

131 FERC ¶ 61,262
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

Florida Reliability Coordinating
Council, Inc.

Docket No. PA09-7-000

ORDER APPROVING AUDIT REPORT, DETERMINING ISSUE OF
SEPARATION OF FUNCTIONS, AND DIRECTING
COMPLIANCE AND OTHER CORRECTIVE ACTIONS

(Issued June 23, 2010)

1. In this order, the Commission approves the attached Audit Report (Report) prepared by the Division of Audits in the Office of Enforcement (OE), with the assistance of staff from the Office of Electric Reliability. The Report contains staff's findings and recommendations with respect to Florida Reliability Coordinating Council, Inc.'s (FRCC) Regional Entity (RE) function. The audit evaluated FRCC's compliance with: (1) the Regional Delegation Agreement between the North American Electric Reliability Corporation (NERC) and FRCC; (2) the FRCC bylaws; and (3) other obligations and responsibilities as approved by the Commission.

2. This audit was intended to help the Commission determine whether FRCC RE is sufficiently independent from the FRCC Member Services Division, which consists of representatives from users, owners, and operators of Florida's Bulk-Power System, consistent with the requirements of Order No. 672.¹ FRCC's Member Services Division is responsible for providing services to the members,

¹ *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards*, Order No. 672, FERC Stats. & Regs. ¶ 31,204, *order on reh'g*, Order No. 672-A, FERC Stats. & Regs. ¶ 31,212 (2006).

including responsibility for the reliability coordinator and planning authority functions that must comply with Reliability Standards approved by the Commission.

3. Staff informed FRCC of the audit findings and recommendations in a draft audit report on December 28, 2009, as revised on January 27, 2010, to reflect comments made by FRCC. The Report found that FRCC has taken steps to improve the separation between FRCC RE and FRCC Member Service activities. However, the Report identified some areas of concern that FRCC and the FRCC RE must address to reduce FRCC RE dependence on the FRCC Member Services Division and create the independence of oversight and operational functions, as contemplated by Order No. 672.²

4. FRCC has agreed, or has already begun, to undertake most of the recommended corrective actions in the January 27, 2010 draft report.

5. Based on the results of the audit and FRCC's agreement to implement the Report's recommendations, we conclude that upon implementation of the applicable recommendations FRCC prospectively will satisfy the requirement that it "demonstrate[s] a strong separation between oversight and operational functions."³ We condition this conclusion on FRCC's timely and effective implementation of the Report's applicable recommendations, including the filing of an implementation plan as specified below.

Background

6. In Order No. 672, the Commission discussed the generic issue of whether a Regional Entity may perform functions beyond the proposal and enforcement of Reliability Standards. The Commission found that a "Regional Entity may conduct such activities, provided that they do not conflict or interfere with the performance of a delegated function, which we view as the primary mission of a

² *Id.* at P 656-57.

³ *North American Electric Reliability Council, et al.*, 119 FERC ¶ 61,060, at P 551 (2007) (Delegation Agreements Order), *order on reh'g*, 120 FERC ¶ 61,260 (2007), *order on compliance filing*, 122 FERC ¶ 61,245 (2008) (Second Delegation Agreements Order), *order on compliance filings*, 125 FERC ¶ 61,330 (2008) (Third Delegation Agreements Order) (collectively Delegation Agreements Orders).

Regional Entity.”⁴ The Commission further found that “any additional activity must not compromise the oversight role or the independence of the Regional Entity.”⁵

7. In the Delegation Agreements Order, the Commission, *inter alia*, approved FRCC RE’s Regional Delegation Agreement and Compliance Monitoring and Enforcement Program (CMEP). In that order, this Commission stated that “As [both a Regional Entity and Reliability Coordinator], FRCC is obligated to demonstrate a strong separation between oversight and operational functions.”⁶

The Audit

8. On November 13, 2008, OE staff issued a public letter to FRCC in this docket announcing the commencement of an audit to determine whether FRCC was in compliance with: (1) the Delegation Agreement between NERC and FRCC; (2) the FRCC bylaws; and (3) other obligations and responsibilities as approved by the Commission. In particular, in the ensuing audit, OE staff looked at the relationship between FRCC RE and FRCC Member Services division, which consists of users, owners, and operators of the Florida Bulk-Power System. NERC has delegated to FRCC the following major program functions:⁷

1. Develop regional and national Reliability Standards;
2. Administer the compliance enforcement program and organization registration and certification;
3. Conduct reliability readiness evaluations;
4. Provide training, education, and operator certification;
5. Conduct reliability assessment and performance analysis;
6. Conduct situational awareness and infrastructure security; and
7. Provide administrative services.

9. In the course of the audit, OE staff issued data requests, conducted analytical work, performed site visits, examined emails, and held many meetings

⁴ Order No. 672 at P 656.

⁵ *Id.*

⁶ Delegation Agreements Order at P 551.

⁷ *North American Electric Reliability Corporation*, 117 FERC ¶ 61,091, at P 20 (2006) (*Business Plan and Budget Order*), *order on reh’g*, 119 FERC ¶ 61,059 (2007).

and interviews with FRCC's officials and staff. Subsequently, on December 28, 2009, OE staff sent FRCC a draft audit report and gave FRCC until January 19, 2010, to respond to the audit findings and recommendations. On January 27, 2010, after a teleconference that day discussing the draft audit report, OE staff sent FRCC a revised draft audit report with a February 5, 2010 deadline for FRCC's response. FRCC's response to the draft audit report is attached to this order.

The Audit Report

10. In the Report, staff determines that FRCC has taken steps to improve the separation between FRCC RE and FRCC Member Service activities. However, the Report identifies the following areas of concerns: (1) interference of the FRCC Compliance Committee in the FRCC RE's performance of compliance activities pursuant to the CMEP; (2) oversight of the reporting of misoperations; (3) lack of an agreement with a third party to perform the CMEP activities for all reliability functions for which the FRCC has registered; (4) review of reliability assessments; (5) cost allocation between activities subject to the Commission's reliability jurisdiction pursuant to section 215 of the Federal Power Act and other activities;⁸ and (6) absence of adequate periodic evaluations of FRCC RE staffing needs.

11. First, the FRCC Compliance Committee, a stakeholder committee of the FRCC Board, inappropriately influenced the FRCC RE's implementation of certain aspects of the CMEP. Specifically, the audit found that the FRCC Compliance Committee impeded the FRCC RE's ability to independently implement the CMEP by constantly opposing adoption of FRCC RE's November 1, 2008 policy to eliminate the use of industry volunteers.⁹ The audit discovered that the FRCC Compliance Committee still has not taken this matter to the FRCC Board for resolution.¹⁰

12. Second, FRCC RE should expand its role with respect to misoperations reporting. FRCC, as the Regional Entity, has assumed the responsibility for

⁸ 16 U.S.C. § 824o (2006). The Audit Report refers to these activities as "statutory" and "non-statutory" activities, respectively.

⁹ Report at 18-25.

¹⁰ Report at 24.

collecting information and reports regarding system events, such as protection system misoperations. The audit recommended that FRCC RE, as the entity responsible for collecting this information, expand its role to include authority for evaluating misoperations and determining whether they are reportable events.¹¹

13. Third, FRCC is registered as the Reliability Coordinator for the FRCC region and as one of thirteen Planning Authorities in the region. Recognizing the conflict of interest that may arise from FRCC being both a Regional Entity and registered entity, in the Delegation Agreements Order the Commission directed FRCC to remedy the issue.¹² FRCC and NERC subsequently reached an understanding under which NERC would perform the CMEP duties with respect to the FRCC's Reliability Coordinator and Planning Authority functions. However, the audit found that there is no formal agreement detailing such oversight.¹³ Therefore, the audit concluded that FRCC should execute a detailed agreement with NERC, or another entity approved by NERC and the Commission, to provide this oversight.¹⁴

14. Fourth, staff members that perform both Regional Entity (statutory) and Member Services (non-statutory) duties were responsible for preparing Reliability Assessments collaboratively with stakeholder members as well as performing a Regional Entity independent final review of such assessments. The audit determined that FRCC RE should designate Regional Entity staff to perform a thorough and independent review of the reliability assessments.¹⁵

15. Fifth, FRCC staff currently uses staff-estimated percentages to allocate costs between statutory and non-statutory functions. However, FRCC has not evaluated the reasonableness of this method. Audit staff found that FRCC should conduct a study to evaluate this method and make modifications, if necessary.¹⁶

¹¹ Report at 25-28.

¹² Delegation Agreements Order at P 551.

¹³ Report at 28-30.

¹⁴ Report at 30.

¹⁵ Report at 30-32.

¹⁶ Report at 32-34.

16. Finally, FRCC should better monitor its staffing requirements. Although FRCC compliance staff has been expanded, audit staff found FRCC did not expeditiously secure staff during a significant portion of the audit period. This staffing delay led to postponement of the implementation of the CMEP and reliance on volunteer subject-matter experts.¹⁷ Staffing delays also adversely affected FRCC's implementation, beginning in July 2009, of Spot Checks on compliance with the Critical Infrastructure Protection standards.

FRCC Response

17. In its response, FRCC states that it accepts most of the recommendations in the Report. However, FRCC asserts that most of the recommendations concerning misoperations reporting are premature until NERC and the Regional Entities complete deliberations regarding the appropriate assignment of responsibility for collecting and reporting misoperations information.¹⁸ FRCC states that:

[P]ending the outcome of the assessment of misoperations responsibilities by NERC and the REs FRCC will shift its misoperations information collecting and reporting functions back to its Member Services (non-statutory) side, while it works with NERC and the other regional entities to determine appropriate responsibilities for collecting and reporting information on misoperations.[¹⁹]

FRCC maintains that it would anticipate giving full consideration of the recommendations regarding misoperations "as they may be applicable in light of a determination of a NERC/RE policy on misoperations reporting."²⁰

18. In its comments, FRCC acknowledges that it has differed with the FRCC stakeholder Compliance Committee on certain issues regarding implementation of

¹⁷ Report at 34-38.

¹⁸ FRCC agrees with audit staff's recommendation to "Designate staff to respond to entities' questions regarding the reporting of misoperations and related matters." Report at 28. In fact, FRCC states that it has developed and implemented a process by which registered entities in the FRCC region can seek guidance and clarification on reporting obligations. FRCC Comments at 3.

¹⁹ *Id.* at 2.

²⁰ *Id.*

the CMEP.²¹ However, FRCC maintains that the efforts of the Compliance Committee have not “undermined the authority of the FRCC staff or its ability to plan and implement the FRCC CMEP.”²² Nonetheless, FRCC agrees with the Compliance Committee-related recommendations in the Report.

Discussion

19. The Commission accepts the audit findings. However, regarding misoperations reporting, FRCC stated in its response to the Report that its Member Services Division (which is non-statutory) will assume the responsibility for collecting information and reports on misoperations. The recommendations in the Report were designed to ensure that FRCC as the Regional Entity independently perform the misoperations reporting function. Since FRCC represented in its response to the Report that its Member Services Division will perform analysis of misoperations reporting, FRCC must include in its implementation plan the date that the misoperations reporting function was transferred to its Member Services Division. If at a future date FRCC RE performs this function, FRCC must conduct this analysis using funding pursuant to section 215. The recommendations in the Report are only applicable until FRCC transfers this responsibility to its Member Services Division. Until that time, FRCC is directed to implement the Report’s recommendations.

20. The Commission is also concerned about the possible impact to reliability and compliance from FRCC’s proposed shift of misoperations reporting and analysis duties to its Member Services Division. For example, it is not clear whether the Member Services Division will inform the FRCC RE of specific misoperations reports it receives under Reliability Standard PRC-004-1 or of the Member Services Division’s work on misoperations reporting and analysis. This situation could impede FRCC RE’s ability to monitor compliance by registered entities with their obligations to report and correct misoperations under PRC-004-1. As a result, we require FRCC to provide to its RE function full information from the Member Services Division on each misoperations report it receives and the Member Services Division’s response to it.

21. Regarding reliability assessments, the Commission has stated that “Regional Entities should increase their efforts to verify, analyze and integrate information they receive from registered entities and provide in regional

²¹ *Id.*

²² *Id.*

assessment reports to NERC.”²³ Therefore, the Commission encourages FRCC, as a Regional Entity, to expand its role beyond an independent review.

22. Because FRCC has agreed to implement the applicable Report’s recommendations, we conclude that upon implementation of the recommendations and compliance with our directive concerning misoperations reporting and analysis, FRCC will prospectively satisfy the requirement that it demonstrates a “strong separation between oversight and operational functions,” as Order No. 672 specifies for Regional Entities that perform functions beyond the proposal and enforcement of Reliability Standards. This conclusion is conditioned on FRCC’s timely and effective implementation of the Report’s recommendations, including the submission of an implementation plan as specified below.

23. The Report requires FRCC to design an implementation plan that includes procedures to implement the recommendations that are described in the audit report. The plan is to be submitted to OE staff for review and approval within 60 days from the date of issuance of this order. Thereafter, FRCC must make non-public quarterly submissions in Docket No. PA09-7-000 to OE staff detailing FRCC’s progress in implementing the actions set forth in the Report until all the actions are completed. The submissions are to be made not later than 30 days after the end of each calendar quarter, beginning with the first quarter after the submission of the implementation plan and continuing until FRCC completes all the recommended actions. We direct OE staff to conduct a post-audit site visit when FRCC states that it has completed all of the recommendations to ensure that all of the corrective actions taken as a result of implementing the recommendations were properly completed.

The Commission orders:

(A) The attached Report is approved as explained in the body of this order.

(B) FRCC is directed to implement the actions recommended in the Report as clarified in the body of this order.

(C) FRCC is directed to provide to its RE function full information from the Member Services Division on each misoperations report it receives and the Member Services Division’s response to it.

²³ *Texas Regional Entity*, 130 FERC ¶ 61,025 at P 18 (2010).

(D) FRCC is directed to submit an implementation plan outlining the steps it will take to implement the recommendations in the Report within 60 days from the date of issuance of the final report in this docket.

(E) FRCC must make non-public quarterly submissions in Docket No. PA09-7-000 detailing its progress in implementing the corrective actions until all the corrective actions are completed. The submissions must be made not later than 30 days after the end of each calendar quarter, beginning with the first quarter after the submission of the implementation plan and continuing until FRCC completes all of the recommended corrective actions.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Attachment A



Federal Energy Regulatory Commission

**Audit of Regional Entity
Independence of the
Florida Reliability
Coordinating Council**

Docket No. PA09-7-000

Date: February 5, 2010

**Office of Enforcement
Division of Audits**

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I. Executive Summary

A. Overview

The Office of Enforcement's (OE) Division of Audits, with the assistance of the Office of Electric Reliability's Division of Compliance (OER), has completed an audit of the Florida Reliability Coordinating Council, Inc.'s (FRCC) Regional Entity (RE) function. The audit evaluated FRCC's²⁴ compliance with: (1) the Delegation Agreement between the North American Electric Reliability Corporation (NERC) and FRCC; (2) the FRCC bylaws; and (3) other obligations and responsibilities as approved by the Commission. The audit covered the period from May 18, 2007 through the present.

The audit was intended to enable the Commission to determine whether FRCC RE is sufficiently independent from the FRCC Member Services Division, which consists of representatives from users, owners, and operators of Florida's Bulk-Power System, consistent with the requirements of Order No. 672.²⁵

As described in greater detail below, audit staff found that FRCC took steps to improve the separation between FRCC RE and Member Service activities. However, audit staff identified concerns that FRCC and the FRCC RE should address to eliminate FRCC RE reliance on the Member Services Division, and create the "strong separation" of oversight and operational functions, as contemplated by Order No. 672 and subsequent Commission orders.

²⁴ We use the term "FRCC" when referring to the corporation, its Board of Directors and its officers. We use the term "FRCC RE" when referring to the employees responsible for performing the functions NERC has delegated to FRCC under the Regional Delegation Agreement (RDA) approved by the Commission.

²⁵ *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards*, Order No. 672, FERC Stats. & Regs. ¶ 31,204, *order on reh'g*, Order No. 672-A, FERC Stats. & Regs. ¶ 31,212 (2006) (Order No. 672).

B. The FRCC Regional Entity

Under its RDA with NERC, FRCC oversees seventy-two registered entities responsible for 242 functions within the State of Florida east of the Apalachicola River. NERC has delegated to FRCC the following major program elements:²⁶

1. Develop regional and national Reliability Standards;
2. Administer compliance enforcement, and organization registration and certification;
3. Conduct reliability readiness evaluations;
4. Provide training, education, and operator certification;
5. Conduct reliability assessment and performance analysis;
6. Conduct situational awareness and infrastructure security; and
7. Provide administrative services.

For 2010, FRCC budgeted \$5.1 million and 22.1 full-time equivalent employees (FTEs) for RE activities. Another \$4.2 million and 8.9 FTEs were budgeted for nonstatutory, Member Service activities.²⁷ FRCC's total 2010 budget is \$9.3 million and 31 FTEs.

Of the 2010 FRCC RE budget, compliance monitoring and enforcement activities comprised 66 percent; reliability assessment, 22 percent; regional standard development, 7 percent; and training and situational awareness, 5 percent. On October 15, 2009, the Commission conditionally accepted NERC's 2010 budget, including FRCC's budget and business plan.²⁸

The FRCC RE currently has ten full-time employees, including two Compliance Administrators, six Compliance Auditors, a Manager of Compliance,

²⁶ *North American Electric Reliability Corporation*, 117 FERC ¶ 61,091, at P 20 (2006) (*Business Plan and Budget Order*), order on reh'g, 119 FERC ¶ 61,059 (2007).

²⁷ In this audit report, staff uses the term "non-statutory" to mean activities or functions that the Commission has not determined to fall within its jurisdiction pursuant to Federal Power Act section 215.

²⁸ *North American Electric Reliability Corporation*, 129 FERC ¶ 61,040 (2009) (*Budget Order*).

and a Manager of Reliability Standards. These employees are led by the Vice President and Executive Director of Standards and Compliance. The remaining FTEs assigned to the FRCC RE represent shared employees who are also engaged in providing certain member services, including accounting, budgeting, communications, and administrative support services. As discussed in detail in the following sections, since its approval, FRCC RE has gradually increased staffing for its CMEP duties in accordance with the guidance provided by the Commission and NERC.

C. Commission Orders on Regional Entity Independence

In July 2006, the Commission issued an order under section 215 of the Federal Power Act (FPA),²⁹ certifying NERC as the Electric Reliability Organization (ERO).³⁰ Under FPA section 215(e)(4), the ERO is authorized to delegate authority to a Regional Entity for the purpose of proposing Reliability Standards to the ERO and enforcing Reliability Standards in a particular region of the country. The Commission may approve a delegation agreement with a Regional Entity if: (i) the Regional Entity is governed by an independent board, a balanced stakeholder board, or a combination of the two; (ii) the Regional Entity otherwise satisfies required criteria for ERO certification; and (iii) the proposed agreement promotes effective and efficient administration of the Bulk-Power System.

Other applicable requirements are that the Regional Entity: (i) has the ability to develop and enforce, subject to the provisions of FPA section 215(e)(2), Reliability Standards that provide for an adequate level of reliability of the Bulk-Power System; and (ii) has established rules that ensure the independence of the Regional Entity from the users, owners, and operators of the Bulk-Power System, while ensuring fair stakeholder representation in the selection of its directors and balanced decision making in any committee or subordinate organizational structure.

²⁹ 16 U.S.C. § 824o (2006).

³⁰ *North American Electric Reliability Corp.*, 116 FERC ¶ 61,062 (ERO Certification Order), *order on reh'g and compliance*, 117 FERC ¶ 61,126 (2006), *order on compliance*, 118 FERC ¶ 61,030, *order on clarification and reh'g*, 119 FERC ¶ 61,046 (2007).

In an order issued April 19, 2007, the Commission approved NERC's *pro forma* delegation agreement and the Uniform Compliance Monitoring and Enforcement Program (CMEP) to be used by NERC and the Regional Entities to monitor, assess, and enforce compliance with NERC's Reliability Standards.³¹

In that Delegation Agreements Order, the Commission accepted the proposed FRCC RDA. The Commission found that: "FRCC will be governed by a balanced stakeholder board and will otherwise satisfy the criteria applicable to NERC's certification to serve as the ERO."³² However, the Commission said that while "FRCC is not a user, owner or operator of the Bulk-Power System, FRCC is a Reliability Coordinator."³³ FRCC fulfills its Reliability Coordinator (RC) function for the FRCC region by contracting with Florida Power & Light (FPL) as its RC agent. FRCC is also registered with NERC as a Planning Authority (PA).

The Commission determined that FRCC's performance of both the RE and RC functions create an inherent conflict of interest because FRCC would be responsible for enforcing its own compliance with NERC Reliability Standards pertaining to the RC function. In the Delegation Agreements Order, the Commission recognized this potential conflict and required FRCC to take actions to mitigate it.

As [both an RE and RC], FRCC is obligated to demonstrate a strong separation between oversight and operational functions. However, in its current configuration, both FRCC's compliance staff and reliability coordinators are hired and have their performance reviewed by FRCC management, and both have their work product reviewed by the same member committees and management personnel. The result is a lack of independence in compliance monitoring and enforcement for FRCC operational

³¹ *North American Electric Reliability Council, et al.*, 119 FERC ¶ 61,060 (2007) (Delegation Agreements Order), *order on reh'g*, 120 FERC ¶ 61,260 (2007), *order on compliance filing*, 122 FERC ¶ 61,245 (2008) (Second Delegation Agreements Order), *order on compliance filings*, 125 FERC ¶ 61,330 (2008) (Third Delegation Agreements Order) (collectively Delegation Agreements Orders).

³² Delegation Agreements Order at P 539.

³³ *Id.* at P 551.

functions. Accordingly, we direct NERC and FRCC to remedy these deficiencies. If FRCC chooses, and NERC agrees, FRCC may engage NERC to oversee the compliance and enforcement functions as they relate to FRCC's compliance with the Reliability Standards. This is one possible way to establish the strong separation we require."³⁴

FRCC subsequently revised Exhibit D of its RDA to state that it had engaged NERC to oversee the CMEP responsibility related to FRCC compliance with the Reliability Standards applicable to its RC and PA functions. The Commission accepted FRCC's revised RDA on March 21, 2008.³⁵

D. FRCC Organization Structure

FRCC RE is currently governed by an eighteen-member Board of Directors representing FRCC's six sectors: suppliers, non-investor owned utility wholesale, load serving entity, generating load-serving entity, investor-owned utility, and general. The FRCC President and CEO is an ex-officio, non-voting member of the Board.

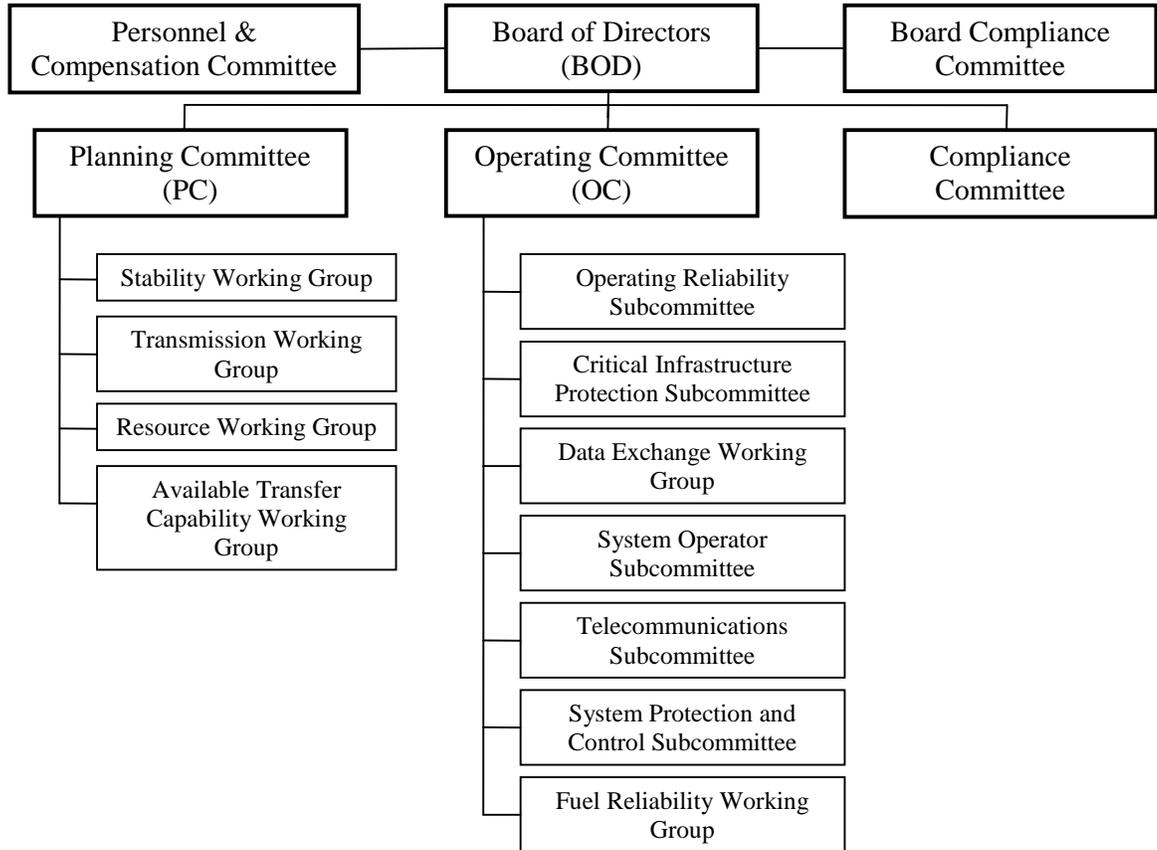
All standing committees of the Board are stakeholder committees. The Board itself has two committees comprised of Board members: the Personnel & Compensation Committee and the Board Compliance Committee (BCC). The BCC is a hearing body with authority to resolve cases in which registered entities contest a finding of an alleged violation, proposed penalty, sanction, or mitigation plan. The BCC consists of one Board member from each sector.

In addition to these two Board committees, the Board is advised by three standing stakeholder committees whose members are not typically Board members: the Planning, Operating, and Compliance Committees. FRCC voting members are entitled to appoint one representative to each stakeholder committee. The stakeholder committees' chairs and vice chairs are elected by the respective committee members and endorsed by the Board.

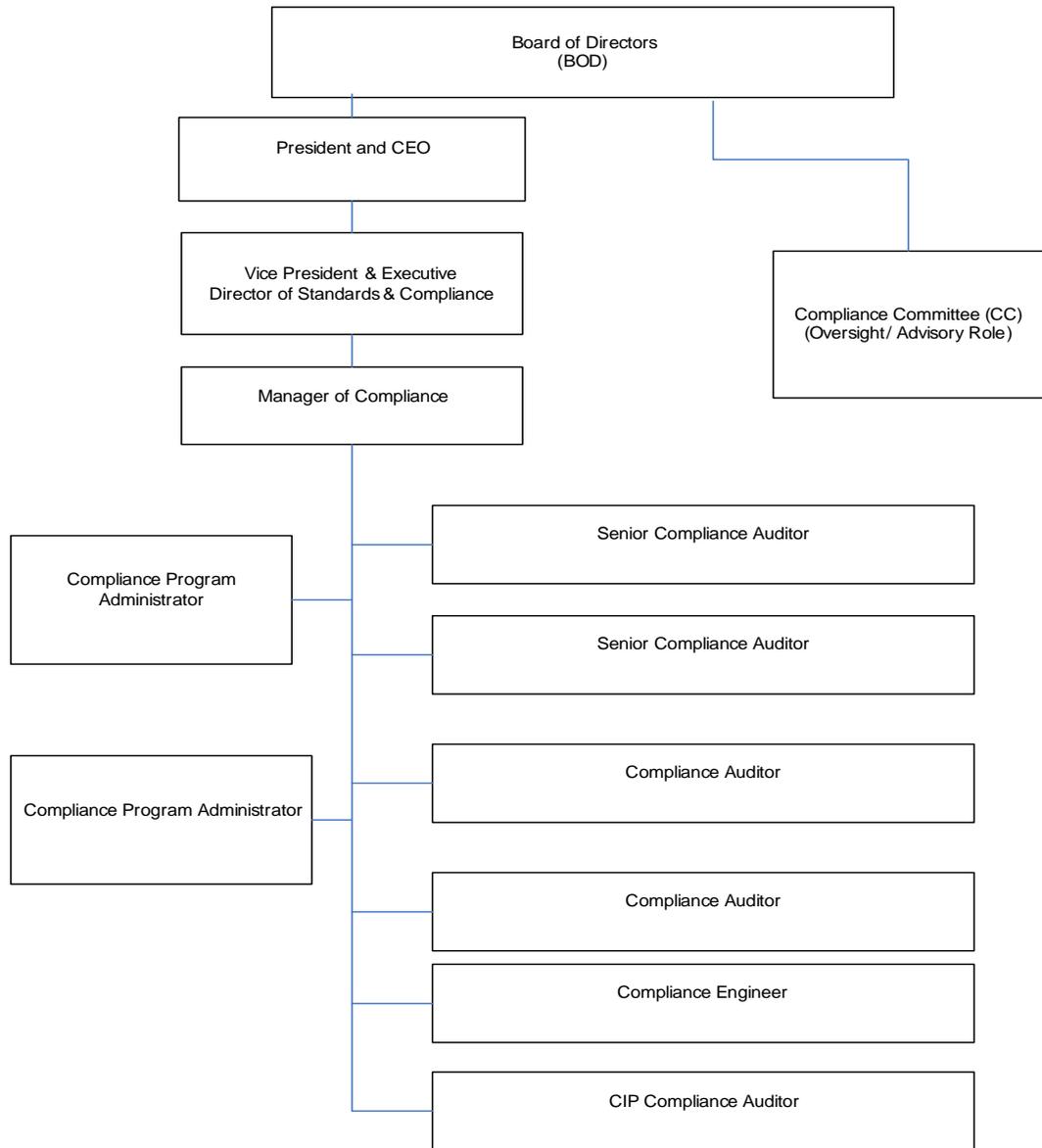
³⁴ *Id.*

³⁵ Second Delegation Agreements Order at P 249.

This chart shows the FRCC stakeholder committee structure and its relationship with the Board.



Regarding the FRCC RE’s CMEP functions, the Board does not manage the day-to-day activities and expects the President and CEO to oversee such activities. This chart depicts the flow of authority for the implementation of the FRCC RE CMEP.



According to an FRCC response to a data request, the Compliance Committee’s role in providing oversight of FRCC RE’s CMEP has generally included:

- Review of proposed changes to the FRCC RE CMEP prior to taking these changes to the Board for approval;
- Review and approval of procedural documents that support the FRCC RE CMEP; and
- Provide guidance to the FRCC representative on the NERC Compliance and Certification Committee as needed.

To improve performance of its delegated functions and comply with Commission guidance, in September 2007, FRCC amended its bylaws to create two types of membership: Regional Entity membership and Member Services membership. Regional Entity membership is open to all parties interested in the reliable operation of the Bulk-Power System in the FRCC region and is at no cost. Entities engaged in the generation, marketing, transmission or purchase for resale of electricity using the Bulk-Power System are eligible to become Member Services members subject to the payment of membership charges. Beginning February 2009, after two entities joined FRCC as Regional Entity members but not as Member Services members, FRCC bifurcated the meetings of its Board into separate sessions for Regional Entity and Member Services. The standing committees have also begun holding bifurcated meetings.

E. Summary of Compliance Findings

Audit staff found that FRCC improved the separation between statutory Regional Entity and non-statutory Member Service activities. Audit staff also found that FRCC RE has gradually increased its staff. However, based on information gathered through interviews, emails, data responses, and other records, audit staff concerns related to independence and performance of the CMEP continue to exist.

Independence of the FRCC Regional Entity

- **FRCC Compliance Committee Influence over FRCC RE**

Members of the FRCC stakeholder Compliance Committee thwarted the FRCC RE's efforts to establish a formal policy to eliminate the participation of industry volunteers in compliance audits.

- **FRCC RE Responsibility for Misoperations Reporting Procedures**

While FRCC as the RE has voluntarily undertaken a role in misoperations reporting procedures to ensure that registered entities *properly* report misoperations, audit staff believes these procedures should be enhanced to provide greater independence of the RE function.

- **CMEP for the FRCC Reliability Coordinator and Planning Authority Functions**

FRCC is the sole entity registered to perform the RC function for the FRCC region and is also registered to perform PA reliability functions. FRCC has an informal arrangement with NERC, which provides that NERC will at present perform the CMEP duties as they relate to FRCC's RC and PA functions. However, there do not appear to be any formal agreements or documents specifying the functions NERC will perform under this arrangement, how future oversight will be provided, or how NERC or any other entity approved by NERC and the Commission would be compensated for such services.

- **FRCC RE Reliability Assessment Responsibilities under the RDA**

Pursuant to the RDA, the FRCC RE receives funding to perform reliability assessment and performance analysis under the NERC Rules of Procedure. However, the reliability assessments are prepared and reviewed by FRCC staff members who perform both statutory and non-statutory functions. This process has inherent conflicts that could result in the reliability assessments being influenced by the stakeholders for whom the FRCC staff members provide services.

- **Cost Allocation between Statutory and Non-statutory Functions**

FRCC's method for allocating costs between NERC-delegated (statutory) and FRCC Member Services (non-statutory) reliability assessment functions is based on staff-estimated percentages that were not reviewed periodically to determine whether updates were necessary.

Implementation of the CMEP

- **FRCC RE Staffing for its CMEP**

Although staffing levels have recently increased, the FRCC RE was initially understaffed and unable to independently accomplish its delegated responsibilities. As a consequence, the FRCC RE depended on participation of industry volunteers in compliance audits and spot checks. The understaffing compromised the independence of the FRCC RE, reduced transparency, and created uncertainty among the registered entities.

- **FRCC RE Staffing for Monitoring and Enforcing Compliance with Critical Infrastructure Protection (CIP) Standards**

The FRCC RE did not post a job announcement for a CIP auditor until late April 2009 and did not fill the position until July 27, 2009, nearly a month after the CIP spot checks were to commence. The FRCC RE was thus again reliant on industry volunteers for the initial CIP spot checks.

F. Recommendations

To ensure the FRCC RE's independence and provide adequate separation between its statutory Regional Entity and non-statutory Member Services functions, audit staff recommends that FRCC take the following actions:

- Revise its Bylaws to clarify that: (a) the FRCC RE is responsible for the day-to-day operations of the RE and the effective and efficient implementation of the CMEP to meet the guidance of NERC and the Commission; and (b) the Compliance Committee serves as an advisor to the Board and the FRCC RE on technical aspects of the CMEP for which the Board or the FRCC RE seeks such guidance;

- Clarify that the role of the Compliance Committee with respect to the administration of the CMEP is to provide technical advice and assistance to the compliance staff when the compliance staff requests such assistance;
- Instruct the Operating Committee and its subcommittees to direct questions regarding misoperations reporting to the FRCC RE;
- Limit the role of the stakeholder Operating Committee's System Protection and Control Subcommittee (SPCS) regarding misoperations reporting to providing technical assistance to the FRCC RE when the FRCC RE requests such assistance;
- Continue actions either to formalize an agreement with NERC, or with or an entity approved by NERC and the Commission, to perform the CMEP duties under the RDA for the FRCC RC and PA functions;
- File with NERC or the Commission a formal agreement with NERC, or an entity approved by NERC and the Commission, to perform the CMEP duties under the RDA for the FRCC RC and PA functions;
- Designate specific FRCC RE staff to oversee reliability assessment activities pursuant to Section 800 of the NERC Rules of Procedure activities and perform an independent review and approval of the assessment of the reliability and adequacy of the Bulk-Power System in the FRCC region; and
- Conduct a study to evaluate and, as needed, update the methods used to allocate costs between statutory and non-statutory activities.

To ensure its independence in the performance of the NERC-delegated function, audit staff recommends that the FRCC RE take the following actions:

- Finalize and implement the *Procedure for the Use of Industry Volunteer Subject Matter Experts* to provide guidance on future compliance audits, spot checks, and other CMEP activities;
- Expand the scope and frequency of the educational and training opportunities available to the registered entities to express and address Compliance Committee concerns about compliance with NERC standards;
- Develop a plan to expand its role regarding misoperations reporting to include reviewing and analyzing misoperations and determining whether they are reportable;
- Consider increasing staff or engage in training of existing staff to include expertise sufficient to perform reviews and analyses of misoperations;
- Consider including misoperations review and analysis in a revised delegation agreement with NERC;
- Instruct all registered entities in the FRCC region to direct questions regarding the reporting of misoperations to the FRCC RE;
- Designate staff to respond to entities' questions regarding the reporting of misoperations and related matters;
- Closely monitor changes in its regulatory staffing requirements and expeditiously recruit and hire qualified personnel as needed;
- Expeditiously evaluate its future staffing requirements for monitoring compliance with the CIP standards and develop and implement a realistic plan and budget for acquiring the necessary personnel; and
- Finalize a procedure for participation of outside experts, including subject matter experts (SMEs), in any CIP spot checks and audits in which the FRCC RE requests their assistance. This procedure should address the special technical qualifications required to audit the CIP

standards and any other issues needed to develop an effective CIP monitoring and enforcement program.

G. Compliance and Implementation of Recommendations

FRCC should design a compliance plan that includes procedures to implement the exception-specific recommendations that are described in this report. The plan should be submitted to audit staff for review within sixty days from the date of issuance of the final report in this docket. Thereafter, FRCC must make non-public quarterly submissions in Docket No. PA09-7-000 to audit staff detailing its progress in implementing the corrective actions set forth in this report until all the corrective actions are completed. The submissions should be made no later than thirty days after the end of each calendar quarter, beginning with the first quarter after the submission of the compliance plan and continuing until FRCC completes all recommended corrective actions.

II. Introduction

A. Objectives

The Division of Audits of the Office of Enforcement (OE) of the Federal Energy Regulatory Commission (FERC or the Commission), with the assistance of the Office of Electric Reliability's Division of Compliance, commenced an audit of FRCC to determine whether its Regional Entity is sufficiently independent from FRCC's operational and Member Services activities, is not unduly influenced by NERC registered entities, and is fully performing its duties under the RDA.

B. Scope and Methodology

To determine the separation between the FRCC RE and FRCC's operations and Member Services functions, audit staff:

- Reviewed publicly available materials, FERC's eLibrary for entity filings, Commission orders and formal complaints, the Enforcement Hotline for complaints made against the entity, and local newspapers and trade press to identify significant developments and occurrences that arose during the audit period, and to familiarize itself with FRCC RE operations.
- Conducted an initial site visit to FRCC's offices from January 26-30, 2009, during which it interviewed FRCC and FRCC RE management and staff to understand their job functions and programs for performing statutory and non-statutory functions. Those interviewed included:
 - President and Chief Executive Officer;
 - Vice President and Executive Director of Standards and Compliance;
 - Manager of Compliance; and
 - Compliance Auditors.
- Conducted a second site visit to the FRCC offices from June 22-25, 2009. In addition to the senior management and staff interviewed during the initial site visit, those interviewed included:
 - Vice President of Planning and Operations;

- Controller;
- Manager of Communications;
- Manager of Reliability Standards;
- All Compliance Auditors; and
- Compliance Administrators.

In addition, audit staff:

- Issued seven sets of data requests, encompassing 140 separate data request items, many of which included multiple elements;
- Reviewed thousands of emails sent and received by FRCC and FRCC RE managers and staff employees over the audit period;
- Conducted telephone interviews and conferences to clarify data responses and seek additional information;
- Reviewed meeting minutes for the FRCC Board of Directors, Operating Committee, Operating Reliability Subcommittee, System Protection and Control Subcommittee, Planning Committee, and Compliance Committee;
- Reviewed selected audit reports, spot checks, investigations, and other compliance actions the FRCC RE has undertaken;
- Reviewed electronic timesheet data;
- Reviewed a substantial amount of data on the processing of mitigation plans for self-reports of violations FRCC received prior to June 18, 2007; and
- Reviewed FRCC's RDA, bylaws, CMEP, annual budget and business plans, implementation plans, quarterly reports required by the Commission in the Delegation Agreements Order, presentations to the Florida Public Service Commission, FRCC self-assessments and other materials that summarized FRCC RE compliance efforts and performance of other delegated tasks.

Prior to and during the audit, FERC staff observed several on-site compliance audits conducted by the FRCC RE to evaluate audit practices and observe the interactions between FRCC RE compliance staff, stakeholder

volunteers, and representatives of the audited entities. Audit staff members gained valuable insight from observing the FRCC RE-led audits.

Audit staff performed the following tasks to evaluate FRCC's shared cost accounting, structural and operational separation, and compliance with the CMEP:

Accounting for Shared Costs

- Interviewed FRCC's Controller;
- Reviewed cost allocation methods for staff engaged in providing administrative, communications, accounting, and IT services; and
- Reviewed time-sheet data for allocation of staff costs between statutory and non-statutory duties.

Structural and Operational Separation of the FRCC RE and the FRCC Member Services Divisions

- Reviewed organizational charts for the audit period;
- Visited the offices of the compliance staff to determine procedures for controlling access and maintaining confidentiality of records;
- Reviewed FRCC stakeholder committee minutes to identify the flow of information between the Regional Entity and Member Services divisions of FRCC;
- Reviewed time-sheet data and other materials for allocation of costs relating to reliability assessment, situational awareness, and other activities between statutory and non-statutory accounts; and
- Reviewed the emails of FRCC RE managers and compliance staff.

FRCC RE Compliance with CMEP

- Conducted an on-site review of select compliance audits and spot checks the FRCC RE performed to understand file layout and data retention policies and procedures;
- Reviewed a sample of FRCC RE activities for each of the tasks enumerated in its CMEP program, including compliance audits, spot checks, mitigation plan reviews, mitigation plan certifications, and evaluations of self-reported violations by the registered entities;
- Reviewed company records for submission of conflict of interest and ethics declarations;
- Reviewed records of Compliance Committee reviews of compliance audit findings;
- Reviewed the participation of FRCC RE staff and stakeholder volunteers in compliance and enforcement activities for compliance with the NERC Rules of Procedure and absence of conflicts of interest;
- Reviewed resumes of compliance staff for technical and audit qualifications;
- Reviewed emails to determine the flow of confidential CMEP information within FRCC;
- Reviewed timesheet data to determine the time and effort expended on specific RDA tasks; and
- Conducted interviews on-site and via telephone to examine staffing levels and qualifications to perform RDA tasks.

III. Findings and Recommendations

A. Independence of the FRCC Regional Entity

1. FRCC Compliance Committee Influence over the CMEP

Members of the FRCC stakeholder Compliance Committee asserted a right to approve implementation of the FRCC CMEP by opposing the RE's attempts to formalize a policy to eliminate the use of volunteers for CMEP functions.

Pertinent Guidance

In the Delegation Agreements Order issued on April 19, 2007, the Commission accepted FRCC's proposal to allow its stakeholder Compliance Committee to review FRCC RE compliance staff decisions to issue notices of alleged violations and proposed sanctions or penalties. The Commission tempered its decision based upon the existing limitations that FRCC RE faced, the need to transition from historical practices, and the caveat that such permission could be withdrawn at a later date. The order stated in pertinent part that:

We find this deviation justified in light of NERC's explanation that FRCC has historically relied on member volunteers, recent turnovers in FRCC compliance staff have occurred, and the review could be eliminated if unnecessary or burdensome. However, we may reevaluate this provision in the future, based on experience. We clarify that this review process will apply only to the issuance of notices of alleged violation, not to any later determination with respect to such a notice or any proposed penalty or sanction included within it. Further, with respect to a notice of alleged violation proposed to be issued to a particular registered entity, no member of the FRCC compliance committee who is employed by, or has a financial or other interest in, the registered entity or any of its affiliates may participate in the review. All such reviews must be conducted confidentially. Also, we direct FRCC to provide NERC with quarterly reports that set forth the number of FRCC compliance committee reviews [and other pertinent information]...NERC must submit these quarterly reports to the

Commission. We encourage FRCC to hire and train additional qualified compliance staff members.³⁶

On October 20, 2007, NERC filed a revised delegation agreement with FRCC that removed the Compliance Committee's ability to approve penalties and prohibited participation of a member of the Compliance Committee where that member is employed by, or has a financial or other interest in, the subject registered entity or any of its affiliates. In an order issued March 21, 2008, the Commission stated:

FRCC asserts that the stakeholder compliance committee has technical expertise and experience to assist FRCC compliance staff. The Commission approved use of the stakeholder compliance committee as a transitional tool to assist FRCC in light of FRCC's traditional use of industry volunteers and recent turnovers in FRCC compliance staff. We believe that these rationales will become less relevant as FRCC staff increases in number and gains experience. Accordingly, we direct NERC and FRCC to submit, within 60 days of the date of this order, a schedule for ending the stakeholder compliance committee review process, or a justification supporting its proposed continuation.³⁷

On May 19, 2008, NERC and FRCC submitted a compliance filing stating that FRCC would eliminate the decisional "concurrence" component of the Compliance Committee's role, but provide for the continued role of the Compliance Committee as a non-decisional technical advisor. FRCC and NERC proposed that this latter role be continued until December 31, 2010.

The Commission addressed the proposed changes in an order issued December 19, 2008:

[W]e expect each Regional Entity's compliance staff to be independent and technically competent. Thus, we are not persuaded that the compliance review process, as revised in Exhibit D, section 1.2, should be permanent. Further, if the process is to be limited to a review of how to comply with requirements the

³⁶ Delegation Agreements Order at P 574-576.

³⁷ Second Delegation Agreements Order at P 252.

Reliability Standards, as proposed, reviews should not relate to the development of proposals for a penalty or sanction for violations, as could be permitted under NERC's and FERC's proposal. In addition, only FRCC compliance staff should initiate the review process, when it believes that a review is appropriate...In addition, because FRCC does not propose a timetable for the phase-out of the compliance committee review process, we require that, in lieu of the quarterly reports that FRCC currently provides on compliance committee reviews, NERC and FRCC submit non-public reports to the Commission staff 30 days after the end of each calendar quarter on compliance committee reviews during that calendar quarter...We also require NERC and FRCC to file, on or before June 30, 2010, a report that incorporates the results of these quarterly reports and proposes a schedule for the termination of the reviews or a justification for their continuation. Should FRCC's compliance staff have technical questions concerning its evaluation of alleged violations, FRCC's compliance staff is encouraged to seek advice from NERC or Commission staff.³⁸

Section 403.1 of the NERC Rules of Procedure states in part:

Each regional entity's governance of its compliance enforcement program shall exhibit independence, meaning the compliance enforcement program shall be organized so that its compliance monitoring and enforcement activities are carried out separately from other activities of the regional entity. The program shall not be unduly influenced by the bulk power system owners, operators, and users being monitored or other regional entity activities that are required to meet the reliability standards.

Section 403.6.2 of the Rules of Procedure states:

Regional entity compliance enforcement program staff shall have the authority and responsibility to investigate, audit (with the input of industry experts or regional members), make initial determinations of compliance or noncompliance, and levy penalties and sanctions without interference or undue influence from regional entity members and their representatives or other industry entities.

³⁸ Third Delegation Agreements Order at P 127.

Section 3.1.5 of NERC's CMEP states in part, with respect to compliance audits:

The audit team shall be comprised of staff personnel from the Compliance Enforcement Authority and may include contractors and industry volunteers as determined by the Compliance Enforcement Authority to be appropriate to comprise a sufficient audit team.

Section 5.4 of the FRCC bylaws states in part:

The Compliance Committee shall report directly to the Board and is charged with responsibility for the development and implementation of programs to ensure compliance for both FRCC Regional Reliability Standards and NERC Reliability Standards.

Background

The FRCC Compliance Committee, a stakeholder committee of the FRCC Board, exerted inappropriate influence over the FRCC RE's implementation of certain aspects of the CMEP. As noted above, the Commission expressed concerns about the Compliance Committee's involvement in the CMEP in all three Delegation Agreements Orders. In these orders, the Commission determined that the role of the Compliance Committee in reviewing the FRCC compliance staff's audit findings should be reduced, redefined, and limited to providing technical assistance where such assistance is requested by the FRCC RE staff.³⁹

Notwithstanding these orders, audit staff found that the Compliance Committee continued to influence, and attempt to exert control over, certain operations of the CMEP, particularly regarding the participation of stakeholder volunteers in compliance audits.

The FRCC RE's compliance department was understaffed when mandatory Reliability Standards became effective on June 18, 2007. As a result, the FRCC RE extensively used industry volunteers on compliance audits during 2007, 2008, and part of 2009. During this period, industry volunteers participated in all eight on-site compliance audits conducted by the FRCC RE. Audit teams

³⁹ Delegation Agreements Order at P 574-576; Second Delegation Agreements Order at P 252; Third Delegation Agreements Order at P 127.

generally consisted of the lead auditor, one or more staff auditors, a compliance administrator, and two industry volunteers. The FRCC RE considered the industry volunteers to be full members of the audit team, and they participated in all phases of the audit, including determining whether Reliability Standards had been violated.

In 2008, the FRCC RE hired additional compliance staff. The addition of these compliance staff members enabled FRCC RE to reduce its reliance on industry volunteers as audit team members. In developing the 2009 audit schedule, the compliance staff decided to discontinue the use of industry volunteers and staff all audits with compliance personnel. In a September 18, 2008 email, the Manager of Compliance made the following recommendation to the Vice President and Executive Director of Standards and Compliance (VP):

To assure independence in the auditing process, both in fact and perception, I recommend that FRCC Compliance not use entity audit team members in a voting member or non-voting observer role for [compliance audits, spot checks, or compliance violation investigations]. The education of entities about what to expect and how to prepare for audits both in process and evidence preparation can better be done through Compliance Workshops and the FRCC Compliance Committee meetings (staff and non-staff sessions).

In an interview with the VP, audit staff noted that the VP supported the Manager of Compliance's decision not to use industry volunteers. As a demonstration of its independence and its willingness to follow the guidance of the Commission and NERC, the FRCC RE announced the decision to cease using volunteers as audit team members in its 2009 Implementation Plan, which was forwarded to NERC on November 1, 2008.

The VP informed the Compliance Committee of the decision not to use volunteers at its meeting on November 17, 2008. While noting that the CMEP allows industry volunteers to serve as audit team members, the VP emphasized that both FERC and NERC staff had expressed concerns over the potential impacts on audit independence. At the meeting, Compliance Committee members expressed a desire to continue using stakeholder volunteers on audits. The VP informed the Compliance Committee that this matter would be discussed with NERC and discussed with the Compliance Committee thereafter.

The Compliance Committee revisited the staff's decision at its following two meetings. Following these discussions, the Compliance Committee Chair

briefed the Board on the matter at its meeting on February 6, 2009. In his presentation, the Chair made the following points: “The FRCC implementation plan does not include the use of volunteers in 2009. Compliance Committee members have voiced their concerns and provided comments strongly in favor of volunteer participation.” After his presentation, a recommendation was made that the issue of volunteers be brought back to the Board for further discussion at its next meeting before a final decision on the use of industry volunteers is made. It was unclear whether the Compliance Committee was seeking to have the Board alter the 2009 implementation plan, or was addressing future implementation plans. However, the Compliance Committee was making a clear challenge to the authority of the CMEP staff to independently establish policies for audits that it believed were in accord with NERC and FERC guidance.

After considering the views expressed by the Compliance Committee and the Board, the VP prepared a draft *Procedure for the Use of Industry Volunteer Subject Matter Experts* in compliance audits. Under this new procedure, the Manager of Compliance would determine the appropriate staffing for each audit, which may include the use of industry volunteer subject matter experts (SMEs) to provide added technical expertise to the compliance staff, at the discretion of the Manager of Compliance. The procedure was presented to the Compliance Committee on February 26, 2009. The meeting’s minutes state that the procedure received favorable comments.

At the Compliance Committee’s March 25, 2009 meeting, however, the members present suggested that feedback be solicited from all Compliance Committee members. The Compliance Committee Chair then requested that comments and suggestions on the procedure be reviewed at the following month’s meeting.

The Vice Chair of the Compliance Committee presented a marked-up version of the staff procedure to the committee on April 30, 2009. The revised draft would make fundamental changes to the procedure, including the addition of:

- A requirement that the Manager of Compliance “shall not unreasonably exclude” SMEs from audit participation when they have completed NERC training, met conflict of interest and confidentiality rules, and have expertise in standard compliance;
- A clause stating that, “It is desirable for each audit team to have” an SME; and

- A clause allowing the Compliance Committee, or any of its members, to petition for inclusion of SMEs with particular areas of expertise on an audit team. “Denial of such petitions by FRCC Compliance Staff shall be in writing clearly identifying the reason(s) for the denial.”

The VP told audit staff that the Compliance Committee’s revisions had placed her staff in a difficult position. While the FRCC had received guidance from both NERC and FERC staff advising against the use of industry volunteers, the Compliance Committee pushed back, wanting SMEs to participate in every audit. As a consequence, the VP believed, compliance staff “is stuck in the middle.” However, currently FRCC RE is using industry SMEs (ISMES) only on critical infrastructure protection (CIP) compliance audits. The temporary need for such ISMEs is addressed later in this report.

Audit staff is concerned that the Compliance Committee’s repeated efforts to require participation of industry volunteers in audits have interfered with the FRCC RE’s authority over the CMEP. By opposing a key element of the RE’s 2009 Implementation Plan and failing to bring the matter to the Board for resolution, the Compliance Committee has undermined the RE’s authority to plan and implement its CMEP.

Audit staff is also concerned that the Compliance Committee did not provide its advice to the Board, as specified in Section 5.4 of the FRCC bylaws, but allowed its members to directly influence the FRCC RE’s implementation of the CMEP. In addition to being inconsistent with the FRCC bylaws, the Compliance Committee’s actions were contrary to the Commission directives that the Committee should limit the role of its members to providing technical assistance to the compliance staff when the staff requests such assistance.⁴⁰

Audit staff is further concerned that the FRCC RE, by seeking Compliance Committee approval of decisions regarding the CMEP, should allow it to become a means by which the Compliance Committee asserts a right to approve decisions regarding the CMEP. Both Commission orders and section 403 of NERC’s Rules of Procedure make it clear that implementation of the CMEP, including but not limited to matters relating to the staffing of compliance audits, evaluating compliance and noncompliance, and imposing penalties and sanctions, is the responsibility of the Regional Entities, not industry stakeholders. However, as shown above, audit staff found that the Compliance Committee sought to

⁴⁰ Third Delegation Agreements Order at P 127.

interfere with the FRCC compliance staff determinations, and that FRCC RE staff felt the pressure of this interference.

During interviews with FRCC RE managers, audit staff learned that Compliance Committee members claim their employees' participation on audit teams is to learn more about compliance with NERC standards. The Manager of Compliance recommended additional training to meet this need. Audit staff agrees that the legitimate desire of the industry to learn about the compliance process should be addressed in a forum other than participation in compliance audits. Accordingly, the FRCC RE should consider expanding training opportunities for registered entities regarding the compliance process.

Recommendations

We recommend that FRCC:

1. Revise its bylaws to clarify that: (a) the FRCC RE is responsible for the operations of the RE and the effective and efficient implementation of the CMEP to meet the guidance of NERC and the Commission; and (b) the Compliance Committee serves as an advisor to the Board and the FRCC RE on technical aspects of the CMEP for which the Board or the FRCC RE seeks guidance; and
2. Clarify that the role of the Compliance Committee with respect to the administration of the CMEP is to provide technical advice and assistance to the compliance staff when the compliance staff requests such assistance.

We recommend that the FRCC RE:

3. Finalize and implement the *Procedure for the Use of Industry Volunteer Subject Matter Experts* to provide guidance on future compliance audits, spot checks, and other CMEP activities; and
4. Expand the scope and frequency of the training opportunities available to the registered entities to express and address Compliance Committee concerns about compliance with NERC standards.

2. FRCC RE Responsibility for Misoperations Reporting Procedures

While FRCC as the RE has voluntarily undertaken a role in misoperations reporting procedures to ensure that registered entities properly report misoperations, audit staff believes these procedures could be enhanced to provide greater independence of the RE function.⁴¹

Pertinent Guidance

The FRCC Web site provides these instructions under the heading “Reporting to FRCC:”

The FRCC as a Regional Entity (formerly a Regional Reliability Organization (RRO)) has certain responsibilities for collecting information and reports from various operating entities within its footprint. Below are some helpful links and documents that explain the processes and contacts for reporting bulk electric system information to the FRCC. . . .

All facility owners should send a monthly log (by the 10th of each month for previous months data) of all generation and transmission relay misoperations and all [Special Protection System (SPS)] misoperations to Misoperations@frcc.com.

Background

FRCC, as the Regional Entity, has assumed the responsibility for collecting information and reports regarding system events such as protection system misoperations. Audit staff believes that FRCC RE, as the entity responsible for collecting this information, should expand its role to include evaluating misoperations and determining whether they are reportable events.

Audit staff found that the System Protection and Control Subcommittee (SPCS), a subcommittee of the Operating Committee, routinely provides guidance to entities on whether particular events should be reported as

⁴¹ Misoperations occur when a protection system operates when it should not or does not operate when it should. *See Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 1457, *order on reh’g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007).

misoperations. From July 2007 through August 2009, SPCS members provided guidance to entities on whether thirteen system events were reportable as misoperations. For example, minutes for the July 17, 2007 meeting say: “The SPCS members discussed at length misoperations that were due to ‘human error’ and determined that these would not be considered as reportable misoperations.” At its April 22, 2008 meeting, SPCS members agreed that four additional events were not classified as reportable misoperations. More recently, at the June 17, 2009 meeting, the SPCS asked two entities to send revised misoperations reports “since the events were not considered to be misoperations.” Audit staff believes that these determinations should be made by the Regional Entity.

Audit staff also contends that, as the entity responsible for collecting misoperations information, FRCC RE should also be responsible for drafting and maintaining procedures for reporting misoperations. In the event FRCC RE expands its role but continues to initially require technical assistance, audit staff recommends that FRCC RE call upon the Operating Committee or the SPCS in the same way the Commission directed the FRCC compliance staff to use the stakeholder Compliance Committee.⁴² That is, the FRCC may request technical guidance from the expertise of committee members. However, audit staff believes that an expanded role would entail FRCC RE making final decisions regarding reporting determinations as well as approval of or amendment to the reporting procedures. Audit staff considers this an appropriate area for inclusion in a revised delegation agreement and suggests that FRCC consider including it in discussions with NERC.

In sum, audit staff believes that the FRCC RE should enhance its current role regarding misoperations reporting to include analysis of the event and a determination of whether it should be reported as a misoperation. Audit staff is concerned that if stakeholder committees are permitted to decide what kinds of misoperations are reportable, the information reported to the FRCC RE, or provided to the FRCC RE compliance staff during compliance audits, could be incomplete or inaccurate.

⁴² Third Delegation Agreement Order at P 127.

Recommendations

We recommend that FRCC:

5. Instruct the Operating Committee and its subcommittees to direct questions regarding misoperations reporting to the FRCC RE; and
6. Limit the role of the SPCS regarding misoperations reporting to providing technical assistance to the FRCC RE when the FRCC RE requests such assistance.

We recommend that the FRCC RE:

7. Develop a plan to expand its role regarding misoperations reporting to include reviewing and analyzing misoperations and determining whether they are reportable;
8. Consider increasing staff or engage in training of existing staff to include expertise sufficient to perform reviews and analyses of misoperations;
9. Consider including misoperations review and analysis in a revised delegation agreement with NERC;
10. Instruct all registered entities in the FRCC region to direct questions regarding the reporting of misoperations to the FRCC RE; and
11. Designate staff to respond to entities' questions regarding the reporting of misoperations and related matters.

3. CMEP for the FRCC Reliability Coordinator and Planning Authority Functions

FRCC did not enter into a formal agreement with NERC for NERC to oversee compliance of FRCC's Reliability Coordinator (RC) and Planning Authority (PA) functions.

Pertinent Guidance

In the Delegation Agreements Order, the Commission directed FRCC to remedy the conflict of interest inherent in FRCC's performance of both RE and RC functions for its region. While the order did not mandate any specific remedy, the Commission noted that, "If [FRCC] chooses, and NERC agrees, FRCC may engage NERC to oversee the compliance and enforcement functions as they relate to FRCC's compliance with the Reliability Standards. This is one possible way to establish the strong separation we require."⁴³

Background

FRCC is registered as the RC for the FRCC region and as one of thirteen PAs in the region. Under the RDA, that NERC and FRCC originally proposed, FRCC, as the Regional Entity, would provide the oversight functions of the CMEP in regard to the reliability functions for which FRCC is the registered entity. Thus one division of FRCC, the FRCC RE, would be engaged in the oversight of another division, the FRCC non-statutory Member Services Division, which performs the RC and PA functions. This situation would create a potential conflict of interest that the Commission directed FRCC to resolve in the Delegation Agreements Order.

FRCC and NERC subsequently reached an understanding under which NERC would perform the CMEP duties with respect to the FRCC's RC and PA functions. As stated in FRCC's Amended and Restated Delegation Agreement:

The FRCC has engaged NERC to oversee the compliance monitoring and enforcement responsibility as related to FRCC's compliance with Reliability Standard requirements that are applicable to the functions for which FRCC is a Registered Entity.

⁴³ Delegation Agreements Order at P 551.

Audit staff reviewed emails and other data and issued a data request to determine if there were any formal agreements or other documents that specified the details of this understanding. Audit staff found that there are no signed agreements or other documents governing this relationship. Audit staff believes that a written agreement should be executed with NERC, or an entity approved by NERC and the Commission, governing the CMEP activities for the FRCC registered functions.

As long as FRCC is both the RE and registered entity for RC and PA reliability functions, a conflict of interest will continue. Audit staff believes that this situation requires FRCC to enter into a formal, detailed contractual arrangement with NERC, or another entity approved by NERC and the Commission, to provide oversight. Audit staff notes that FRCC has been negotiating with the SERC Reliability Corporation (SERC), another Regional Entity, to develop a formal contractual agreement.

Recommendation

We recommend that FRCC:

12. Continue actions either to formalize an agreement with NERC, or with an entity approved by NERC and the Commission to perform the CMEP duties under the RDA for the FRCC RC and PA functions; and
13. File with NERC or the Commission a formal agreement with NERC, or an entity approved by NERC and the Commission, to perform the CMEP duties under the RDA for the FRCC RC and PA functions.

4. FRCC RE Reliability Assessment Responsibilities under the RDA

FRCC staff members who perform both Regional Entity statutory and Member Services non-statutory duties were responsible for both (1) preparing Reliability Assessments collaboratively with stakeholder members, and (2) performing an independent final review of such assessments.

Pertinent Guidance

Under section 215(e)(4) of the Federal Power Act, the Commission may approve NERC's delegation to Regional Entities of authority to propose and enforce Reliability Standards.⁴⁴ Within FRCC's footprint, NERC also has delegated to the FRCC RE major program elements, such as Reliability Assessment and Performance Analysis (Section 800 of the NERC Rules of Procedure), including necessary data gathering activities.⁴⁵

Section 804 of the NERC Rules of Procedure states:

To carry out the reviews and assessments of the overall reliability of the interconnected bulk power systems, the regional entities and other entities shall provide sufficient data and other information requested by NERC in support of the annual long-term and seasonal assessments and any special reliability assessments. . . . In connection with the reliability assessment reports, requests shall be submitted to each of the regional entities for required reliability assessment data and other information, and for each region's self-assessment report.

Section 805.4 of the NERC Rules of Procedure further provides:

The teams of reliability and technical experts shall provide an independent assessment of the reliability of the regional entities and

⁴⁴ 16 U.S.C. § 824o(e)(4) (2008).

⁴⁵ *North American Electric Reliability Corporation*, 117 FERC ¶ 61,091, at P 20 (2006) (*Business Plan and Budget Order*), *order on reh'g*, 119 FERC ¶ 61,059 (2007). FPA section 215(g) requires the ERO to conduct periodic assessments of reliability and adequacy of the North American Bulk-Power System.

the North American interconnected bulk power system for the period of the assessment. While the regional entities are relied upon to provide the information to perform such assessments, the review team is not required to accept the conclusions provided by the regional entities. . . . Upon completion of the assessment, the team shall share the results with the regional entities. The regional entities shall be given the opportunity to review and comment on the conclusions in the assessment and to provide additional information as appropriate.

Background

In interviews and responses to audit staff data requests, FRCC stated that it provides NERC with an assessment of the reliability of the FRCC Bulk-Power System, “based on committee-approved reports, assessments and studies.” The process for preparing the annual reliability assessment was described as follows:

As part of this annual assessment, FRCC staff aggregates forecasted load, resource data, and planned transmission facilities reflecting expected conditions over the next ten years as provided by the Planning Authorities within the region. Based on this information, FRCC staff and Resource Working Group members (under the direction of the Planning Committee) complete the Reliability Assessment Report addressing the adequacy of Reserve Margins throughout the ten-year horizon. The Reliability Assessment Report is reviewed and approved by the FRCC Planning Committee [a non-statutory body].

Once approved by the respective committees, the assessments are sent to the FRCC planning staff, which compiles them into the format required by NERC. The resulting assessments are then reviewed and approved by the FRCC Vice President of Planning and Operations and the FRCC President and CEO before being submitted to NERC. In addition to his review and approval of the reliability assessment, the FRCC Vice President of Planning and Operations is also responsible for overseeing all FRCC Member Services activities, including the development of reliability assessments.

In response to an audit staff data request, the Manager of Planning stated that the primary objectives of the reviews are to ensure that data are consistently reported and to familiarize management with the final content. “As such, the review of each assessment is brief.”

Audit staff has these concerns with this process:

- FRCC's reliability assessments are planned, directed, and approved by industry stakeholder committees outside the control of the FRCC RE;
- FRCC planning staff members may have a conflict of interest because they perform Member Service reliability assessment activities for the same stakeholder committees that direct and approve the assessments as well as the RE duty of reviewing and approving the assessments for submittal to NERC; and
- There may be a conflict between the duty of the Vice President for Planning and Operations to independently review and approve reliability assessments on behalf of the RE, and his responsibility on behalf of the Member Services Division to oversee all FRCC Member Service activities related to reliability assessments.

Recommendation

We recommend that FRCC:

14. Designate specific FRCC RE staff to oversee Section 800 activities and perform an independent review and approval of the assessment of the reliability and adequacy of the Bulk-Power System in the FRCC region.

5. Cost Allocation between Statutory and Non-statutory Functions

FRCC's method for allocating costs between NERC-delegated (statutory) and FRCC Member Services (non-statutory) functions is based on staff-estimated percentages that were not reviewed periodically to determine whether updates were necessary.

Pertinent Guidance

In Order No. 672, the Commission stated that: "Section 215 of the FPA provides for federal authorization of funding limited to the development of Reliability Standards and their enforcement, and monitoring the reliability of the Bulk-Power System. However, the ERO or a Regional Entity is not precluded from pursuing other activities, funded from other sources."⁴⁶

In the Delegation Agreements Order, the Commission stated that:

We also require FRCC to modify FRCC's proposal to assess all members for the costs of non-statutory activities. While the Commission has stated that a Regional Entity may engage in non-statutory activities, subject to certain limits, its primary function is to develop and enforce reliability standards. It would be improper to require interested stakeholders to fund other activities as a condition to their membership in FRCC. FRCC may collect funds through other means (such as user fees), or may charge special membership fees to those who either choose or are required to participate in non-FPA section 215 activities, however, it may not require contributions from those who do not.⁴⁷

In the Second Delegation Agreements Order, the Commission stated that: "FRCC should ensure that each employee involved in both statutory and non-statutory functions keeps accurate timesheets reflecting his or her activities."⁴⁸

⁴⁶ Order No. 672 at P 202.

⁴⁷ Delegation Agreements Order at P 552.

⁴⁸ Second Delegation Agreements Order at P 256.

Background

FRCC performs statutory functions for the FRCC region through its Regional Entity function; non-statutory services are provided through the Member Services function. The duties of some FRCC personnel benefit both the statutory Regional Entity division and the non-statutory Member Services Division. Thus it is important that costs associated with these personnel are properly allocated between the functions.

In particular FRCC RE believes, and the audit team concurs, that work performed in preparation for reliability assessments has benefits that flow to both the RE and the Member Services Divisions. As such, FRCC RE allocates costs for work on projects necessary for reliability assessments using percentages based on staff developed estimates. However, no systematic effort has been undertaken to determine the reasonableness of these staff-estimated percentages and there has not been any true-up to reflect actual use of the staff's various work products (i.e., benefits derived).

Recommendations

We recommend that FRCC:

15. Conduct a study to evaluate and, as needed, update the methods used to allocate costs between statutory and non-statutory activities.

B. Implementation of the CMEP

FRCC RE had too few auditors to process mitigation plans and complete audits in a timely manner during the initial phase of mandatory Reliability Standards. In addition, the FRCC RE did not recruit qualified staff and develop procedures in time to begin monitoring and enforcing compliance with CIP standards on July 1, 2009.

1. FRCC RE Staffing for its CMEP

FRCC was slow to hire staff to perform its delegated responsibilities during a significant portion of the audit period, which led to delays in implementing the CMEP process.

Pertinent Guidance

Section 403.5 of the NERC Rules of Procedure states:

Each regional entity shall have sufficient resources to meet delegated compliance responsibilities, including the necessary professional staff to manage and implement the regional entity compliance enforcement program.

The Third Delegation Agreements Order states in part that:

We expect each Regional Entity's compliance staff to be independent and technically competent.⁴⁹

Background

FRCC had only one compliance manager and one compliance administrator on staff when mandatory Reliability Standards became effective on June 18, 2007. FRCC added a senior compliance auditor in July 2007, indicating that additional staff hires might have been possible had FRCC desired to staff at appropriate levels. But subsequent recruitment efforts were insufficient to keep pace with the rapidly expanding workload. A summary of compliance hiring is displayed in the chart below.

⁴⁹ Third Delegation Agreements Order at P 127.

Position	Date Hired
Manager of Compliance	1/29/2007
Compliance Program Administrator	3/26/2007
Senior Compliance Auditor	7/23/2007
Senior Compliance Auditor	4/14/2008
Compliance Engineer	6/2/2008
Compliance Program Administrator	6/30/2008
Compliance Auditor	12/8/2008
Compliance Auditor	2/23/2009
CIP Auditor	7/27/2009

The understaffing of the CMEP had serious negative consequences. First, the FRCC RE was unable to audit entities registered for functions other than Balancing Authority (BA) and Transmission Operator (TOP) for the first 18 months after mandatory Reliability Standards became effective. As a result, the FRCC RE felt compelled to request an exemption from NERC to delay the start of the six-year cycle audits as it applied to registered entities other than BAs and TOPs until January 2009.

The FRCC RE also accumulated a large backlog of unprocessed self-reported violations for the period prior to June 18, 2007. As of December 31, 2007, the FRCC RE had 295 pre-June 18, 2007 self-reported violations with mitigation plans not certified as complete. Processing these mitigation plans required extensive overtime by the compliance staff as well as substantial assistance, provided without cost, from both NERC and SERC staff. Even with these efforts, the backlog was eliminated only in the second quarter of 2009.

As discussed in detail above, FRCC overly depended on the participation of stakeholder volunteers to staff compliance audits for much of the audit period.

Although the compliance staff has gradually been expanded, audit staff is concerned that if FRCC does not maintain sufficient staffing for the CMEP in the future, its ability to fulfill its delegated functions could again be compromised with further adverse consequences for independence, transparency, and the effectiveness of compliance monitoring and enforcement activities.

Recommendations

We recommend that the FRCC RE:

16. Closely monitor changes in its regulatory staffing requirements and expeditiously recruit and hire qualified personnel as needed.

2. FRCC RE Staffing for CMEP as to Critical Infrastructure Protection Standards

The FRCC RE was inadequately staffed to begin monitoring and enforcing compliance with CIP standards when the first CIP spot checks began on July 1, 2009.

Pertinent Guidance

On January 18, 2008, the Commission issued Order No. 706 approving mandatory CIP Reliability Standards. The Order approved the implementation schedule proposed by NERC:

The schedule gives a timeline by calendar quarters for completing various tasks and prescribes milestones for when a responsible entity must: (1) “begin work;” (2) “be substantially compliant” with a Requirement; (3) “be compliant” with a Requirement; and (4) “be auditably compliant” with a Requirement. According to the implementation plan, “auditably compliant” must be achieved in 2009 for certain Requirements by certain responsible entities, and in 2010 for others.⁵⁰

According to NERC’s Revised Implementation Plan for Cyber Security Standards CIP-002-1 through CIP-009-1, Regional Entities were expected to commence spot checks of compliance with thirteen requirements of the CIP Standards for those entities in their regions that were in the auditably compliant stage, beginning July 1, 2009.

Section 403.5 of the NERC Rules of Procedure states:

Each regional entity shall have sufficient resources to meet delegated compliance responsibilities, including the necessary professional staff to manage and implement the regional entity compliance enforcement program.

⁵⁰ *Mandatory Reliability Standards for Critical Infrastructure Protection*, Order No. 706, 122 FERC ¶ 61,040, at P 77, 86 (2008) (Order No. 706); *order on reh’g*, Order No. 706-A, 123 FERC ¶ 61,174 (2008); *order on clarification*, Order No. 706-B, 126 FERC ¶ 61,229 (2009); *order denying clarification*, Order No. 706-C, 127 FERC ¶ 61,273 (2009).

Background

In February 2008, FRCC RE management informed the FRCC Board that adoption of the CIP standards “will likely require additional manpower for FRCC to be able to effectively audit these standards due to the technical expertise that is required.” The FRCC budget for 2009, which the Board approved in June 2008, included funding for two compliance auditors, one for auditing the CIP standards. However, FRCC did not post an announcement for an auditor with expertise on CIP compliance assessment until late April 2009 and the position was not filled until July 27, 2009, seven months into FRCC’s fiscal year and nearly a month after FRCC RE was supposed to commence the CIP spot checks.

Based on the delay in hiring qualified CIP staff, FRCC reported in June 2009 that it was re-evaluating its plan to compose audit staffs entirely of FRCC compliance staff “as we assess needs for subject matter experts, particularly in the Critical Infrastructure Program area.”⁵¹

In responses to audit staff data requests, the FRCC RE stated that it planned to conduct the initial CIP spot checks in 2009 with three members of the compliance staff and one volunteer CIP SME. The responses did not specify the qualifications required for volunteer SMEs or the criteria for selecting them. In response to audit staff’s inquiry regarding the SMEs’ involvement in spot checks, including their role in making initial determinations of compliance and noncompliance, and determining penalties and sanctions, FRCC RE provided copies of the VP’s draft procedure on the use of volunteer SMEs and the marked-up version with the Compliance Committee’s revisions. As discussed above in the FRCC Compliance Committee Influence over the CMEP section, owing to the Compliance Committee’s opposition to the VP’s draft, no official guidelines governing the participation of SMEs in FRCC compliance activities, including CIP spot checks, are currently in place.

Audit staff is concerned that, in monitoring and enforcing compliance with CIP standards, the FRCC RE appears to be repeating the same pattern of understaffing, overreliance on stakeholders, and lack of appropriate guidelines that hampered its CMEP during much of the audit period.

Audit staff also notes that the CIP program is in an early stage. As more entities reach the auditably compliant and fully compliant stages, the workload

⁵¹ FRCC Three-Year Self Assessment Report to NERC, June 22, 2009, p. 11.

for monitoring compliance with CIP standards is expected to grow substantially. If the FRCC RE does not promptly develop the capacity needed to handle the increased workload, it could again experience lengthy delays in completing CIP audits and spot checks, and processing possible violations.

Recommendation

We recommend that the FRCC RE:

17. Expediently evaluate its future staffing requirements for monitoring compliance with the CIP standards, and develop and implement a realistic plan and budget for acquiring the necessary personnel; and
18. Finalize a procedure for participation of outside experts, including SMEs, in any CIP spot checks and audits in which the RE requests their assistance. This procedure should address the special technical qualifications required to audit the CIP standards and other issues needed to develop an effective CIP monitoring and enforcement program.

Attachment B



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February 5, 2010

Bryan K. Gray,
 Director, Division of Audits
 Office of Enforcement
 Federal Energy Regulatory Commission
 888 First St., N.E. – Room 9137
 Washington, D.C. 20426

Comments on Draft Audit Report
 Packet No. FA0974000

Dear Mr. Gray:

Following up on our discussions with members of your office on January 27, 2010, and in accordance with the schedule agreed to on that call, the Florida Reliability Coordinating Council, Inc. ("FRCC") submits the following comments on the draft audit report in the above packet forwarded to us by Mr. Oschler of your office on January 27 following a recent annual call (the "Report").

FRCC asserts that it is fully compliant with the (1) the Regional Allocation Agreement between North American Electric Reliability Corporation (NERC) and the FRCC, (2) the FRCC Bylaws, and (3) other obligations and responsibilities as approved by the Commission. As noted in the Report, FRCC has voluntarily taken steps to further independence between the FRCC staff and member services activities. With the limited exceptions discussed below, FRCC welcomes the recommendations contained in the Report and looks forward to implementing the recommendations to further enhance the "strong separation" of oversight and operational functions.

These comments are keyed to the numbered recommendations beginning on p. 25 of the Report. FRCC notes that the numbered recommendations in the body of the Report are in some respects different from the bulleted executive summary of the recommendations in Section I(P) of the Report.¹ FRCC assumes the recommendations set forth in the body of the Report are controlling, and its comments are keyed to those numbered recommendations. FRCC also notes that it appears that the recommendation

¹ Unless otherwise specified, capitalized terms used in these comments have the meanings specified in the Report or in the NERC Glossary of Terms Used to Reliability Standards.

² Report at 11 (i) (a).

numbered 11 at the top of p. 30 of the Report should be renumbered as no. 12, and these comments proceed accordingly. FERC's comments are organized by the topics covered in the Report in which FERC wishes to raise its concerns.

Role of the Compliance Committee

As noted in the Report, the FERC staff has discussed with the FERC stakeholder Compliance Committee on certain policy issues relating to implementation of the FERC Compliance Monitoring and Enforcement Program ("CMEP"). These issues have included the use of industry volunteers in CMEP activities. Notwithstanding these discussions, FERC has not changed its operations to include industry volunteers in circumstances in which the staff believed their participation was not appropriate. The good faith efforts of the Compliance Committee to express certain views on CMEP implementation have not undermined the authority of the FERC as a Federal entity to plan and implement the FERC CMEP. With this clarification, FERC concurs with recommendations 1 through 4 in the Report.²

Misoperations Reporting

The FERC as the Regional Entity ("RE") for the state of Florida has voluntarily assumed the Regional Reliability Organization ("RRO") responsibility for collecting information and reports on system events, such as production system misoperations. FERC has determined, however, that performance of these functions by FERC as a RE is not consistent with the practices of other NERC regional entities, and that issues of the appropriate assignment of responsibility for collecting and reporting misoperation information are currently under review and deliberation by NERC and the IIA. In order to be consistent with current industry practice, pending the outcome of the assessment of misoperations responsibilities by NERC and the IIA, FERC will shift its misoperations information collecting and reporting functions back to its Member services (not statutory) staff, while it works with NERC and the other regional entities to determine appropriate responsibilities for collecting and reporting information on misoperations.

Accordingly, FERC respectfully submits that recommendations 5 through 10 are premature until completion of the NERC/RRO review and deliberations referred to above.³ For example, as recommended in Recommendations 5 and 6, misoperation review and analysis in a revised delegation agreement between FERC and NERC. Any such efforts should await possible revisions to the NERC regional delegation agreement to reflect a national policy on misoperations reporting. FERC would anticipate giving full consideration to recommendations 5 through 10 as they may be applicable in light of the determination of a NERC/RRO policy on misoperations reporting.

² Report at 25.

³ Report at 27-28.

FERC concurs with recommendation no. 11, which would be applicable whatever the outcome of the NERC/SE consideration of misoperations functions.¹⁷ FERC has reviewed, and recently implemented a process by which registered entities in the FERC region can seek guidance and clarification on reporting and other reliability obligations. The goal of this process is to enhance the registered entities' understanding of reliability requirements and the consistent application of the requirements, consistent with what FERC intends and to be the objective of recommendation no. 11.

COMMITTEE FOR FERC, Reliability Coordinator and Planning Authority Functions

FERC has submitted for NERC approval, and ultimately submission to the Commission, an agreement with the BERC Reliability Corporation ("BERC") under which BERC would oversee compliance with applicable reliability standards of FERC's Reliability Coordinator and Planning Authority functions. Thus, FERC concurs with recommendations 12 and 13.¹⁸

FERC, Re Reliability Assessment Responsibilities

FERC respectfully submits that the Report misconstrues the role of the FERC Planning Committee in reliability assessment activities. This body is involved in such activities in its role as a body of the FERC. Thus, it is subject to balance-of-governance requirements that ensure that its actions and decisions, including review or oversight of reliability assessments, are fair and unbiased. FERC also notes that §§ 822 and 805.4 of the NERC Rules of Procedure govern the reporting of reliability assessment information to NERC.¹⁹

Consistent with the above observations and recommendation 14, FERC will designate specific staff to oversee its activities under § 90 of the BERC Rules of Procedure, and will develop processes and procedures to ensure independent review and approval of the assessment of the reliability and adequacy of the Bulk Electric System in the FERC region.

Cost Allocation between Scheduling and Non-scheduling Functions

FERC concurs with recommendation no. 15.²⁰

¹⁷ Report at 28.

¹⁸ Report at 30.

¹⁹ See Rules at ¶¶ 51.

²⁰ Report at 32.

²¹ Report at 31.

FERC REFORM Staffing

While FERC conducts public consultation on rule 187, FERC does not agree that the use of industry volunteers in the past to supplement FERC's REFORM staffing compromised the independence of these functions. Indeed, the transparency of these functions is enhanced under industry input. The Report notes that although the results of the REFORM functions were in any way impacted by the independence of staff decision-making by the FERC staff. Moreover, the Report notes that "the legitimate desire of the industry to learn about the compliance process should be addressed in a forum other than participation in compliance studies."¹¹ This necessarily implies that the use of industry volunteers served to provide transparency and certainty about the FERC process. FERC has a strong preference for these contributions to the

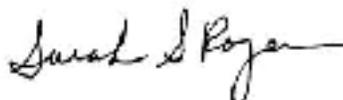
FERC RE Staffing via Publicly Available Regulatory Standards CMRF

FERC concurs with the recommendation in 187 and 188.

* * * *

FERC appreciates the opportunity to provide comments on the draft REFORM reports. FERC would welcome an opportunity to discuss any of its comments with you or your colleagues at your convenience.

Respectfully submitted,



Sarah S. Poyar
President and Chief Executive Officer
Florida Reliability Coordinating Council, Inc.

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- Per: [redacted]
 - Per: [redacted]
 - Per: [redacted]
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