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May 3, 2010

**VIA ELECTRONIC FILING**

Ms. Kimberly D. Bose  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

**Re: North American Electric Reliability Corporation  
Docket Nos. RR09-9-000, RR07-14-004 and RR08-6-004  
Further Report of the North American Electric Reliability Corporation  
In Response to Paragraph 36 of October 15, 2009 Order on  
2010 Business Plans and Budgets**

Dear Ms. Bose:

The North American Electric Reliability Corporation (NERC) hereby submits the "Further Report of the North American Electric Reliability Corporation in Response to Paragraph 36 of October 15, 2009 Order on 2010 Business Plans and Budgets."

NERC's filing consists of: (1) this transmittal letter and (2) the narrative text of this filing, which are submitted in a single pdf file.

Please contact the undersigned if you have any questions concerning this filing.

Respectfully submitted,

/s/ Owen E. MacBride  
Owen E. MacBride

Attorney for North American Electric  
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## **I. INTRODUCTION**

The North American Electric Reliability Corporation (“NERC”) respectfully submits this further report in response to P 36 of the Commission’s Order issued October 15, 2009 in these dockets on the NERC and Regional Entity 2010 Business Plans and Budgets.<sup>1</sup> In P 36 of the 2010 ERO Budget Order, the Commission directed NERC to submit an evaluation of the adequacy of ERO and Regional Entity resources for implementing the processing of Technical Feasibility Exceptions (“TFEs”) “within 90 days after implementation of the activity by the Regional Entities.” NERC filed a partial response to P 36 on January 11, 2010, in which NERC provided responsive information but stated that due to the small numbers of TFE Requests that had been received, an evaluation of the adequacy of NERC and Regional Entity resources for processing TFEs was premature.<sup>2</sup> NERC proposed to submit a further evaluation by May 3, 2010, by which time NERC and the Regional Entities expected to have received and be processing a larger volume of TFE Requests. The Commission accepted NERC’s January 11, 2010 Compliance Filing in a letter order issued March 8, 2010, and directed NERC to file a further evaluation report by May 3, 2010.

As discussed in the Region-by-Region analysis provided below,<sup>3</sup> although the volumes of TFE Requests submitted through the first quarter of 2010 have generally been greater than what

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<sup>1</sup> *North American Electric Reliability Corporation, Order Conditionally Accepting 2010 Business Plan and Budget of the North American Electric Reliability Corporation and Ordering Compliance Filings*, 129 FERC ¶ 61,040 (2009) (“2010 ERO Budget Order”).

<sup>2</sup> *Partial Compliance Filing of the North American Electric Reliability Corporation in Response to Paragraph 36 of October 15, 2009 Order on 2010 Business Plans and Budgets*, filed January 11, 2010 in Docket Nos. RR09-9-002, RR08-6-004 and RR07-14-006 (“January 11, 2010 Compliance Filing”). As reported at page 4 of that filing, as of January 8, 2010, the Regional Entities had received, in the aggregate, only 137 TFE Requests.

<sup>3</sup> The Region-by-Region analysis includes NERC in its role as Compliance Enforcement Authority for four Responsible Entities.

the Regional Entities anticipated in preparing their 2010 Business Plans and Budgets, NERC and the Regional Entities believe they have sufficient available resources to carry out their responsibilities for processing TFE Requests during 2010. NERC and the Regional Entities are continuing to analyze their resource needs for this responsibility as they begin to prepare their Business Plans and Budgets for 2011, and will be able to adjust their resource needs and funding requirements for this activity, if necessary, in their 2011 Business Plans and Budgets that will be submitted to the Commission for approval in August 2010.<sup>4</sup>

## **II. NOTICES AND COMMUNICATIONS**

Notices and communications with respect to this filing may be addressed to:

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<sup>4</sup> On April 20, 2010, NERC posted for comment Draft 1 of its 2011 Business Plan and Budget (available at [http://www.nerc.com/filez/business\\_plan\\_2011.html](http://www.nerc.com/filez/business_plan_2011.html)). The draft 2011 Business Plan and Budget provides for the addition of staff in the CIP area in recognition of, among other things, NERC's responsibilities with respect to TFEs.

### **III. FURTHER REPORT IN RESPONSE TO PARAGRAPH 36 OF 2010 ERO BUDGET ORDER**

Paragraph 36 of the 2010 ERO Budget Order stated:

As indicated in the proposed business plans and budgets, the details of how Regional Entities plan to process technical feasibility exceptions continue to evolve. We are concerned that, once the ERO develops the procedure and the Regional Entities implement the process of reviewing technical feasibility exceptions, Regional Entities may not have budgeted adequate funding of this potential labor-intensive activity. It is premature for the Commission to rule on the adequacy of the ERO and Regional Entity funding of this activity at this time. The Commission, however, directs the ERO to provide status reports, every three months from the date of this order, regarding the development of uniform procedures for processing technical feasibility exceptions; and, within 90 days after implementation of the activity by the Regional Entities, an evaluation of the adequacy of ERO and Regional Entity resources for implementing this activity.

NERC notes that on October 29, 2009, it filed a petition with the Commission requesting approval of new Section 412, “Requests for Technical Feasibility Exceptions to NERC Critical Infrastructure Protection Reliability Standards,” to the NERC Rules of Procedure (“ROP”), and new Appendix 4D, “Procedure for Requesting and Receiving Technical Feasibility Exceptions to NERC Critical Infrastructure Protection Standards” (the “TFE Procedure”) to the ROP.<sup>5</sup> The TFE Procedure provides a set of conditions or criteria that a Responsible Entity must follow when relying on the technical feasibility exception contained in specific requirements of certain NERC CIP standards. The TFE Procedure also sets forth the procedures to be followed by a Responsible Entity in submitting a TFE Request to the applicable Regional Entity, and the procedures to be followed by the Regional Entities in reviewing and approving or disapproving TFE Requests. On January 21, 2010, the Commission issued an Order accepting the proposed TFE Procedure but directing NERC to make certain revisions to the TFE Procedure and to file

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<sup>5</sup> *Petition for Approval of Amendments to the Rules of Procedure of the North American Electric Reliability Corporation – New Section 412 and Appendix 4D, “Procedure for Requesting and Receiving Technical Feasibility Exceptions to NERC Critical Infrastructure Protection Standards,”* filed October 29, 2009 in Docket No. RR10-1-000.

the revised TFE Procedure in a compliance filing within ninety days.<sup>6</sup> On April 21, 2010, NERC submitted its compliance filing to the TFE Procedure Order, including a revised TFE Procedure.<sup>7</sup>

Under the TFE Procedure, the Regional Entities are responsible for:

- intake and initial screening of the Part A Required Information submitted with TFE Requests to determine that all required information has been provided with the TFE Request and that the TFE Request should be accepted (or rejected);
- substantive review of the Part B Required Information for the TFE Request to determine if it should be approved or disapproved (generally the substantive review will be conducted through a Spot Check or Compliance Audit); and
- assuming the TFE Request is approved, monitoring (through receipt of periodic reports and ongoing compliance monitoring activities) the Responsible Entity's progress in implementing its proposed measures to compensate or mitigate for not being in Strict Compliance with the Applicable Requirement, and its progress in reaching the point at which the TFE is no longer needed and the Responsible Entity can achieve Strict Compliance with the Applicable Requirement.

The TFE Procedure specifies that the Regional Entity should review the Part A Required Information and accept or reject the TFE Request within 60 days; and, if the TFE Request is accepted, should complete the substantive review of the Part B Required Information, and approve or disapprove the TFE Request, within one year after it was originally submitted.<sup>8</sup> NERC's responsibilities include reviewing the Regional Entities' reports of approval and disapproval of TFE Requests and taking steps to question the Regional Entity's determination if

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<sup>6</sup> *Order Approving Technical Feasibility Exception Procedures and Ordering Compliance Filing*, 130 FERC ¶ 61,050 (2010) ("TFE Procedure Order").

<sup>7</sup> *Compliance Filing of the North American Electric Reliability Corporation in Response to January 21, 2010 Commission Order Concerning Appendix 4D to the NERC Rules of Procedure – "Procedure for Requesting and Receiving Technical Feasibility Exceptions to NERC Critical Infrastructure Protection Standards,"* filed April 21, 2010 in Docket No. RR10-1-001 ("April 21, 2010 Compliance Filing").

<sup>8</sup> See Sections 5.1.3 and 5.2.2 of the TFE Procedure in Attachment 1 to the April 21, 2010 Compliance Filing (these time periods have not been changed in the revised TFE Procedure). The TFE Procedure allows for a Regional Entity to develop and follow an alternative work plan and schedule; however, to date no Regional Entity has expressed the need to do so.

and when appropriate; and preparing and submitting to the Commission an annual report on TFE activities, including wide-area analyses on the impacts of reliance on TFEs, and the associated compensating measures and/or mitigating measures, on the reliability of the Bulk Electric System.<sup>9</sup> In the revised TFE Procedure submitted with the April 21, 2010 Compliance Filing, NERC has added additional activities and responsibilities to be performed by NERC and the Regional Entities to ensure consistency in the application of the criteria for granting TFEs.<sup>10</sup>

As NERC stated in the January 11, 2010 Compliance Filing, NERC and the Regional Entities anticipated that they would begin to receive a considerably larger volume of TFE Requests during the latter part of January, 2010.<sup>11</sup> This in fact has proved to be the case. The following table shows the number of TFE Requests received by each Regional Entity as of January 8, 2010 (as reported in the January 11, 2010 Compliance Filing), and more recent totals:

<b>Regional Entity</b>	<b>As of January 8, 2010</b>	<b>As of Recent Dates</b>
<b>FRCC</b>	22	234 <sup>2</sup>
<b>MRO</b>	5	258 <sup>3</sup>
<b>NPCC</b>	12	333 <sup>3</sup>
<b>ReliabilityFirst</b>	13	908 <sup>4</sup>
<b>SERC</b>	28	441 <sup>4</sup>
<b>SPP RE</b>	1	183 <sup>1</sup>
<b>Texas RE</b>	10	519 <sup>1</sup>
<b>WECC</b>	46	1154 <sup>5</sup>
<b>NERC (as CEA)</b>	0	71 <sup>3</sup>

<sup>1</sup> As of March 31, 2010

<sup>2</sup> As of April 9, 2010

<sup>3</sup> As of April 15, 2010

<sup>4</sup> As of April 30, 2010

<sup>5</sup> As of April 19, 2010

<sup>9</sup> One of NERC's responsibilities in the originally-submitted TFE Procedure was to develop lists of Class Type TFEs, defined as "[a] type or category of equipment, device, process or procedure for which NERC has determined that a TFE from an Applicable Requirement is appropriate, as set forth on a list of such Class-Type TFEs posted on the NERC Website." However, in the revised TFE Procedure submitted with the April 21, 2010 Compliance Filing, NERC has removed the Class-Type TFE concept. See April 21, 2010 Compliance Filing at 7-8.

<sup>10</sup> See further discussion in Section III.I below.

<sup>11</sup> January 11, 2010 Compliance Filing at 4-5.



The following subsections describe, for each Regional Entity, its experience in receiving and processing TFE Requests as of mid-April, and its assessment of the adequacy of its resources for carrying out its responsibilities for processing TFE Requests in accordance with the TFE Procedure for the remainder of 2010. The resource assessments assume there is no material change to the responsibilities of the Regional Entities, or to the number of Applicable Requirements, from those in the revised TFE Procedure submitted with the April 21, 2010 Compliance Filing.

**A. Florida Reliability Coordinating Council**

As of April 9, 2010, FRCC has received a total of 234 TFE Requests from a total of six Responsible Entities. In addition, one Responsible Entity that has indicated it has Critical Cyber Assets has not submitted any TFE Requests, which suggests that some TFE Requests may be forthcoming from that entity. FRCC has completed its reviews of the Part A Required Information, for purposes of the acceptance/rejection determination, for all TFE Requests that were received as of January 31, 2010. Reviews of the Part A Required Information for some TFE Requests that were received or resubmitted (with revisions) after January 31, 2010, are still in progress.

FRCC projects the need to complete the reviews of Part B Required Information for 167 TFE Requests during the balance of 2010, in order to make the approval/disapproval determinations. None of the Responsible Entities that submitted TFE Requests is scheduled for a Compliance Audit or CIP Spot Check during the balance of 2010. Therefore, it will be necessary for FRCC to schedule Spot Checks specifically to conduct the reviews of Part B Required Information for the TFE Requests submitted by these Responsible Entities. A total of seven on-site Spot Checks are planned for the balance of 2010 (for the six Responsible Entities that have

submitted TFE Requests plus the one additional Responsible Entity that is expected to submit TFE Requests) in order to complete the reviews of Part B Required Information within the one-year time period specified in the TFE Procedure.

With respect to a related activity, FRCC will also conduct on-site reviews of completed mitigation plans submitted by several of the Responsible Entities for noncompliances with one or more of CIP Standards CIP-002 through CIP-009. This activity will require a minimum of two CIP compliance auditors for two days each, for a total of 14 days. If possible, FRCC will conduct these reviews at the same time the on-site reviews of Part B Required Information are conducted.

FRCC currently has one CIP compliance auditor on staff and a budgeted, vacant position for a second CIP compliance auditor. Interviews for the unfilled position are scheduled.

Based on the scope of the Applicable Requirements in the revised TFE Procedure submitted with the April 21, 2010 Compliance Filing, FRCC expects that two CIP compliance auditors, with the assistance of a compliance administrator, can complete a review of Part B Required Information at a Responsible Entity in one week. Therefore, a total of seven weeks will be required to conduct the on-site reviews for the seven Responsible Entities during the balance of 2010. Based on present compliance activity schedules, FRCC believes there will be sufficient existing budgeted 2010 resources, and sufficient time, to complete the reviews of Part B Required Information within the specified one-year time period.

In summary, and assuming the currently budgeted but vacant CIP compliance auditor position is filled in a reasonably timely manner, FRCC believes its existing budgeted resources are sufficient for carrying out its responsibilities for processing TFE Requests for the balance of 2010.

**B. Midwest Reliability Organization**

As of January 31, 2010, MRO had received 232 TFE Requests covering a total of 6,020 Covered Assets. MRO completed its reviews of the Part A Required Information, and issued the acceptance/rejection notices to the Responsible Entities, for all of these TFE Requests within the 60-day period specified in the TFE Procedure. MRO has subsequently received an additional 26 TFE Requests through April 15, 2010.

MRO's 2010 Business Plan and Budget includes resources for obtaining contractor assistance in processing TFE Requests, in addition to MRO's existing staff of technical experts in this area. MRO has staffed a team of technical experts in the CIP area to manage the work load through the budgeted external consultant resources. MRO budgeted \$480,000 for Consultants in its 2010 Compliance Monitoring and Enforcement Program budget for contractor resources to process TFE Requests. In addition, during the fourth quarter of 2009, MRO hired a third CIP compliance auditor; and MRO will be hiring a fourth CIP compliance auditor in the second half of 2010.

Although MRO has budgeted for contractor resources for TFE-related work, MRO's plan is to perform as much of the processing of TFE Requests as possible using its staff resources. MRO plans to conduct on-site reviews of Part B Required Information during scheduled CIP Spot Checks, using contractor staff augmentation as necessary. When reviews are necessary outside the Spot Check schedule and process, qualified contractors will be used as necessary to complete the reviews within the scheduled time frames.

In summary, at the present time, MRO believes it has adequate resources, including staffing to be added during 2010, to fulfill its responsibilities with respect to processing and

tracking TFE Requests as well as monitoring compliance with CIP Standards, for the balance of 2010.

**C. Northeast Power Coordinating Council**

As of April 15, 2010, NPCC has received 333 TFE Requests. As of that date, NPCC has completed reviews of the Part A Required Information and accepted 310 TFE Requests. Reviews of the Part A Required Information for the remaining 23 TFE Requests are still in progress.

NPCC plans to schedule reviews of the Part B Required Information for the TFE Requests that are accepted, during the balance of 2010 and early 2011, in order to make the substantive approval/disapproval determinations for these TFE Requests within the one-year period specified in the TFE Procedure. NPCC presently has two FTEs assigned to processing TFE Requests, and believes they will be sufficient to conduct the necessary reviews of Part B Required Information during the remainder of 2010. Therefore, NPCC expects to be able to complete the reviews that will be conducted during the balance of 2010 with these existing resources. If necessary, NPCC will use funds from its Working Capital reserve to retain independent contractor auditor assistance for the Part B Required Information reviews, to supplement the two NPCC FTEs.<sup>12</sup>

In summary, NPCC believes that its existing resources (including, as noted, the possible use of funding from Working Capital Reserve) will be sufficient to enable NPCC to fulfill its responsibilities for processing TFE Requests during the balance of 2010, without the need for a supplemental budget or funding request.

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<sup>12</sup> Table 5 in NPCC's 2010 Business Plan and Budget showed its projected Working Capital Reserve at December 31, 2009, to be \$2,124,463.

**D. ReliabilityFirst**

As of the end of the first quarter of 2010, a total of 51 Responsible Entities within the ReliabilityFirst region had declared that they have Critical Cyber Assets, and ReliabilityFirst had received a total of 846 TFE Requests. These numbers exceed the assumptions used in developing ReliabilityFirst's 2010 Business Plan and Budget, of 41 Responsible Entities with Critical Cyber Assets and 410 TFE Requests.<sup>13</sup> ReliabilityFirst has completed its reviews of the Part A Required Information for the 846 TFE Requests it received as of the end of the first quarter. Subsequent to March 31, ReliabilityFirst has received an additional 62 TFE Requests. Based on the TFE Requests received and the numbers that have been accepted and rejected as the result of the review of the Part A Required Information, ReliabilityFirst presently has 881 TFE Requests for which the Part B Required Information needs to be reviewed to make the approval/disapproval determination.

In preparing its 2010 Business Plan and Budget, ReliabilityFirst assumed (1) one man-week (40 man-hours) per TFE Request would be required for processing TFE Requests, for a total projection of 410 man-weeks, and (2) one-third of the TFE Requests would be processed in each of 2010, 2011 and 2012 based on a three-year review cycle. Based on these assumptions, ReliabilityFirst calculated that 3.5 full-time equivalent employees ("FTEs") would be needed in 2010 to evaluate TFE Requests, to be met with 3.0 employees plus contract support as needed. ReliabilityFirst also budgeted for one additional compliance enforcement case manager (attorney) to handle a projected increase in its violations caseload based on 20 violations per year relating to rejected/disapproved TFE Requests and resulting noncompliances with CIP

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<sup>13</sup> The budget assumption of 410 TFE Requests was based on an informal survey of Responsible Entities that had indicated they have Critical Cyber Assets.

Standards. In addition, Reliability*First* budgeted for one additional FTE in Information Technology to provide support for TFE-related and compliance enforcement-related activities.

Subsequently, the TFE Procedure, which was finalized after submission of the 2010 Business Plan and Budget, specified that TFE Requests must be accepted or rejected, and if accepted, substantively reviewed and approved or disapproved, within one year after submission. The higher-than-projected volume of TFE Requests, and the shorter-than-assumed review period requirement, have demonstrated that the additional resources Reliability*First* budgeted for TFE-related activities in its 2010 Business Plan and Budget are needed.

Based on Reliability*First's* experience in completing the reviews of the Part A Required Information for the TFE Requests received as of the end of the first quarter of 2010, an average of one man-hour per TFE Request was required for this activity. Consistent with its original budget assumptions, Reliability*First* is projecting that 39 man-hours will be required per TFE Request to conduct the reviews of Part B Required Information to arrive at the approval/disapproval determinations. However, to date Reliability*First* has not had sufficient experience in conducting the reviews of Part B Required Information to confirm this estimate. The substantive reviews of Part B Required Information could result in a determination of a need for additional resources beyond those provided for in the 2010 Business Plan and Budget; however, Reliability*First* does not yet have sufficient experience to determine that any additional resources will be needed in 2010.

In summary, to date Reliability*First's* budgeted resources for 2010 have been sufficient to enable it to carry out its responsibilities relating to processing TFE Requests in a timely manner. At this time, Reliability*First* does not have a basis to seek additional resources for TFE-related activities, beyond those budgeted, for the balance of 2010, and believes its budgeted

resources will be sufficient for conducting the necessary reviews of Part B Required Information during the balance of 2010.

**E. SERC Reliability Corporation**

As of April 30, 2010, SERC has received 441 TFE Requests from a total of 20 Responsible Entities.<sup>14</sup> SERC has completed the reviews of Part A Required Information, and issued the acceptance/rejection notices to the Responsible Entities, for all TFE Requests that were received prior to January 31, 2010. Reviews of the Part A Required Information for TFE Requests that were received, or revised/amended and resubmitted, after January 31, are still in progress. SERC presently expects to complete the reviews of Part A Required Information for all initial, amended and resubmitted TFE Requests within the 60-day time period specified in the TFE Procedure.

Only one Responsible Entity that has submitted TFE Requests is presently scheduled for a CIP Spot Check during the balance of 2010. However, due to the time required to conduct the substantive reviews of the Part B Required Information, SERC has determined that it will be necessary to schedule a separate review for this purpose with each Responsible Entity that has submitted TFE Requests. A total of 14 on-site reviews of Part B Required Information for TFE Requests are planned for 2010. Each review will require a minimum of two SERC staff members, with a potential need of up to five staff members depending on which Applicable Requirements are covered by the Responsible Entity's TFE Requests. All reviews are scheduled to be completed within the one-year time period specified in the TFE Procedure.

In terms of resources, SERC has three existing CIP compliance auditors and has recently hired two additional CIP compliance auditors who are scheduled to report within the next 35

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<sup>14</sup> In a somewhat different experience than that of the other Regional Entities, SERC received 98 TFE Requests between April 15 and April 30, 2010.

days. The newly-hired CIP compliance auditors will receive training and then participate in reviews of Part B Required Information and in CIP Spot Checks during the balance of 2010. In its 2010 Business Plan and Budget, SERC did not specifically budget for additional resources for TFE-related activities, and planned on meeting the expenses for these activities from Working Capital Reserve.<sup>15</sup> Based on present compliance activity schedules, SERC expects existing 2010 resources (including the two newly-hired CIP auditors) will be sufficient to allow for completing the reviews of Part B Required Information within the one-year time period specified in the TFE Procedure. However, if additional budget resources were to prove to be necessary, SERC would expect to file a supplemental budget request.

**F. Southwest Power Pool Regional Entity**

As of April 1, 2010, SPP RE has received a total of 183 TFE Requests. Although SPP RE anticipates that additional TFE Requests will be submitted during the balance of 2010, it does not expect the volume of additional TFE Requests to be substantial.

With respect to the Part A Required Information, SPP RE staff has thus far completed its initial screening of the Part A Required Information, for the purposes of the acceptance/rejection determination, for all TFE Requests submitted within sixty days of their submission. Of the 183 TFE Requests, 163 were accepted and 20 were rejected; however, SPP RE expects the 20 rejected TFE Requests to be revised, resubmitted and accepted. With respect to its review of the Part B Required Information for approval/disapproval determinations, the SPP RE believes it will complete its review for all the TFE Requests submitted within one year of their submission date. SPP RE has a four-member team that is dedicated to performing CIP-related compliance monitoring activities. In addition, the SPP RE utilizes contractors to augment the activities of its

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<sup>15</sup> Table 5 in SERC's 2010 Business Plan and Budget showed SERC's projected Working Capital Reserve at December 31, 2009 to be \$1,588,000.



CIP compliance team. In particular, the SPP RE's 2010 Business Plan and Budget includes \$700,000 for contractor assistance in processing TFE Requests.<sup>16</sup>

In summary, based on the present CIP compliance activity schedules, SPP RE believes its existing budgeted resources are sufficient for carrying out its responsibilities for processing TFE Requests for the balance of 2010.

**G. Texas Regional Entity**

As of March 31, 2010, Texas RE has received a total of 519 TFE Requests. This exceeds the assumption that 240 TFE Requests would be received in 2010 and 2011, that was used in preparing Texas RE's 2010 Business Plan and Budget. To date, Texas RE has been able to complete the reviews of the Part A Required Information for all 519 TFE Requests, using its existing staff. Of the 519 TFE Requests, 488 have been accepted; one was determined to be insufficient and was rejected; one was rejected and resubmitted but rejected (denied) again; and 29 were requested by the Responsible Entity to be withdrawn.

In its 2010 Business Plan and Budget, Texas RE budgeted for 3.0 additional FTEs for TFE-related activities, comprised of 2.0 FTEs in the compliance staff for TFE Request screening and verification and implementation plan review and follow-up, and 1.0 FTE in the compliance staff for data base administration and tracking. Texas RE filled one of these positions in April and will fill a second position in May. The reviews of Part B Required Information for the TFE Requests, which will be a significantly more time-intensive activity than the reviews of Part A Required Information, will necessitate hiring the remaining FTE included in the 2010 Business Plan and Budget this summer. These hires will bring Texas RE's CIP staffing to five including

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<sup>16</sup> As a result of transitioning work related to accepting and approving TFEs originally planned to be performed by contractors, it is likely that the TFE contractor/consultant expenses will be less than the budgeted amount.

the CIP Manager. Texas RE believes this staffing will be sufficient to enable it to carry out its responsibilities for processing TFE Requests, including completing reviews of Part B Required Information within the time period specified in the TFE Procedure, during the balance of 2010.

**H. Western Electricity Coordinating Council**

As of January 31, 2010, WECC had received 1,090 TFE Requests. During the ensuing two months, only a modest amount of additional TFE Requests were received – through April 19, WECC has received a total of 1,154 TFE Requests (*i.e.*, 64 additional TFE Requests subsequent to January 31). In March 2010, WECC completed its review of the Part A Required Information for the TFE Requests received on or before January 31, 2010. WECC presently has 20 of the subsequently-received TFE Requests for which reviews of the Part A Required Information has not been completed.

In its 2010 Business Plan and Budget, WECC did not budget specific resources for processing TFE Requests. WECC indicated that it planned to use Working Capital Reserves for any funding required for TFE-related activities in 2010.<sup>17</sup>

Based on recent experience and on guidance from NERC and the Commission subsequent to submission of the 2010 Business Plan and Budget, WECC estimates that the time required to conduct the substantive reviews of the Part B Required Information for a TFE Request will range from four to 40 hours, with an average of 24 hours required for each TFE Request to review the Part B Required Information and to make the necessary determinations. WECC presently projects the need to conduct reviews of the Part B Required Information for

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<sup>17</sup> Table 5 in WECC's original 2010 Business Plan and Budget showed its projected Working Capital Reserve at December 31, 2009 to be \$577,000. However, in Table 5 in its Amended 2010 Business Plan and Budget, which was filed with the Commission on April 22, 2010 for approval, WECC shows a Working Capital Reserve at December 31, 2009 of \$4,375,000, which is well in excess of WECC's currently-projected 2010 expense for processing TFE Requests.

925 TFE Requests in 2010; at an average of 24 hours apiece, these reviews would require approximately 22,000 total hours. WECC estimates that the costs for these contractor resources could be approximately \$2 million. Therefore, at this time, WECC continues to believe that its existing budgeted resources (including Working Capital Reserves) will be sufficient to enable WECC to carry out its responsibilities for processing TFE Requests during the balance of 2010.

**I. NERC as Compliance Enforcement Authority**

As of April 15, 2010, NERC has received a total of 71 TFE Requests from a total of three Responsible Entities for which NERC is the Compliance Enforcement Authority (“CEA”). NERC has completed its reviews of the Part A Required Information, for purposes of the acceptance/rejection determination, for all of the TFE Requests received as of January 31, 2010.

NERC expects to need to review the Part B Required Information for 68 TFE Requests in 2010 to make the approval/disapproval determinations. Only one of the Responsible Entities that submitted TFE Requests is scheduled for a Compliance Audit or CIP Spot Check during the balance of 2010. Therefore, it will be necessary for NERC to schedule Spot Checks specifically to conduct the reviews of Part B Required Information for the TFE Requests submitted by the other two Responsible Entities. A maximum of four on-site Spot Checks will be conducted for the balance of 2010 in order to complete the reviews of Part B Required Information within the one-year time period specified in the TFE Procedure.

NERC currently has two CIP compliance auditors on staff to assist the two NERC CEA auditors. Based on the scope of the Applicable Requirements in the revised TFE Procedure submitted with the April 21, 2010 Compliance Filing, NERC expects that two CIP compliance auditors, with the assistance of a compliance administrator, can complete a review of Part B Required Information at a Responsible Entity in one week. Therefore, a total of four weeks will

be required to conduct the on-site reviews for the four Responsible Entities during the balance of 2010. Based on present compliance activity schedules, NERC believes there will be sufficient existing budgeted 2010 resources, and sufficient time, to complete the reviews of Part B Required Information within the specified one-year time period.

In summary, NERC believes its existing budgeted resources are sufficient for carrying out its responsibilities, as CEA, for processing TFE Requests for the balance of 2010.

**J. NERC – Oversight Role**

NERC reported in the January 11, 2010 Compliance Filing that in December 2010, it entered into a contract with a consulting firm to provide the following assistance relating to TFE activities: (1) analyze and recommend required staffing and resources, develop position descriptions, design processes, and estimate work flows and recommend strategies to address workload peaks based on the CIP compliance dates for Responsible Entities in the NERC CIP Implementation Plan; (2) assist in the identification and description of Class-Type TFEs; (3) develop metrics and criteria for wide-area reporting and review and report on wide-area results; and (4) assist NERC in developing appropriate procedures for processing and reviewing TFEs requested by nuclear plant owners.<sup>18</sup> As noted earlier in this filing, in the revised TFE Procedure submitted with the April 21, 2010 Compliance Filing, NERC has eliminated the Class-Type TFE concept.<sup>19</sup> Therefore (assuming Commission approval of the revised TFE Procedure), NERC will not need resources to develop and maintain a list of Class-Type TFEs.

However, the revised TFE Procedure requires a number of new activities by NERC (again, assuming Commission approval). These activities include, in particular, more active

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<sup>18</sup> January 11, 2010 Compliance Filing at 10.

<sup>19</sup> See April 21, 2010 Compliance Filing at 7-8.

review (for consistency) of reports submitted by the Regional Entities on their acceptance/rejection and approval/disapproval of TFE Requests; development and maintenance of a catalogue of types of Covered Assets for which TFE Requests have been approved and disapproved, which will be available as a resource for Regional Entities; and formation and operation of a NERC-Regional Entity committee that will review approved and disapproved TFE Requests for consistency and provide guidance to Regional Entities.<sup>20</sup>

NERC is planning to add one additional FTE who will be partially responsible for TFE decisional technical support and support of consistency management across NERC and the Regional Entities. NERC is presently evaluating whether it will need to add additional resources during the balance of 2010 to carry out its responsibilities under the TFE Procedure, including the added responsibilities under the revised TFE Procedure.

#### **IV. OVERALL ASSESSMENT**

The following table summarizes the TFE Requests received by each Regional Entity (including by NERC as CEA), the number of reviews of Part B Required Information that must be conducted to make the approval/disapproval determinations for the TFE Requests that have passed the Part A screening, and the resources the Regional Entities have in place or planned in order to carry out this work during the balance of 2010:

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<sup>20</sup> See §11.0 of the revised TFE Procedure in Attachment 1 to the April 21, 2010 Compliance Filing.

<b>CEA</b>	<b>Total TFE Requests Received</b>	<b>TFE Requests for Part B Review<sup>1</sup></b>	<b>FTE Resources (employees)<sup>2</sup></b>	<b>Contractor/ Consultant Resources</b>
<b>FRCC</b>	234	167	2 (+1)	0
<b>MRO</b>	258	256	3 (+1)	\$480,000 budgeted
<b>NPCC</b>	333	310 (23)	2	0
<b>RFC</b>	908	881	3	0
<b>SERC</b>	441	265 (142)	5	0
<b>SPP RE</b>	183	183	4	\$700K budgeted
<b>Texas RE</b>	519	488	2 (+1)	0
<b>WECC</b>	1154	925 (20)	0	Estimate approx. 22,000 contractor hours; estimated cost of \$2.0 mil.
<b>NERC (CEA)</b>	71	68	3	0
<b>Totals</b>	<b>4,101</b>	<b>3,543 (185)</b>	24 (+3)	

<sup>1</sup> (XX) indicates TFE Requests for which Part A reviews have not been completed.

<sup>2</sup> “(+1)” indicates the Regional Entity has plans to add an additional FTE this year.

Based on its review of the status of each Regional Entity’s processing of TFE Requests and each Regional Entity’s plans for conducting reviews of Part B Required Information during the balance of 2010, NERC believes that each Regional Entity, and NERC in its role as CEA, has sufficient resources available or planned to perform the timely processing of TFE Requests, in accordance with the TFE Procedure, during the balance of 2010. As anticipated, there was a substantial inflow of TFE Requests in the period leading up to January 31, 2010; with the exception of SERC, the Regional Entities and NERC have seen a significant reduction in the numbers of TFE Requests received subsequent to January 31. The Regional Entities and NERC have been able to complete their reviews of the Part A Required Information, and make acceptance/rejection decisions, in a timely manner. While review of the Part B Required Information to make approval/disapproval decisions is a significantly more time-consuming task, the number of TFE Requests for which the reviews of Part B Required Information must be

conducted within one year after receipt of the TFE Request is a manageable number, particularly when evaluated in light of the marked slowdown in receipt of new TFE Requests after January 31, 2010. Based on reasonable assumptions as to the man-hours required to conduct the Part B reviews (as discussed in §III of this report), each Regional Entity, and NERC in its role as CEA, has identified sufficient resources to continue to process the reviews of Part B Required Information in a timely manner during the remainder of 2010. As part of the business planning and budgeting process for 2011, NERC and the Regional Entities will continue to evaluate the resources needed to carry out their responsibilities for processing TFE Requests and for monitoring approved TFEs, and will provide for any additional resources needed for these activities in their 2011 Business Plans and Budgets.

## **V. CONCLUSION**

The North American Electric Reliability Corporation respectfully requests that the Commission accept this filing as compliance with P 36 of the 2010 ERO Budget Order.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the foregoing document upon all parties listed on the official service list compiled by the Secretary in this proceeding.

Dated at Chicago, Illinois this 3<sup>rd</sup> day of May, 2010.

/s/ Owen E. MacBride  
Owen E. MacBride

*Attorney for North American Electric  
Reliability Corporation*