreement indicates that nothing in the Settlement Agreement limits the Commission's ability to determine the sufficiency of the criteria NERC will submit to the Commission on February 1, 2013 regarding section 215 of the FPA or whether any NERC activity is or is not eligible for funding under section 215 of the FPA. In approving the Settlement Agreement, the Commission makes no finding as to the sufficiency of the criteria NERC will submit to the Commission or whether any NERC activity is or is not eligible for funding under section 215 of the FPA. The Commission will address those issues in a subsequent order.¹⁶

¹² November 2 Order, 141 FERC ¶ 61,086 at P 30. The November 2 Order addressed the two audit recommendations in Docket No. FA11-21-000 and the budget and business plan in Docket No. RR12-13-000. Although the two issues were addressed in the same order, the Commission made clear that the two dockets were not consolidated.

¹³ *Id.*

¹⁴ *Id.* P 31. The ERO is required to file with the Commission its proposed entire annual budget for statutory and non-statutory activities. 18 C.F.R. § 39.4 (2012).

¹⁵ November 2 Order, 141 FERC ¶ 61,086 at P 30. By adopting Recommendation Nos. 37 and 38 in the November 2 Order and requiring NERC to submit the criteria directly to the Commission, the Commission eliminated the requirement in Recommendation No. 37 that NERC submit the criteria to audit staff. NERC developed the criteria through a stakeholder process. NERC February 1, 2013 Filing at 8-12.

¹⁶ *North American Electric Reliability Corp.*, 142 FERC ¶ 61,042, at P 12 (2013).

C. NERC Filing

11. In its filing, NERC proposes eleven criteria, three of which have sub-criteria, phrased in the form of questions, with an affirmative answer indicating that the activity is eligible for statutory funding.¹⁷ NERC explains that for those criteria that have sub-criteria, in order for a proposed activity to fall within the criterion, the activity must satisfy at least one of the criterion's sub-criteria.¹⁸ NERC states that the proposed criteria are based on the text of FPA section 215, the Commission's regulations at 18 C.F.R. Part 39, and Commission orders addressing the scope of NERC's activities. NERC states that it developed the proposed criteria through stakeholder input, including several rounds of stakeholder comments and revisions.

12. NERC states that the proposed criteria serve two purposes: (1) for internal use by NERC to determine whether activities fall within FPA section 215 and thus should be classified as "statutory" and eligible for funding through the FPA section 215 funding mechanism; and (2) for use in NERC's annual business plan and budget filings as a basis for demonstrating that NERC's proposed activities are statutory and eligible for funding pursuant to FPA section 215. NERC states that the criteria are not intended to determine whether an activity, assuming it is statutory, should be undertaken as an efficient use of ERO resources. NERC does not state that Regional Entities will use these criteria in developing their business plans and budgets. NERC specifies that the criteria "are not intended to address any activities of Regional Entities that have been specifically approved by the Commission as FPA [section] 215 activities."¹⁹

D. Notice and Responsive Pleadings

13. Notice of NERC's filing was published in the *Federal Register*, 78 Fed. Reg. 9687 (2013), with comments due on or before February 22, 2013. Edison Electric Institute (EEI) and Large Public Power Council (LPPC) filed timely comments. EEI moved to intervene and to consolidate Docket Nos. FA11-21-000 and RR12-13-000. NERC filed a response to EEI's motion to intervene, motion to consolidate, and comments. Western Interconnection Regional Advisory Body (WIRAB) moved to comment out of time. American Public Power Association (APPA), National Rural Electric Cooperative

¹⁷ Criterion I (development of Reliability Standards), Criterion II (monitoring and enforcement of compliance with Reliability Standards), and Criterion III (periodic assessments) each have sub-criteria.

¹⁸ NERC February 1, 2013 Filing at 13 ("The first introductory paragraph to the written criteria states that where sub-criteria are listed below a major criterion, the proposed activity should be a positive answer to at least one of the sub-criteria.").

¹⁹ *Id.* at 7.

Association (NRECA), and Transmission Access Policy Study Group (TAPS) jointly moved to comment and intervene out of time.

14. EEI states that NERC's proposed criteria are overly-broad and would allow the ERO's functions to stray from the core functions in FPA section 215. EEI requests that the Commission direct NERC to confine the proposed criteria to developing Reliability Standards, enforcing Reliability Standards, and periodically assessing the reliability and adequacy of the Bulk-Power System. EEI proposes deleting Criteria IV through XI. EEI states that prior Commission acceptance of a given NERC function should not conclusively determine that the function falls within the scope of FPA section 215. EEI further states that identifying an activity as eligible for statutory funding is "not a reason to conclude that NERC must undertake that activity or that the activity must be a priority."²⁰

15. LPPC states that NERC's proposed criteria reasonably catalog current and anticipated activities specified in FPA section 215. LPPC states that FPA section 215 was intended to be read broadly and that "there is no reason to think that Congress intended to confine the ERO to the narrowest vision of its mission by depriving it of funds needed to effectively promote system reliability through activities logically ancillary to the ERO's core functions."²¹ LPPC states that accepting the proposed criteria does not mean that a given NERC activity will be funded under FPA section 215, as that determination can be made as part of NERC's annual business plan and budget process.

16. In responsive comments, NERC states that the Commission's intent in requiring NERC to develop and file proposed criteria was not to define the scope of FPA section 215 or determine whether a specific current or proposed activity is statutory or whether NERC should prioritize specific activities.²² Rather, NERC states, the intent was to have written criteria in place for NERC to use in determining whether proposed reliability activities are statutory and in demonstrating to the Commission in NERC's annual business plan and budget filings that NERC's proposed activities are statutory. NERC states that all of the activities in the proposed criteria are rooted in FPA section 215 and that none of the proposed criteria are based solely on the activity having been approved in a prior Commission order.

17. APPA, NRECA, and TAPS state that they support NERC's proposed criteria as an appropriate tool to be applied by NERC to screen proposed activities to determine whether they are eligible for statutory funding.

²⁰ EEI Comments at 6.

²¹ LPPC Comments at 4-5.

²² NERC March 6, 2013 Filing at 5-7.

18. WIRAB states that the Commission should interpret FPA section 215 as “broadly as possible, consistent with Congress’ original intent in enacting section 215 to promote electric system reliability.”²³ WIRAB states that the proposed criteria should encompass all activities that advance the goals of FPA section 215; that are required by Commission tariffs, rules, orders and regulations; and that advance the reliability of the electric grid, even if not explicitly required of the ERO. WIRAB also states that the proposed criteria should allow an independent organization to provide reliability services and tools that would otherwise qualify for funding under a broad interpretation of FPA section 215 if the organization has demonstrated that it is capable of providing the tools and services; it has a secure, long-term funding source that does not allow for free riders; and it has a mission and governance structure necessary to ensure that its decisions are imbued with the public interest. Further, WIRAB states that the proposed criteria should exclude activities related to the distribution system unless such facilities impact the reliability of the Bulk-Power System.

II. Discussion

A. Procedural Matters

19. We will allow the late-filed comments from WIRAB, the late-filed joint comments from APPA, NRECA, and TAPS, and NERC’s responsive comments given their interest in the proceeding, the early state of the proceedings, and the absence of undue prejudice or delay.

1. Motions to Intervene

20. EEI states that it should be allowed to intervene and have the right to participate as a party based on fundamental principles of due process. EEI acknowledges that, in the Order on Procedures, the Commission rejected previous attempts to intervene in this proceeding. However, EEI states that the Commission will determine in this proceeding “what the statute permits the Commission to require its regulated entities to finance . . . [t]hese amounts are not insignificant, as NERC’s 2013 Budget requires more than \$43,000,000 to be paid by U.S. entities for 2013.”²⁴ EEI states that many of its member companies “pay mandatory assessments to fund NERC’s FPA Section 215 activities as the ERO, the scope of which will be determined in this proceeding.”²⁵

²³ WIRAB Comments at 3.

²⁴ EEI Comments at 3.

²⁵ *Id.*

21. In its responsive comments, NERC states that it does not object to EEI intervening if the Commission allows intervention.

22. APPA, NRECA, and TAPS state that good cause exists for their late intervention because their filing was made two days after NERC's responsive filing; they accept the record as it stands; their comments support previously filed submissions; and intervention will not disrupt the proceedings or otherwise prejudice or burden the parties. APPA, NRECA, and TAPS further state that, at a minimum, their late-filed comments should be accepted and considered.

Commission Determination

23. We deny the motions to intervene. While allowing entities to comment, the Order on Procedures did not permit entities to intervene in the first phase of this audit proceeding.²⁶ We see no reason to modify the Order on Procedures during this phase of the audit proceeding. The entities seeking to intervene will not be deprived of due process. NERC will use the proposed criteria during the 2014 business plan and budget development process, in which NERC will determine its funding requirement based on the application of the proposed criteria to NERC's activities. Once filed, entities may seek to intervene in the 2014 NERC business plan and budget proceeding. Intervenors in the budget docket may challenge the criteria as well as the application of the criteria.

2. Motion to Consolidate

24. EEI states that, while NERC's proposed statutory criteria filing is in part responsive to the Audit Report in Docket No. FA11-21-000, "it is directly responsive to the [November 2 Order] . . . and grew out of the concerns presented in comments, including those filed by EEI in the [Docket No.] RR12-13-000 proceeding."²⁷

25. In response, NERC opposes consolidation, noting that: (1) no requests for rehearing were filed in Docket No. RR12-13-000 after the Commission issued the November 2 Order; (2) the caption of the November 2 Order explicitly stated that the two dockets were "Not Consolidated;" (3) the November 2 Order explicitly noted that the statutory criteria would be used to develop the 2014 business plan and budget; and (4) the statutory criteria were developed in response to the Audit Report in Docket No. FA11-21-000.

²⁶ Order on Procedures, 139 FERC ¶ 61,179 at P 11.

²⁷ EEI Comments at 4.

Commission Determination

26. We deny the motion to consolidate Docket Nos. FA11-21-000 and RR12-13-000. We agree with NERC that consolidating the two dockets would be contrary to the November 2 Order, in which the Commission stated that “[w]e are not consolidating the two proceedings in this order and, therefore, the compliance filing directed herein should be submitted to the Commission in the Performance Audit proceeding in Docket No. FA11-21-000.”²⁸ Moreover, Docket No. RR12-13-000 is closed and the rehearing deadline has passed. We will not disturb the final, non-appealable order in Docket No. RR12-13-000 by consolidating that proceeding with Docket No. FA11-21-000.²⁹

B. Substantive Issues

27. The Commission approves NERC’s proposed criteria with modifications.³⁰ We find NERC’s proposed criteria to be, on the whole, based on a reasonable interpretation of FPA section 215. Going forward, NERC will apply these criteria, as modified, in determining whether its activities are eligible for funding under FPA section 215. However, in approving NERC’s criteria with modifications, we do not make any determinations as to the application of the proposed criteria to specific NERC activities beyond those activities specifically identified in the proposed criteria.³¹

1. FPA Section 215 Funding Eligibility

28. NERC’s proposed criteria are responsive to Recommendation No. 37 in the Audit Report. The Audit Report concluded that NERC “did not establish written criteria to determine whether its activities are statutory.”³² The proposed criteria identify categories

²⁸ November 2 Order, 141 FERC ¶ 61,086 at P 32.

²⁹ See, e.g., *Old Dominion Electric Cooperative v. Public Service Electric and Gas Co.*, 108 FERC ¶ 61,055, at P 9 (2004) (denying request to reopen a final, non-appealable order based on the need for finality).

³⁰ In the discussion below, we review NERC’s eleven proposed criteria *seriatim*. In the attachment to this order, the Commission includes a redlined version of NERC’s proposed criteria reflecting the Commission’s directed modifications.

³¹ For example, we do not address the Electric Sector Information Sharing and Analysis Center program because that activity is not specifically identified in the proposed criteria. By contrast, we address the organizational and system operator certification programs because those activities are specifically identified, respectively, in sub-criteria B and C of Criterion II.

³² Audit Report at 77.

of activities that are eligible for funding pursuant to FPA section 215. While we approve NERC's proposed criteria with modifications, our determination does not mean that the Commission must accept future NERC business plans and budgets that are based on the application of NERC's proposed criteria.³³ Instead, as in past budget cycles, the Commission's determination regarding the appropriateness of NERC's activities and funding request will be made in the annual NERC business plan and budget proceedings.³⁴ As indicated above, intervenors in the budget docket may challenge the criteria as well as the application of the criteria.

29. We find NERC's approach to be generally reasonable. The lack of clarity in FPA section 215 as to what ERO "activities" are eligible for funding under the statute, beyond general references to "develop[ing] and enforce[ing] . . . reliability standards" and "conduct[ing] periodic assessments of the reliability and adequacy of the bulk-power system," renders FPA section 215 susceptible to competing interpretations.³⁵ Because the statute does not directly address the specific types of activities that are eligible for funding under FPA section 215, our review of the written criteria centers on whether the criteria reflect a reasonable interpretation of the statute.³⁶

30. FPA section 215 does not restrict the scope of the ERO's activities in furtherance of the goals of FPA section 215 beyond what is explicitly prohibited in FPA section 215(i). Thus, for example, FPA section 215 provides that the ERO must have the "ability to develop and enforce" Reliability Standards.³⁷ While the term "enforce" suggests that a violation or alleged violation has occurred, it is reasonable to understand the statute as

³³ This order does not address any activities of the Regional Entities that the Commission has specifically approved as FPA section 215 activities.

³⁴ Thus, NERC will comply with Recommendation No. 38 in its annual business plan and budget filings.

³⁵ 16 U.S.C. § 824o(c)(1), (g) (2006).

³⁶ *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843-44 (1984) (*Chevron*) ("[I]f the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute . . . a court may not substitute its own construction of a statutory provision for a reasonable interpretation made by the administrator of an agency."); *National Cable & Telecommunications Ass'n v. Brand X Internet Services*, 545 U.S. 967, 980 (2005).

³⁷ 16 U.S.C. § 824o(c)(1) (2006).

authorizing the ERO to engage in compliance activities, such as spot checks and audits, which are intended to identify non-compliance.³⁸

31. However, we reject NERC's proposal that an activity is eligible for funding if it will "involve or support" Reliability Standards development, enforcement, and other identified functions. NERC does not explain the meaning or intent of this phrase. We conclude that the standard of "involve or support," as a basis to determine funding, is too broad and does not provide any meaningful limitation on funding.³⁹ Accordingly, the Commission directs NERC to replace "involve or support" (and "involve" and "support" when they appear individually) with "necessary or appropriate" throughout the proposed criteria, as identified in the attachment to this order. The Commission concludes that the phrase "necessary or appropriate" allows activities to be funded that are reasonably consistent with the activities identified in FPA section 215. Use of the phrase "necessary or appropriate" is specific enough for the Commission, NERC and the industry to readily identify what should be funded under FPA section 215 and what activities should not. The phrase "necessary or appropriate" creates a clearer linkage to the activities in FPA section 215 than "involve or support" does, thereby eliminating ambiguities while retaining a reasonable degree of flexibility.

³⁸ See *Corpus Juris Secundum*, Public Administrative Law and Procedure § 109 (Implied Powers) (updated December 2012) ("[I]n the absence of restricting limitations of public policy or express prohibitions . . . [administrative agencies] possess the powers reasonably necessary and fairly appropriate to make effective the express powers granted to, or duties imposed on them, and to accomplish the purposes of the legislation which established them.") (footnotes omitted); see also *American Trucking Ass'n v. United States*, 344 U.S. 298, 312 (1953) (promulgation of leasing rules for authorized carriers falls within the ICC's power, despite the absence of specific reference to leasing practices in the Interstate Commerce Act); *Northern States Power Corp. v. FPC*, 118 F.2d 141, 143 (1941) ("[i]f the Commission is intelligently to exercise its extensive regulatory and supervisory power, it must have been intended that it shall have power to do everything essential to the execution of its clearly granted powers and the achievement of the purposes of the legislation").

³⁹ See *Corpus Juris Secundum*, Public Administrative Law and Procedure § 109 (Implied Powers) (updated December 2012) ("The implied powers of administrative agencies and bodies are not to be extended beyond fair and reasonable inferences, or what may be necessary for the just and reasonable execution of the powers expressly granted."); see also *American Jurisprudence*, 2nd Ed., Administrative Law, § 57 (Implied and Inherent Powers) (updated November 2012) ("Generally, administrative agencies have the implied or incidental powers that are reasonably necessary in order to carry out the powers expressly granted.").

32. Our approval of NERC's proposed criteria with modifications does not foreclose NERC from revising the criteria from time to time, provided NERC submits the revisions to the Commission for review. Moreover, as explained in NERC's petition, the proposed criteria do not address NERC's priorities (i.e., deciding what statutory activities the ERO should pursue). Similarly, this order does not address whether NERC should pursue certain activities that are eligible for FPA section 215 funding based on an application of the proposed criteria. We expect that NERC will prioritize its statutory activities as part of NERC's annual business plan and budget development process.

2. Analysis of NERC's Proposed Criteria

a. Criterion I

Does the activity involve or support the development of Reliability Standards?

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

Commission Determination

33. We determine that the activities identified in Criterion I are eligible for funding under FPA section 215. FPA section 215 explicitly authorizes the development of Reliability Standards by the ERO in subsections (a)(2) (“‘ERO’ mean[s] the organization certified by the Commission . . . the purpose of which is to establish and enforce reliability standards for the bulk-power system”) and (c)(1) (“such ERO . . . has the ability to develop and enforce . . . reliability standards that provide for an adequate level of reliability”). The activities under Criterion I fall within the scope of Reliability Standards development, either by addressing the drafting or revising of Reliability Standards or in terms of studying reliability issues that could lead to the development or revision of Reliability Standards.

34. The comments support NERC’s position that the activities in Criterion I are eligible for funding under FPA section 215. However, as noted above, “involve or support” is too vague and should be replaced with “necessary or appropriate.” As shown in the attachment to this order, the Commission directs NERC to replace “involve or support,” or “involve” or “support” individually, wherever the language appears in the proposed criteria, with “necessary or appropriate.”

b. Criterion II

Does the activity involve or support the monitoring and enforcement of compliance with Reliability Standards?

- A. Does the activity involve or support the identification and registration of users, owners, and operators of the Bulk Power System that are required to comply with Requirements of Reliability Standards applicable to the reliability functions for which they are registered?
- B. Does the activity involve or support the Certification of Reliability Coordinators, Transmission Operators and Balancing Authorities as having the requisite personnel, qualifications and facilities and equipment needed to perform these reliability functions in accordance with the applicable Requirements of Reliability Standards?
- C. Does the activity involve or support the Certification of system operating personnel as qualified to carry out the duties and responsibilities of their positions in accordance with the Requirements of applicable Reliability Standards?
- D. Does the activity involve or support conducting, participating in or overseeing compliance monitoring and enforcement activities pursuant to the NERC ROP and (through the Regional Entities) the Commission-approved delegation agreements?

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

- miss events, and other Bulk Power System monitoring activities?
4. Registered Entity internal processes for compliance with Reliability Standards, such as development, implementation and maintenance of internal reliability compliance programs?
- G. Does the activity involve the maintenance and provision of tools and services that are useful for the provision of adequate reliability, because they relate specifically to compliance with existing Reliability Standards and they proactively help avert Reliability Standard violations and Bulk Power System disturbances, but only in the absence of an independent organization stepping forward to provide the tool or service?

Commission Determination

35. We determine that the activities identified in Criterion II, as modified, are eligible for funding under FPA section 215. However, as explained below, we find that the concluding language in sub-criterion G (tools and services), qualifying eligibility on the “absence of an independent organization stepping forward to provide the tool or service,” should be removed. We also find, for the reasons discussed above, that the phrase “involve or support” should be replaced with “necessary or appropriate.”

36. The activities identified in Criterion II generally are reasonably tied to NERC and Regional Entity compliance monitoring and enforcement efforts. Compliance with and enforcement of Commission-approved Reliability Standards is explicitly provided for in FPA section 215 in subsections (b) (“All users, owners and operators of the bulk-power system shall comply with reliability standards that take effect under this section”); (c)(1) (“such ERO . . . has the ability to develop and enforce . . . reliability standards that provide for an adequate level of reliability”); (c)(2)(C) (“[the ERO must] provide fair and impartial procedures for enforcement of reliability standards”); and (e)(1) (“The ERO may impose . . . a penalty on a user or owner or operator of the bulk-power system for a violation of a reliability standard approved by the Commission”).

37. EEI contends that certain activities in Criterion II (i.e., sub-criteria B and C (certification of organizations and system operating personnel), F (training), and G (tools and services)) have only a tenuous link to compliance monitoring and enforcement and thus do not qualify for statutory funding. However, “compliance” and “enforcement” are not defined in the statute or in the legislative history of FPA section 215.⁴⁰ Also, the

⁴⁰ *Chevron*, 467 U.S. at 843 (“If, however, the court determines Congress has not directly addressed the precise question at issue, the court does not simply impose its own

statute's reference to "compliance" and "enforcement" suggests that FPA section 215 addresses more than post-violation enforcement and includes, as the Commission previously determined in Order No. 672, "pro-active compliance efforts by the ERO or a Regional Entity as well as after-the-fact investigations and imposition of penalties."⁴¹ We agree with LPPC that there is "no reason to think that Congress intended to confine the ERO to the narrowest vision of its mission."⁴²

38. The Commission agrees with EEI that the last clause of sub-criterion G ("but only in the absence of an independent organization stepping forward to provide the tool or service") should be removed. There is no reasonable basis in the statute to find that an activity is eligible for FPA section 215 funding only in the absence of an independent organization performing the same activity. However, we conclude that sub-criterion G should not be deleted in its entirety. We determine that statutory funding for activities necessary or appropriate for the "maintenance and provision of tools and services that are useful for the provision of adequate reliability, because they relate specifically to compliance with existing Reliability Standards," is a reasonable interpretation of FPA section 215.

c. Criterion III

Does the activity involve or support conducting and disseminating periodic assessments of the reliability of the Bulk Power System or monitoring the reliability of the Bulk Power System?

- A. Does the activity involve or support the preparation or dissemination of long-term, seasonal, and special assessments of the reliability and adequacy of the Bulk Power System?
- B. Does the activity involve or support measuring reliability performance – past, present and future; publishing or disseminating the results of such measurements; analyzing the results of such measurements; identifying and analyzing risks to reliability of the Bulk Power System based on such measurements;

construction on the statute, as would be necessary in the absence of an administrative interpretation. Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.").

⁴¹ 16 U.S.C. § 824o(b) (2006) ("All users, owners and operators of the bulk-power system shall comply with reliability standards that take effect under this section."); Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 456.

⁴² LPPC Comments at 4-5.

- and/or identifying approaches to mitigating or eliminating such risks?
- C. Does the activity involve investigating, analyzing, evaluating, and disseminating information concerning, the causes of major events and off-normal occurrences, and/or providing coordination assistance, technical expertise and other assistance to users, owners, and operators of the Bulk Power System in connection with Bulk Power System major events and off-normal occurrences, but not Real-time operating control of the Bulk Power System?
 - D. Is the activity reasonably necessary for awareness of circumstances on the Bulk Power System and to contribute to understanding the risks to reliability?
 - E. Does the activity involve gathering, analyzing and sharing with and among industry and government participants, information regarding the physical or cyber security of the Bulk Power System?
 - F. Does the activity involve the development and dissemination of Advisories/Recommendations/Essential Actions regarding lessons learned and potential reliability risks to users, owners, and operators of the Bulk Power System?
 - G. Does the activity involve or support data collection and analysis of information regarding Bulk Power System reliability matters mandated by the Commission?

Commission Determination

39. We determine that the activities identified in Criterion III are eligible for funding under FPA section 215. However, for the reasons discussed above, the phrase “involve or support” should be replaced with “necessary or appropriate.” FPA section 215(g) provides that the “ERO shall conduct periodic assessments of the reliability and adequacy of the bulk-power system in North America.” The activities identified in Criterion III are directly tied to the periodic assessment of the reliability and adequacy of the Bulk-Power System in that they include scheduled reliability assessments and assessments made in response to events on the Bulk-Power System.

40. EEI states that the activities listed in sub-criteria C, D, E, and F are not eligible for statutory funding. EEI states that these “situational awareness” activities are “useful and worthy efforts beneficial to reliability [but that] does not make these projects statutory functions of the ERO.”⁴³ EEI states that real-time situational awareness, by definition, is not the same as the “periodic assessments” required in FPA section 215. EEI recognizes

⁴³ EEI Comments at 25.

that the Commission has previously treated monitoring of the Bulk-Power System as a statutory function, but EEI urges the Commission to “reexamine its use of monitoring in this context and clarify that the monitoring included within the statute involves periodic assessments, but not real-time awareness.”⁴⁴

41. We believe that Criterion III is based on a reasonable interpretation of the “periodic assessments” requirement in FPA section 215(g). We reject EEI’s assertion that the activities in sub-criteria C, D, E, and F are not “periodic assessments” because they necessarily involve “real-time situational awareness activities and tools.” We are also not persuaded that the meaning of “periodic assessments” in FPA section 215(g) requires the exclusion of real-time monitoring of the Bulk-Power System. While EEI states that constant situational awareness renders the word “periodic” meaningless, we are not persuaded that was Congress’s intent. Rather, it is reasonable to conclude that the term “periodic” was meant to impose a minimum requirement on the ERO (i.e., that the ERO perform regular assessments) as opposed to a prohibition against real-time monitoring of the Bulk-Power System by the ERO.⁴⁵

d. Criterion IV

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

Commission Determination

42. Criterion IV is based on the reasonable premise that the Commission’s directives to NERC as the ERO are made pursuant to FPA section 215. Criterion IV is also consistent with the Commission’s past statement that “anything required of the ERO or a Regional Entity by the statute, Order No. 672 pursuant to the statute, or any subsequent Commission order pursuant to section 215 of the FPA is a statutory activity.”⁴⁶

⁴⁴ *Id.* at 26 (citing Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 202).

⁴⁵ Alternatively, the activities in Criterion III could be eligible for FPA section 215 funding as part of Criterion I (Reliability Standard development) because analyzing Bulk-Power System events may uncover reliability issues requiring development or revision of Reliability Standards or Criterion II (monitoring and enforcement of compliance with Reliability Standards) because the analyses may uncover violations of existing Reliability Standards.

⁴⁶ *North American Electric Reliability Corp.*, 117 FERC ¶ 61,091, at P 28 (2006) (citing ERO Certification Order, 116 FERC ¶ 61,062 at P 185).

43. NERC states that “the ERO is not in a position to second-guess the Commission.”⁴⁷ EEI states that Criterion IV should be deleted because, although a Commission directive “would be statutory, the existence of a Commission order is not a justification for NERC not to trace the activity back to the language of the statute itself.”⁴⁸

44. We approve Criterion IV without modification. Criterion IV is consistent with FPA section 215 as it merely states the premise that the Commission’s directives to the ERO are within the scope of the Commission’s FPA section 215 jurisdiction. Ultimately, it is the responsibility of the Commission to ensure that its directives to the ERO fall within the scope of FPA section 215. It would be inappropriate for NERC to operate from any other premise, unless NERC sought rehearing or judicial review of a Commission determination with which NERC disagreed. Moreover, because FPA section 215(e)(5) gives the Commission authority to “take such action as is necessary or appropriate against the ERO . . . to ensure compliance with a reliability standard or any Commission order affecting the ERO,” NERC could be sanctioned if it did not operate from the premise that a Commission directive to it is statutory unless and until modified, revoked or vacated on rehearing or judicial review or by a subsequent order.

e. Criterion V

Is the activity one that is required or specified by, or carries out, the provisions of NERC’s Rules of Procedure that have been approved by the Commission as “Electric Reliability Organization Rules” (defined in 18 C.F.R. §39.1) pursuant to FPA §215(f)?

Commission Determination

45. We approve Criterion V without modification. Criterion V raises the same issues addressed with respect to Criterion IV because the NERC Rules of Procedure are approved by order of the Commission.⁴⁹ EEI states that Criterion V should be deleted because NERC may develop Rules of Procedure addressing non-FPA section 215 activities. We find EEI’s concern to be misplaced because the statutory basis for the ERO Rules of Procedure, FPA section 215(f), requires that any Rule of Procedure “must be just, reasonable, not unduly discriminatory or preferential, . . . in the public interest and satisf[y] the requirements of subsection (c),” and the latter subsection only addresses

⁴⁷ NERC February 1, 2013 Filing at 28.

⁴⁸ EEI Comments at 16.

⁴⁹ 16 U.S.C. § 824o(f) (2006).

statutory activities. In addition, EEI does not identify any existing rule in the NERC Rules of Procedure solely applicable to non-statutory activities.

f. Criterion VI

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

Commission Determination

46. We approve Criterion VI with the modification, discussed above, replacing the word “involve” with “necessary or appropriate.” FPA section 215(e)(4) provides that the Commission “shall issue regulations authorizing the ERO to enter into an agreement to delegate authority to a regional entity for the purpose of proposing reliability standards to the ERO and enforcing reliability standards.” Moreover, the regional delegation agreements are approved by the Commission, and Commission-approved Section 1200 of the NERC Rules of Procedure requires Regional Entities to comply with all applicable ERO Rules of Procedure.

47. EEI states that Criterion VI, as proposed by NERC, should be deleted because it qualifies as statutory any Regional Entity oversight activities related to the Regional Entities’ performance of their delegated responsibilities. Instead, EEI states that the statutory criteria should require NERC to trace delegated authority oversight activities directly to the statute itself.

48. We determine that the activities identified in Criterion VI, as modified to include the phrase “necessary or appropriate,” are eligible for funding under section 215 of the FPA. FPA section 215(e)(4) specifically provides that “[t]he Commission shall issue regulations authorizing the ERO to enter into an agreement to delegate authority to a regional entity for the purpose of proposing reliability standards to the ERO and enforcing reliability standards.”

g. Criterion VII

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

Commission Determination

49. We approve Criterion VII without modification. FPA section 215(c) sets forth the conditions necessary for an entity to be certified as the ERO. The Commission's regulations governing NERC's periodic assessments of itself and the Regional Entities, 18 C.F.R. §39.3(c), provide that "[the Commission] will issue an order finding that the [ERO] meets the statutory and regulatory criteria or [direct the ERO to come into compliance]." The regulation further provides that "[i]f the ERO fails to comply . . . the Commission may institute a proceeding to enforce its order, including, if necessary and appropriate, a proceeding to consider decertification of the ERO."

50. NERC states that, because it must periodically demonstrate that it meets the statutory criteria for ERO certification, the activities in Criterion VII that are necessary or appropriate for maintaining this certification (e.g., periodic assessments of the performance of NERC and the Regional Entities) are eligible for statutory funding. EEI states that activities that are necessary for NERC to continue as the ERO should be traced directly to FPA section 215(c).

51. We determine that the activities identified in Criterion VII are eligible for funding under section 215 of the FPA and are necessary or appropriate for NERC to maintain its certification as the ERO.

h. Criterion VIII

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

Commission Determination

52. We approve Criterion VIII with the modification, discussed above, replacing the word "support" with "necessary or appropriate." NERC states that it is required to devote resources to respond to audits of NERC and the Regional Entities, addressing the performance of their responsibilities under FPA section 215, by the Commission. In turn, FPA section 215(e)(5) empowers the Commission to "take such action as is necessary or appropriate against the ERO . . . to ensure compliance with . . . any Commission order affecting the ERO or a regional entity." EEI states that Criterion VIII should be deleted because "responding to audits is not, by itself, a source of statutory authority to expend Section 215 funds . . . [a]ny expenditures related to audit costs should be sourced to the relevant enabling portion of the statute."⁵⁰

⁵⁰ EEI Comments at 18.

53. We determine that the activities identified in Criterion VIII are eligible for funding under FPA section 215. FPA section 215(e)(5) gives the Commission the authority to sanction the ERO for failure to comply with a Commission order, including failure to take actions in response to a final audit report in a Commission audit under 18 C.F.R. § 39.9(b) (“The Commission may periodically audit the [ERO’s] performance under this part.”). It would be unreasonable to withhold statutory funds from the ERO in responding to Commission audits.

i. Criterion IX

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

Commission Determination

54. We approve Criterion IX with the modification, discussed above, replacing the word “support” with “necessary or appropriate.” Article VII, Section 1 of NERC’s bylaws provide for the appointment of committees by the NERC Board of Trustees. Additionally, Commission-approved Section 1300 of NERC’s Rules of Procedure provides for the appointment of committees by the Board of Trustees and the appointment of subgroups by those committees. NERC states that it supports the committees by providing payment of committee expenses, provision of meeting space, and publication of reports. EEI states that Criterion IX should be deleted because providing support activities for NERC and the Regional Entity committees engaged in other activities is not a separate source of statutory authority.

55. We determine that the activities identified in Criterion IX are eligible for funding under FPA section 215. Under the terms of Criterion IX, the NERC committees, subcommittees, and working groups must be engaged in a statutory activity that falls within one or more of the other proposed criteria.

j. Criterion X

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

Commission Determination

56. We approve Criterion X with the modification, discussed above, replacing the word “involve” with “necessary or appropriate.” Criterion X encompasses activities for evaluating and analyzing NERC’s statutory activities for efficiency purposes. Criterion X is similar to Criterion IX because Criterion X also contains a qualification that the

“analysis and evaluation,” in order to be eligible for statutory funding, must be of a statutory activity that falls within one or more of the other proposed criteria.

57. NERC states that the Board of Trustees and NERC management engage in a strategic planning process to identify and develop strategic goals for the upcoming year. The self-analysis effort for NERC’s current and future activities involves the retention of consultants. NERC states that, although the self-analysis effort does not directly constitute a statutory activity, it results in improved efficiency and effectiveness in the performance of NERC statutory responsibilities. EEI states that Criterion X should be deleted because there is no statutory justification for funding activities that enhance the efficiency and effectiveness of other NERC activities with statutory funds.

58. We determine that the activities identified in Criterion X are eligible for funding under FPA section 215. Having the ERO continuously analyze and evaluate its activities for efficiency purposes is consistent with FPA section 215. As the ERO, NERC is tasked with essential activities, such as developing Reliability Standards and conducting compliance monitoring and enforcement activities.⁵¹ Also, under FPA section 215(c), the ERO must ensure that the dues, fees, and charges that it collects are “reasonable.” We believe that it is unreasonable to conclude that Congress intended to prohibit the ERO from allocating statutory funds to study ways in which the ERO can better perform its statutory activities and ensure that the level of dues, fees, and charges it collects are reasonable.

k. Criterion XI

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

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

- A. Technical Committees and Members’ Forum Programs.
- B. General and administrative (includes, but is not limited to, executive, board of trustees, communications, government affairs, and facilities and related services).

⁵¹ 16 U.S.C. § 824o(c)(1) (2006) (“[The ERO must have] the ability to develop and enforce . . . reliability standards that provide for an adequate level of reliability of the bulk-power system.”).

- C. Legal and Regulatory.
- D. Information Technology
- E. Human Resources
- F. Accounting and Finance.

Commission Determination

59. We approve Criterion XI with the modification, discussed above, replacing the word “support” with “necessary or appropriate.” Criterion XI encompasses all of NERC’s administrative and general activities and costs. NERC states that these administrative and general activities are necessary for the support and performance of all of NERC’s statutory activities and, more generally, to operate NERC as a functioning organization. NERC states that if NERC was to engage in any non-statutory activities in the future, its administrative and general costs would be allocated appropriately. EEI states that Criterion XI should be deleted because it is a “catchall” that classifies any administrative or overhead function that supports a statutory function as eligible to receive statutory funding. EEI states that there is no need for Criterion XI because administrative costs should instead be assigned directly to the underlying statutory activity.

60. We determine that the activities identified in Criterion XI are eligible for funding under FPA section 215. Criterion XI, as modified, states that, to be eligible for statutory funding, the administrative cost must be “necessary or appropriate” for other statutory activities that fall within one or more of the other proposed criteria. Further, we find that Criterion XI is consistent with FPA section 215 in that the costs associated with NERC’s administrative and general programs as they relate to FPA section 215 activities are essential to NERC’s functioning as the ERO.

The Commission orders:

The Commission hereby approves NERC’s proposed criteria for FPA section 215 funding eligibility with modifications, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

ATTACHMENT

CRITERION I

Is ~~Does~~ the activity ~~involve or support~~ necessary or appropriate for the development of Reliability Standards?

A. Is the activity ~~a (or part of a)~~ necessary or appropriate for Reliability Standards development projects pursuant to the NERC Rules of Procedure (ROP)?

B. Is ~~Does~~ the activity necessary or appropriate for ~~involve~~ providing guidance and assistance to Regional Entities in carrying out Regional Reliability Standards development activities?

C. Is ~~Does~~ the activity ~~involve~~ necessary or appropriate for information gathering, collection and analysis activities to obtain information ~~reasonably necessary in~~ for Reliability Standards development, including for purposes of identifying areas in which new Reliability Standards could be developed, existing Reliability Standards could be revised, or existing Reliability Standards could be eliminated, such as:

1. Measuring reliability performance – past, present and future; publishing or disseminating the results of such measurements; analyzing the results of such measurements; identifying and analyzing risks to reliability of the Bulk Power System based on such measurements; and/or identifying approaches to mitigating or eliminating such risks?
2. Monitoring, event analysis and investigation of Bulk Power System major events, off-normal occurrences and near miss events?

D. Is ~~Does~~ the activity necessary or appropriate for ~~involve or support~~ the provision of training and education concerning Reliability Standards development processes, procedures and topics for/to (i) NERC personnel, (ii) Regional Entity personnel, and (iii) industry personnel?

CRITERION II

Is ~~Does~~ the activity ~~involve or support~~ necessary or appropriate for the monitoring and enforcement of compliance with Reliability Standards?

A. Is ~~Does~~ the activity necessary or appropriate for ~~involve or support~~ the identification and registration of users, owners, and operators of the Bulk Power System that are required to comply with Requirements of Reliability Standards applicable to the

reliability functions for which they are registered?

B. ~~Is Does~~ the activity necessary or appropriate for involve or support the Certification of Reliability Coordinators, Transmission Operators and Balancing Authorities as having the requisite personnel, qualifications and facilities and equipment needed to perform these reliability functions in accordance with the applicable Requirements of Reliability Standards?

C. ~~Is Does~~ the activity necessary or appropriate for involve or support the Certification of system operating personnel as qualified to carry out the duties and responsibilities of their positions in accordance with the Requirements of applicable Reliability Standards?

D. ~~Is Does~~ the activity necessary or appropriate for involve or support conducting, participating in or overseeing compliance monitoring and enforcement activities pursuant to the NERC ROP and (through the Regional Entities) the Commission-approved delegation agreements?

E. ~~Is Does~~ the activity necessary or appropriate for involve information gathering, collection and analysis activities to obtain information ~~reasonably necessary~~ to monitor and enforce compliance with Reliability Standards, including evaluating the effectiveness of current compliance monitoring and enforcement processes, the need for new or revised compliance monitoring and enforcement processes, and the need for new or different means of training and education on compliance with Reliability Standards, such as:

1. Measuring reliability performance – past, present and future; publishing or disseminating the results of such measurements; analyzing the results of such measurements; identifying and analyzing risks to reliability of the Bulk Power System based on such measurements; and/or identifying approaches to mitigating or eliminating such risks?
2. Monitoring, event analysis and investigation of Bulk Power System major events, off-normal occurrences, and near miss events?

F. ~~Is Does~~ the activity ~~involve or support~~ necessary or appropriate for the provision of training, education and dissemination of information for/to (i) NERC personnel, (ii) Regional Entity personnel, and (iii) industry personnel with respect to compliance monitoring and enforcement topics and topics concerning reliability risks identified through compliance monitoring and enforcement activities, such as:

1. Requirements of Reliability Standards, including how to comply and how to demonstrate compliance? This includes development of guidance and interpretation documents.
2. Compliance monitoring and enforcement processes, including how to conduct them, how to participate in them, and the expectations for the processes? This includes development of guidance documents.
3. Disseminating, through workshops, webinars,

Advisories/Recommendations/Essential Actions, and other publications, “lessons learned” information on compliance concerns and reliability risks obtained through compliance monitoring and enforcement activities, monitoring and investigation of Bulk Power System major events, off-normal occurrences and near miss events, and other Bulk Power System monitoring activities?

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

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

CRITERION III

Is Does the activity necessary or appropriate for ~~involve or support~~ conducting and disseminating periodic assessments of the reliability of the Bulk Power System or monitoring the reliability of the Bulk Power System?

A. Is Does the activity necessary or appropriate for ~~involve or support~~ the preparation or dissemination of long-term, seasonal, and special assessments of the reliability and adequacy of the Bulk Power System?

B. Is Does the activity necessary or appropriate for ~~involve or support~~ measuring reliability performance – past, present and future; publishing or disseminating the results of such measurements; analyzing the results of such measurements; identifying and analyzing risks to reliability of the Bulk Power System based on such measurements; and/or identifying approaches to mitigating or eliminating such risks?

C. Is Does the activity necessary or appropriate for ~~involve~~ investigating, analyzing, evaluating, and disseminating information concerning, the causes of major events and off-normal occurrences, and/or providing coordination assistance, technical expertise and other assistance to users, owners, and operators of the Bulk Power System in connection with Bulk Power System major events and off-normal occurrences, but not Real-time operating control of the Bulk Power System?

D. Is the activity necessary or appropriate for awareness of circumstances on the Bulk Power System and to contribute to understanding the risks to reliability?

E. Is Does the activity necessary or appropriate for ~~involve~~ gathering, analyzing and sharing with and among industry and government participants, information

regarding the physical or cyber security of the Bulk Power System?

F. ~~Is Does~~ the activity necessary or appropriate for ~~involve~~ the development and dissemination of Advisories/Recommendations/Essential Actions regarding lessons learned and potential reliability risks to users, owners, and operators of the Bulk Power System?

G. ~~Is Does~~ the activity necessary or appropriate for ~~involve or support~~ data collection and analysis of information regarding Bulk Power System reliability matters mandated by the Commission?

NO CHANGES TO CRITERION IV

NO CHANGES TO CRITERION V

CRITERION VI

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

NO CHANGES TO CRITERION VII

CRITERION VIII

Does the activity respond to or is it necessary or appropriate for ~~support~~ audits of NERC and the Regional Entities conducted by the Commission?

CRITERION IX

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

CRITERION X

Is ~~Does~~ the activity necessary or appropriate for the ~~involve~~ analysis and evaluation of activities encompassed by one or more of the other criteria for the purpose of identifying means of performing the activities more effectively and efficiently?

CRITERION XI

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

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

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