
UNITED STATES OF AMERICA
Before the
FEDERAL ENERGY REGULATORY COMMISSION

**NORTH AMERICAN ELECTRIC RELIABILITY
CORPORATION**

Docket No. RR06-1-012

**DELEGATION AGREEMENT BETWEEN THE NORTH
AMERICAN ELECTRIC RELIABILITY CORPORATION
AND WESTERN ELECTRICITY COORDINATING
COUNCIL**

Docket No. RR07-7-002

**FURTHER STATUS REPORT OF THE
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION
AND WESTERN ELECTRICITY COORDINATING COUNCIL
IN RESPONSE TO PARAGRAPH 226 OF MARCH 21, 2008 COMMISSION ORDER**

Rick Sergel
President and Chief Executive Officer
David N. Cook
Vice President and General Counsel
North American Electric Reliability Corporation
116-390 Village Boulevard
Princeton, NJ 08540-5721
(609) 452-8060
(609) 452-9550 – facsimile
david.cook@nerc.net

Rebecca J. Michael, Assistant General Counsel
North American Electric Reliability Corporation
1120 G Street, N.W., Suite 990
Washington, D.C. 2005-3801
(202) 393-3998
(202) 393-3995 – facsimile
Rebecca.michael@nerc.net

Owen E. MacBride
Debra Ann Palmer
Schiff Hardin LLP
1666 K Street, N.W., Suite 300
Washington, DC 20036-4390
(202) 778-6400
(202) 778-6460 – facsimile
omacbride@schiffhardin.com
dpalmer@schiffhardin.com
Counsel for the North American
Electric Reliability Corporation

Peter H. Zamore
Sheehey, Furlong & Behm P.C.
30 Main Street, P.O. Box 66
Burlington, VT 05402
(802) 864-9891
(802) 864-6815 (facsimile)
pzamore@sheeheyvt.com
Counsel for the Western Electricity
Coordinating Council

November 21, 2008

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	NOTICES AND COMMUNICATIONS	3
III.	NERC-WECC CMEP AGREEMENT	3
IV.	COMPLETION OF COMPLIANCE WITH P 226 OF MARCH 21 2008 ORDER	10
V.	CONCLUSION	11

Attachment 1: Agreement Between North American Electric Reliability Corporation and Western Electricity Coordinating Council Concerning Compliance Monitoring and Enforcement for WECC Registered Functions

I. INTRODUCTION

The North American Electric Reliability Corporation (“NERC”) and the Western Electricity Coordinating Council (“WECC”) file this further status report in response to P 226 of the Commission’s Order issued March 21, 2008 in Docket Nos. RR06-1-012 and RR07-7-002.¹ In P 226, the Commission directed NERC and WECC to file a status report six months following the date of the March 21 2008 Order, and every six months thereafter as necessary, concerning the steps being taken by NERC and WECC to reach a permanent solution for the need to maintain appropriate separation between WECC’s compliance monitoring and enforcement activities and its reliability coordination (“RC”) function. NERC and WECC filed an initial status report on September 22, 2008.² NERC and WECC are now filing this further status report to submit the agreement NERC and WECC have entered into pursuant to which NERC will perform all compliance monitoring and enforcement program (“CMEP”) responsibilities with respect to the WECC RC function. In addition, the agreement between NERC and WECC being submitted with this status report provides for NERC to perform all CMEP responsibilities with respect to the Interchange Authority (“IA”) functions for which WECC is the Registered Entity for Balancing Authority (“BA”) Areas in the WECC Region. The agreement between NERC and WECC is **Attachment 1** to this status report.

In the September 22 Status Report, NERC and WECC stated they had reached agreement that NERC should be responsible for CMEP activities with respect to the WECC RC function and should carry out all compliance monitoring processes with respect to the WECC RC

¹ *Order Addressing Revised Delegation Agreements*, 122 FERC ¶ 61,245 (2008) (“March 21 2008 Order”).

² *Status Report of the North American Electric Reliability Corporation and Western Electricity Coordinating Council in Response to Paragraph 226 of March 21, 2008 Commission Order*, filed September 22, 2008 (“September 22 Status Report”).

function; but that NERC and WECC had not negotiated an agreement to memorialize the arrangements by which NERC will assume responsibility for CMEP activities regarding the WECC RC function. NERC and WECC stated they would finalize definitive agreement language and file the resulting agreement with the Commission within 60 days. In this status report, NERC and WECC comply with their commitment, by submitting **Attachment 1**, the “Agreement Between North American Electric Reliability Corporation and Western Electricity Coordinating Council Concerning Compliance Monitoring and Enforcement for WECC Registered Functions” (the “NERC-WECC CMEP Agreement” or “Agreement”).

NERC and WECC have each determined the NERC-WECC CMEP Agreement is the type of “ordinary course” contract their respective managements are authorized to enter into, and therefore approval of the Agreement by the NERC Board or the WECC Board is not necessary.

NERC and WECC request the Commission to confirm that submission of the NERC-WECC CMEP Agreement with this status report discharges NERC’s and WECC’s obligations under P 226 of the March 21 2008 Order, and that NERC and WECC do not need to submit any further status reports in response to P 226.

II. NOTICES AND COMMUNICATIONS

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

Rick Sergel
President and Chief Executive Officer
David N. Cook*
Vice President and General Counsel
North American Electric Reliability Corporation
116-390 Village Boulevard
Princeton, NJ 08540-5721
(609) 452-8060
(609) 452-9550 – facsimile
david.cook@nerc.net

Rebecca J. Michael, Assistant General Counsel
North American Electric Reliability Corporation
1120 G Street, N.W., Suite 990
Washington, D.C. 2005-3801
(202) 393-3998
(202) 393-3995 – facsimile
Rebecca.michael@nerc.net

*Persons included on the
Commission’s official service list.

Owen E. MacBride*
Debra Ann Palmer
Schiff Hardin LLP
1666 K Street, N.W., Suite 300
Washington, DC 20036-4390
(202) 778-6400
(202) 778-6460 – facsimile
omacbride@schiffhardin.com
dpalmer@schiffhardin.com
Counsel for NERC

Peter H. Zamore*
Sheehey, Furlong & Behm P.C.
30 Main Street, P.O. Box 66
Burlington, VT 05402
(802) 864-9891
(802) 864-6815 (facsimile)
pzamore@sheeheyvt.com
Counsel for WECC

III. NERC-WECC CMEP AGREEMENT

The NERC-WECC CMEP Agreement provides for NERC to take responsibility for the CMEP with respect to the RC function in the WECC Region. The “WECC Region” is defined as the portion of the geographic boundaries of WECC, as described on Exhibit A to the NERC-WECC CMEP Agreement, lying within the United States.

The NERC-WECC CMEP Agreement also provides for NERC to take responsibility for the CMEP with respect to the IA function for those BA Areas in the WECC Region for which WECC is the Registered Entity for the IA function.³ NERC and WECC concluded that the same concerns expressed by the Commission with respect to WECC’s performance of the CMEP for

³ The RC and IA functions for which WECC is the Registered Entity, and for which NERC will perform the CMEP, are referred to in the NERC-WECC CMEP Agreement as the “WECC Registered Functions.”

the RC function, for which WECC is the Registered Entity for the WECC Region, also applied to IA functions for which WECC is the Registered Entity. NERC and WECC therefore concluded that the NERC-WECC CMEP Agreement should also provide for NERC to take responsibility for the CMEP with respect to the IA function for those BA Areas for which WECC is the Registered Entity for the IA function. WECC is or will be the Registered Entity for the IA function for some, but not all, of the BA Areas in the WECC Region, and the BA Areas for which WECC is the Registered Entity for the IA function may change from time to time. Therefore, Exhibit B to the NERC-WECC CMEP Agreement will list the BA Areas for which WECC is the Registered Entity for the IA function.⁴ WECC will continue to be responsible for the CMEP for the IA function for the BA Areas not listed on Exhibit B.⁵

WECC is currently working with the BAs to identify BA Areas in which BAs will register for the IA Function. This process will result in the registration (and inclusion on NERC's Compliance Registry) of either WECC or a BA for the IA function in each BA Area, and identification on Exhibit B of the BA Areas for which WECC is the Registered Entity for the IA function. Because this process is not yet complete, Exhibit B of the NERC-WECC Agreement has been left blank, but will be revised prior to the Effective Date of the NERC-WECC Agreement to list those BA Areas for which WECC is the Registered Entity for the IA Function, and may be revised from time to time thereafter in accordance with Section 5 of the Agreement.

⁴ As specified in Section 5 of the NERC-WECC CMEP Agreement, Exhibit B will be revised from time to time as needed.

⁵ See Section 2(e) of the NERC-WECC CMEP Agreement.

The NERC-WECC CMEP Agreement provides that it shall be effective on January 1, 2009.⁶ As stated in the September 22 Status Report, January 1, 2009 is the date on which WECC will begin operation of its two new Reliability Coordination Centers (“RCCs”) in Vancouver, Washington and Loveland, Colorado, which will be owned and operated by WECC and staffed by WECC employees. Upon commencement of operation of the new WECC RCCs, the RC function in the WECC Region will no longer be hosted and staffed by third-party organizations.⁷ The Initial Term of the NERC-WECC CMEP Agreement is five years from the Effective Date, with provision for successive Renewal Terms of five years unless NERC or WECC gives notice to terminate at least six months before the end of the Initial Term or a Renewal Term.⁸ The Agreement also provides for Early Termination under specified circumstances, including WECC ceasing to be a Regional Entity or ceasing to be a Registered Entity for the RC function and any IA functions in the WECC Region.⁹

Because the NERC-WECC CMEP Agreement is provided with this status report as **Attachment 1**, NERC and WECC will not provide an extensive description of its terms in this status report. However, Section 1 of the NERC-WECC CMEP Agreement sets forth NERC’s responsibilities for the CMEP with respect to the WECC Registered Functions:

1. Responsibilities of NERC.

(a) Beginning on the Effective Date, NERC will perform all responsibilities of the Compliance Enforcement Authority (“CEA”) as specified in the NERC uniform CMEP, Appendix 4C to the NERC Rules of Procedure

⁶ NERC-WECC CMEP Agreement at 1.

⁷ September 22 Status Report at 2 and 8.

⁸ Section 7(a)-(b) of the NERC-WECC CMEP Agreement.

⁹ Section 7(c) of the NERC-WECC CMEP Agreement.

(“ROP”), as amended from time to time (the “NERC Uniform CMEP”), with respect to the WECC Registered Functions.

(b) Without limiting the scope of NERC’s responsibilities as stated in Subsection 1(a), NERC will:

(1) Administer all compliance processes in Section 3.0 of the NERC Uniform CMEP with respect to the WECC Registered Functions, in accordance with the NERC Annual CMEP Implementation Plan required by Section 4.1 of the NERC Uniform CMEP for each year.

(2) Lead all compliance audits and compliance violation investigations (“CVI”) of the WECC Registered Functions.

(a) NERC shall conduct a scheduled compliance audit of the WECC RC function at least once every three (3) years and shall conduct a scheduled compliance audit of the WECC IA function at least once every six (6) years.

(b) Scheduled compliance audits of the WECC Registered Functions shall include all actively-monitored standards in accordance with the NERC Annual CMEP Implementation Plan.

(c) As required by the NERC ROP, all compliance audits of the WECC RC function shall be conducted on site.

(3) Determine if notices of Alleged Violations and proposed penalties or sanctions should be issued to WECC with respect to the WECC Registered Functions, and calculate or determine any proposed penalties or sanctions in accordance with the NERC *Sanctions Guidelines*.

(4) Administer processes as specified in Section 5.0 of the NERC Uniform CMEP with respect to any notices of Alleged Violations and proposed penalties or sanctions issued with respect to the WECC Registered Functions.

(5) Review and approve proposed Mitigation Plans submitted by a WECC Registered Function, and monitor implementation and completion of approved Mitigation Plans, in accordance with Section 6.0 of the NERC Uniform CMEP.

(6) Determine if Remedial Action Directives should be issued to WECC with respect to a WECC Registered Function, and issue such Remedial Action Directives if determined to be necessary, in accordance with Section 7.0 of the NERC Uniform CMEP.

(7) Conduct settlement negotiations, if requested by WECC, in accordance with Section 5.4 of the NERC Uniform CMEP.

(8) Provide due process hearings for the WECC Registered Functions with respect to notices of Alleged Violations, proposed penalties and sanctions, disputed Mitigation Plans, and disputed Remedial Action Directives, as requested by WECC, in accordance with Attachment 2, Hearing Procedures, to the NERC Uniform CMEP.

(c) Compliance audit teams, CVI teams, and review teams for self-certifications, spot check responses, periodic data submittals, self-reports, exception reports and complaints submitted by or relating to a WECC Registered Function shall not include any employees of WECC, but may include employees of other Regional Entities and Commission staff members. Provided, that in accordance with Section 2(c) of this Agreement, NERC may request and obtain technical advice and assistance from WECC employees, acting in a consulting or advisory capacity, who are not employed in a WECC Registered Function.

Section 4 of the NERC-WECC CMEP Agreement provides for the transfer from WECC to NERC of responsibilities for CMEP activities, with respect to WECC Registered Functions that are in progress on the Effective Date of the Agreement:

NERC shall assume full responsibility, as the CEA, for completion of all compliance processes with respect to the WECC Registered Functions that are in progress as of the Effective Date, including without limiting the foregoing, (i) completion and issuance of reports of compliance audits and CVI of the WECC Registered Functions, (ii) completion of review of, and issuance of any findings or reports concerning, any self-certifications, spot-checks, periodic data submittals, self-reports, exception reports or complaints, submitted by or pertaining to a WECC Registered Function, (iii) determination of whether any notice of Alleged Violations and/or proposed penalties or sanctions should be issued to a WECC Registered Function as a result of any such compliance processes, (iv) processing of any notices of Alleged Violations and/or proposed penalties or sanctions that were issued before the Effective Date, or are issued after the Effective Date as the result of compliance processes conducted before the Effective Date, and (v) review, approval and monitoring of implementation and completion of any Mitigation Plans required of a WECC Registered Function as the result of compliance processes conducted before the Effective Date.

Section 2(c) of the NERC-WECC CMEP Agreement specifies that NERC may request, and WECC shall provide, subject-matter experts (“SMEs”) to provide technical advice and assistance to NERC in carrying out the CMEP with respect to the WECC Registered Functions.

However, no SME provided by WECC may be employed by WECC in a WECC Registered Function:

(c) WECC shall provide subject-matter experts (“SME”) as requested by NERC to provide technical advice and assistance to NERC, in NERC’s discretion, in carrying out the CMEP with respect to the WECC Registered Functions. A SME provided by WECC may be an employee of WECC or an industry volunteer, provided, that no SME provided by WECC may be employed by WECC in a WECC Registered Function. The Parties agree that SMEs provided by WECC shall only be used by NERC in a consulting or advisory capacity to provide expertise and advice on technical matters pertaining to the WECC Registered Functions, shall have no decision-making responsibilities with respect to any compliance processes or compliance enforcement matters, and shall not be a member of any compliance audit team, CVI team, or review team for self-certifications, spot check responses, periodic data submittals, self-reports, exception reports or complaints submitted by or relating to a WECC Registered Function.

Section 6 of the NERC-WECC CMEP Agreement specifies the means by which NERC will be compensated by WECC for performing the CMEP for the WECC Registered Functions, for 2009 (for which the NERC and WECC have already submitted, and the Commission has conditionally approved, their budgets for statutory functions¹⁰) and subsequent years:

6. Compensation to NERC for Performance of CMEP With Respect to the WECC Registered Functions.

(a) Compensation for 2009. The Parties agree that NERC’s costs for performance of CMEP responsibilities with respect to the WECC Registered Functions in 2009 shall be deemed to be \$50,000.00. NERC shall invoice WECC for this amount in four equal quarterly amounts during 2009, with the invoices to be issued by NERC to WECC on or about January 10, April 10, July 10 and October 10, and to be paid by WECC by electronic funds transfer to NERC within seven (7) business days following the date of the invoice.

(b) Compensation for Years Subsequent to 2009. In its annual Business Plans and Budgets submitted to the Commission for the year 2010 and subsequent years within the term of this Agreement, NERC shall identify a portion of its CMEP budget (the “WECC Registered Functions CMEP Budget”)

¹⁰ See *North American Electric Reliability Corporation, Order Conditionally Accepting 2009 Business Plan and Budget of the North American Electric Reliability Corporation and Ordering Compliance Filings*, 125 FERC ¶61,056 (2008).

that is attributable to performance of the CMEP with respect to the WECC Registered Functions. The amount of the WECC Registered Functions CMEP Budget for each year, as approved by the Commission, (i) shall be excluded from the calculation of NERC's assessments to load-serving entities and designees ("LSEs") for each such year, and (ii) shall be included in the calculation of WECC's assessments to LSEs in the WECC Region for each such year. NERC shall invoice WECC for the amount of the WECC Registered Functions CMEP Budget in four equal quarterly amounts during each year, with the invoices to be issued by NERC to WECC on or about January 10, April 10, July 10 and October 10 and to be paid by WECC by electronic funds transfer to NERC within seven (7) business days following the date of the invoice.

(c) Payment by WECC of the amount specified in subsection 6(a) for 2009 and of the amount of the WECC Registered Functions CMEP Budget for subsequent years shall constitute the entire compensation due to NERC from WECC as consideration for NERC's performance of the CMEP with respect to the WECC Registered Functions.

These provisions will enable WECC's costs for NERC's compensation to be allocated and included in the assessments to load-serving entities and designees ("LSEs") in the WECC Region. This is appropriate because NERC will be performing CMEP responsibilities in the WECC Region that, were WECC not the Registered Entity for the RC and IA functions, would be performed by WECC and the costs included in WECC's assessments for the costs of its statutory functions to LSEs in the WECC Region. Additionally, although NERC and WECC have agreed that NERC's compensation for performing the CMEP with respect to the WECC Registered Functions in 2009 should be \$50,000, for years after 2009 the Commission will be able to review NERC's budget for this activity as part of its annual review of NERC's business plan and budget.

Finally, Sections 9 through 19 of the NERC-WECC CMEP Agreement are commercial terms and conditions that have been taken directly from, or adapted from comparable provisions in, the Delegation Agreement between NERC and WECC.

IV. COMPLETION OF COMPLIANCE WITH P 226 OF MARCH 21 2008 ORDER

Paragraph 226 of the March 21 2008 Order stated:

We accept WECC's proposal regarding the separation of its compliance and reliability coordinator functions as an interim measure, i.e., until additional measures can be put in place that will ensure that WECC does not monitor compliance of its own operations. If NERC continues to be unable to assume an expanded role regarding these matters, NERC and WECC will be required to assign this role to: (i) another Regional Entity; or (ii) a third party who reports directly to NERC and who is approved by NERC and the Commission. We direct NERC and WECC to submit a status report within six months of the date of this order and every six months thereafter, as may be necessary, detailing its efforts to address these requirements. These status reports should include, but not be limited to, a description of any audits conducted by WECC regarding its reliability coordinator functions and a summary of the results of the audits.

In the September 22 Status Report, NERC and WECC reported their conclusion that NERC should assume responsibility for the CMEP for the WECC RC function.¹¹ In this status report, NERC and WECC are providing their Agreement pursuant to which NERC will perform the CMEP for the WECC Registered Functions. NERC and WECC believe the September 22 Status Report and this status report fulfill their obligations in response to the directive in P 226 of the March 21 2008 Order. NERC and WECC request the Commission to confirm that no further status reports need be filed in response to P 226 of the March 21 2008 Order.¹²

¹¹ The September 22 Status Report also described the audits that have been conducted of the WECC RC function. September 22 Status Report at 9-12.

¹² As the Compliance Enforcement Authority for the WECC Registered Functions, NERC will submit to the Commission all required notifications and reports, including compliance audit reports, any notices of alleged violations and proposed penalties, and any reports of confirmed violations, as required by the NERC uniform CMEP, thereby enabling the Commission to monitor WECC's compliance with Reliability Standards in carrying out the WECC Registered Functions, just as the Commission is able to do with respect to the compliance performance of any Registered Entity.

V. CONCLUSION

NERC and WECC respectfully request that the Commission accept this further status report as final compliance with P 226 of the March 21 2008 Order.

Respectfully submitted,

<p>Rick Sergel President and Chief Executive Officer David N. Cook Vice President and General Counsel North American Electric Reliability Corporation 116-390 Village Boulevard Princeton, NJ 08540-5721 (609) 452-8060 (609) 452-9550 – facsimile david.cook@nerc.net</p> <p>Rebecca J. Michael, Assistant General Counsel North American Electric Reliability Corporation 1120 G Street, N.W., Suite 990 Washington, D.C. 2005-3801 (202) 393-3998 (202) 393-3995 – facsimile Rebecca.michael@nerc.net</p>	<p>Owen E. MacBride Debra Ann Palmer Schiff Hardin LLP 1666 K Street, N.W., Suite 300 Washington, DC 20036-4390 (202) 778-6400 (202) 778-6460 – facsimile omacbride@schiffhardin.com dpalmer@schiffhardin.com Counsel for NERC</p> <p>Peter H. Zamore Sheehey, Furlong & Behm P.C. 30 Main Street, P.O. Box 66 Burlington, VT 05402 (802) 864-9891 (802) 864-6815 (facsimile) pzamore@sheeheyvt.com Counsel for WECC</p>
---	---

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 21st day of November, 2008.

/s/ Owen E. MacBride
Owen E. MacBride

*Attorney for North American Electric
Reliability Corporation*

ATTACHMENT 1

**Agreement Between North American Electric Reliability Corporation
and Western Electricity Coordinating Council
Concerning Compliance Monitoring and Enforcement
for WECC Registered Functions**

**AGREEMENT BETWEEN
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION and
WESTERN ELECTRICITY COORDINATING COUNCIL
CONCERNING COMPLIANCE MONITORING AND ENFORCEMENT
FOR WECC REGISTERED FUNCTIONS**

THIS AGREEMENT (“Agreement”) made effective as of January 1, 2009 (the “Effective Date”), between the North American Electric Reliability Corporation (“NERC”), an organization certified by the Federal Energy Regulatory Commission (“Commission”) pursuant to Section 215(c) of the Federal Power Act (“Act”) to establish and enforce Reliability Standards for the bulk power system, and the Western Electricity Coordinating Council (“WECC”), an organization established to develop and enforce Reliability Standards within the geographic boundaries identified on **Exhibit A** to this Agreement (the portion of such geographic boundaries lying within the United States is referred to herein as the “WECC Region”), and for other purposes. NERC and WECC may be individually referred to herein as “Party” or collectively as “Parties.”

RECITALS

I. WECC performs the Reliability Coordinator (“RC”) function (as “Reliability Coordinator” is defined in the NERC *Glossary of Terms Used in Reliability Standards*) for the WECC Region, and is registered on the NERC *Compliance Registry* as the RC for the WECC Region. WECC also performs the Interchange Authority (“IA”) function (as “Interchange Authority” is defined in the NERC *Glossary of Terms Used in Reliability Standards*) for all Balancing Authority (“BA”) Areas in the WECC Region listed on **Exhibit B** to this Agreement (as **Exhibit B** is revised from time to time), and WECC is registered on the NERC *Compliance Registry* as the IA for all BA Areas in the WECC Region listed on **Exhibit B**. In this Agreement, the RC function for the WECC Region, and the IA function for the BA Areas for

which WECC is registered as the IA, are sometimes referred to as the “WECC Registered Functions,” and WECC is referred to as the “Registered Entity” with respect to its performance of the WECC Registered Functions.

II. In its performance of the WECC Registered Functions, WECC is subject to, and required to comply with, the requirements of Commission-approved Reliability Standards that are applicable to the WECC Registered Functions.

III. NERC and WECC are parties to a certain “Amended and Restated Delegation Agreement Between the North American Electric Reliability Corporation and Western Electricity Coordinating Council” (the “NERC-WECC Delegation Agreement”), which has been approved by the Commission, and which states in Section 6 thereof, in pertinent part, that WECC shall enforce Reliability Standards (including Regional Reliability Standards) within the WECC Region through a compliance enforcement program set forth in Exhibit D to the NERC-WECC Delegation Agreement.

IV. Notwithstanding the provisions of Section 6 of the NERC-WECC Delegation Agreement, the Commission has ruled that WECC responsibility to enforce Reliability Standards applicable to WECC Registered Functions provides insufficient separation of functions, may result in a lack of independence in compliance monitoring and enforcement for WECC Registered Functions, and presents a deficiency in compliance monitoring and enforcement that should be remedied. The Commission has therefore directed that WECC arrange for NERC, another Regional Entity or a third party, rather than WECC, to be responsible for enforcing Reliability Standards applicable to the WECC Registered Functions.

V. In light of the Commission’s directives, NERC and WECC agree that NERC should assume responsibility for the Compliance Monitoring and Enforcement Program

(“CMEP”) with respect to the WECC Registered Functions, and that the terms on which responsibility for the CMEP with respect to the WECC Registered Functions shall be transferred to and performed by NERC should be memorialized in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Parties, intending to be bound, agree as follows:

1. Responsibilities of NERC.

(a) Beginning on the Effective Date, NERC will perform all responsibilities of the Compliance Enforcement Authority (“CEA”) as specified in the NERC uniform CMEP, Appendix 4C to the NERC Rules of Procedure (“ROP”), as amended from time to time (the “NERC Uniform CMEP”), with respect to the WECC Registered Functions.

(b) Without limiting the scope of NERC’s responsibilities as stated in Subsection 1(a), NERC will:

(1) Administer all compliance processes in Section 3.0 of the NERC Uniform CMEP with respect to the WECC Registered Functions, in accordance with the NERC Annual CMEP Implementation Plan required by Section 4.1 of the NERC Uniform CMEP for each year.

(2) Lead all compliance audits and compliance violation investigations (“CVI”) of the WECC Registered Functions.

(a) NERC shall conduct a scheduled compliance audit of the WECC RC function at least once every three (3) years and shall conduct a scheduled compliance audit of the WECC IA function at least once every six (6) years.

(b) Scheduled compliance audits of the WECC Registered Functions shall include all actively-monitored standards in accordance with the NERC Annual CMEP Implementation Plan.

(c) As required by the NERC ROP, all compliance audits of the WECC RC function shall be conducted on site.

(3) Determine if notices of Alleged Violations and proposed penalties or sanctions should be issued to WECC with respect to the WECC Registered Functions, and calculate or determine any proposed penalties or sanctions in accordance with the NERC *Sanctions Guidelines*.

(4) Administer processes as specified in Section 5.0 of the NERC Uniform CMEP with respect to any notices of Alleged Violations and proposed penalties or sanctions issued with respect to the WECC Registered Functions.

(5) Review and approve proposed Mitigation Plans submitted by a WECC Registered Function, and monitor implementation and completion of approved Mitigation Plans, in accordance with Section 6.0 of the NERC Uniform CMEP.

(6) Determine if Remedial Action Directives should be issued to WECC with respect to a WECC Registered Function, and issue such Remedial Action Directives if determined to be necessary, in accordance with Section 7.0 of the NERC Uniform CMEP.

(7) Conduct settlement negotiations, if requested by WECC, in accordance with Section 5.4 of the NERC Uniform CMEP.

(8) Provide due process hearings for the WECC Registered Functions with respect to notices of Alleged Violations, proposed penalties and sanctions, disputed

Mitigation Plans, and disputed Remedial Action Directives, as requested by WECC, in accordance with Attachment 2, Hearing Procedures, to the NERC Uniform CMEP.

(c) Compliance audit teams, CVI teams, and review teams for self-certifications, spot check responses, periodic data submittals, self-reports, exception reports and complaints submitted by or relating to a WECC Registered Function shall not include any employees of WECC, but may include employees of other Regional Entities and Commission staff members. Provided, that in accordance with Section 2(c) of this Agreement, NERC may request and obtain technical advice and assistance from WECC employees, acting in a consulting or advisory capacity, who are not employed in a WECC Registered Function.

2. Responsibilities of WECC.

(a) As the Registered Entity for the WECC Registered Functions, WECC shall establish and designate to NERC a primary compliance contact for each WECC Registered Function, in accordance with Section 2.0 of the NERC Uniform CMEP.

(b) As the Registered Entity for the WECC Registered Functions, WECC shall timely respond to and comply with all notices, requests for information and schedules issued by NERC as the CEA pursuant to the NERC Uniform CMEP.

(c) WECC shall provide subject-matter experts (“SME”) as requested by NERC to provide technical advice and assistance to NERC, in NERC’s discretion, in carrying out the CMEP with respect to the WECC Registered Functions. A SME provided by WECC may be an employee of WECC or an industry volunteer, provided, that no SME provided by WECC may be employed by WECC in a WECC Registered Function. The Parties agree that SMEs provided by WECC shall only be used by NERC in a consulting or advisory capacity to provide expertise and advice on technical matters pertaining to the WECC Registered Functions, shall have no

decision-making responsibilities with respect to any compliance processes or compliance enforcement matters, and shall not be a member of any compliance audit team, CVI team, or review team for self-certifications, spot check responses, periodic data submittals, self-reports, exception reports or complaints submitted by or relating to a WECC Registered Function.

(d) WECC shall reimburse NERC for NERC's performance of the CMEP with respect to the WECC Registered Functions, in accordance with Section 6 of this Agreement.

(e) Except as provided in this Agreement, WECC shall continue to perform all CMEP responsibilities in the WECC Region in accordance with the NERC-WECC Delegation Agreement

3. Disposition of Penalties Paid by WECC with respect to a WECC Registered Function.

In accordance with Section 8(h), and Section 4 of Exhibit E, of the NERC-WECC Delegation Agreement, all penalties to be paid by WECC for violations of Reliability Standards by a WECC Registered Function, shall be paid to NERC and used by NERC as a general offset to NERC's budget for its activities as the Electric Reliability Organization for the following year.

4. Transfer of Responsibilities for CMEP Activities With Respect To WECC Registered Functions That Are In Progress on the Effective Date.

NERC shall assume full responsibility, as the CEA, for completion of all compliance processes with respect to the WECC Registered Functions that are in progress as of the Effective Date, including without limiting the foregoing, (i) completion and issuance of reports of compliance audits and CVI of the WECC Registered Functions, (ii) completion of review of, and issuance of any findings or reports concerning, any self-certifications, spot-checks, periodic data submittals, self-reports, exception reports or complaints, submitted by or pertaining to a WECC Registered Function, (iii) determination of whether any notice of Alleged Violations and/or

proposed penalties or sanctions should be issued to a WECC Registered Function as a result of any such compliance processes, (iv) processing of any notices of Alleged Violations and/or proposed penalties or sanctions that were issued before the Effective Date, or are issued after the Effective Date as the result of compliance processes conducted before the Effective Date, and (v) review, approval and monitoring of implementation and completion of any Mitigation Plans required of a WECC Registered Function as the result of compliance processes conducted before the Effective Date.

5. Revisions to Exhibit B to this Agreement

(a) If WECC becomes registered on the NERC *Compliance Registry* as the IA for a BA Area not listed on **Exhibit B** to this Agreement, the Parties shall revise **Exhibit B** to add the BA Area for which WECC has become the Registered Entity for the IA function.

(b) If WECC ceases to be registered on the NERC *Compliance Registry* as the IA for a BA Area, the Parties shall revise **Exhibit B** to delete the BA Area for which WECC has ceased to be the Registered Entity for the IA function.

6. Compensation to NERC for Performance of CMEP With Respect to the WECC Registered Functions.

(a) Compensation for 2009. The Parties agree that NERC's costs for performance of CMEP responsibilities with respect to the WECC Registered Functions in 2009 shall be deemed to be \$50,000.00. NERC shall invoice WECC for this amount in four equal quarterly amounts during 2009, with the invoices to be issued by NERC to WECC on or about January 10, April 10, July 10 and October 10, and to be paid by WECC by electronic funds transfer to NERC within seven (7) business days following the date of the invoice.

(b) Compensation for Years Subsequent to 2009. In its annual Business Plans and Budgets submitted to the Commission for the year 2010 and subsequent years within the term of this Agreement, NERC shall identify a portion of its CMEP budget (the “WECC Registered Functions CMEP Budget”) that is attributable to performance of the CMEP with respect to the WECC Registered Functions. The amount of the WECC Registered Functions CMEP Budget for each year, as approved by the Commission, (i) shall be excluded from the calculation of NERC’s assessments to load-serving entities and designees (“LSEs”) for each such year, and (ii) shall be included in the calculation of WECC’s assessments to LSEs in the WECC Region for each such year. NERC shall invoice WECC for the amount of the WECC Registered Functions CMEP Budget in four equal quarterly amounts during each year, with the invoices to be issued by NERC to WECC on or about January 10, April 10, July 10 and October 10 and to be paid by WECC by electronic funds transfer to NERC within seven (7) business days following the date of the invoice.

(c) Payment by WECC of the amount specified in subsection 6(a) for 2009 and of the amount of the WECC Registered Functions CMEP Budget for subsequent years shall constitute the entire compensation due to NERC from WECC as consideration for NERC’s performance of the CMEP with respect to the WECC Registered Functions.

7. Term and Termination.

(a) Initial Term. The Initial Term of this Agreement shall be five (5) years from the Effective Date.

(b) Renewal Terms. This Agreement shall automatically renew, without any notice or other action by either Party, at the end of the Initial Term and each Renewal Term, for an additional Renewal Term of five (5) years, unless either Party gives written notice to the other

Party, at least six (6) months prior to the end of the Initial Term or Renewal Term, of intent to terminate this Agreement; provided, however, that in the event of such termination, NERC shall continue to perform the CMEP with respect to the WECC Registered Functions, in accordance with the terms of this Agreement and the NERC Uniform CMEP, until another entity acceptable to the Commission is selected to take, and takes, responsibility for performance of the CMEP with respect to the WECC Registered Functions.

(c) Early Termination. Notwithstanding the provisions of subsections 7(a) and 7(b), Early Termination of this Agreement shall occur in the following events:

(1) If WECC ceases to be a Regional Entity, this Agreement shall terminate as of the date WECC ceases to be a Regional Entity.

(2) If WECC ceases to be the Registered Entity for both the RC function and the IA function in the WECC Region, this Agreement shall terminate as of the date WECC ceases to be a Registered Entity for the RC function or the IA function.

(3) If any provision of this Agreement, or the application thereof to any person, entity or circumstance, is held by a court or regulatory authority of competent jurisdiction to be invalid, void, or unenforceable, or if a modification or condition to this Agreement is imposed by the Commission, the Parties shall endeavor in good faith to negotiate such amendment or amendments to this Agreement as will restore the relative benefits and obligations of the signatories under this Agreement immediately prior to such holding, modification or condition. If either Party finds such holding, modification or condition unacceptable and the Parties are unable to renegotiate a mutually acceptable resolution, either Party may unilaterally terminate this Agreement. Such termination

shall be effective as of one year following written notice by either Party to the other Party, or at such other time as may be mutually agreed by NERC and WECC.

Provided, that in the event of an Early Termination, NERC shall be responsible for completion of all compliance processes that are in progress as of the date of Early Termination, in the same manner as described in Section 4 of this Agreement with respect to compliance processes that are in progress as of the Effective Date.

8. Geographic Scope of Agreement.

For avoidance of doubt, this Agreement, and the responsibilities of the Parties hereunder, are effective and binding only within the portion of the geographic boundaries of WECC shown on **Exhibit A** that is within the United States.

9. Representations of the Parties.

(a) Representations of WECC. WECC represents and warrants to NERC that (i) WECC is and shall remain during the term of this Agreement validly existing and in good standing pursuant to all applicable laws relative to this Agreement, (ii) no applicable law, contract or other legal obligation prevents WECC from executing this Agreement and fulfilling its obligations hereunder, (iii) entry into this Agreement by WECC is duly authorized under its governing corporate documents, and (iv) the person or persons executing this Agreement on behalf of WECC are duly authorized to do so.

(b) Representations of NERC. NERC represents and warrants to WECC that (i) NERC is and shall remain during the term of this Agreement validly existing and in good standing pursuant to all applicable laws relative to this Agreement, (ii) no applicable law, contract or other legal obligation prevents NERC from executing this Agreement and fulfilling its obligations hereunder, (iii) entry into this Agreement by NERC is duly authorized under its

governing corporate documents, and (iv) the person or persons executing this Agreement on behalf of NERC are duly authorized to do so.

10. Limitation of Liability.

NERC and WECC agree not to sue each other or their directors, officers, employees, and persons serving on their committees and subgroups based on any act or omission of any of the foregoing in the performance of duties pursuant to this Agreement or in conducting activities under the authority of Section 215 of the Act, other than seeking a review of such action or inaction by the Commission. NERC and WECC shall not be liable to one another for any damages whatsoever, other than for non-payment of or failure to remit compensation due pursuant to Section 6 of this Agreement, including without limitation, direct, indirect, incidental, special, multiple, consequential (including attorneys' fees and litigation costs), exemplary, or punitive damages arising out of or resulting from any act or omission associated with the performance of NERC's or WECC's responsibilities under this Agreement or in conducting activities under the authority of Section 215 of the Act, except to the extent that NERC or WECC is found liable for gross negligence or intentional misconduct, in which case NERC or WECC shall not be liable for any indirect, incidental, special, multiple, consequential (including without limitation attorneys' fees and litigation costs), exemplary, or punitive damages.

11. No Third Party Beneficiaries.

Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any third party.

12. Confidentiality.

During the course of the Parties' performance under this Agreement, a Party may receive Confidential Information, as defined in Section 1500 of the NERC ROP. Except as set forth

herein, the Parties agree to keep in confidence and not to copy, disclose, or distribute any Confidential Information or any part thereof, without the prior written permission of the issuing Party, unless disclosure is required by subpoena, law, or other directive of a court, administrative agency, or arbitration panel, in which event the recipient hereby agrees to provide the Party that provided the Confidential Information with prompt notice of such request or requirement in order to enable such issuing Party to (a) seek an appropriate protective order or other remedy, (b) consult with the recipient with respect to taking steps to resist or narrow the scope of such request or legal process, or (c) waive compliance, in whole or in part, with the terms of this Section 12. In the event a protective order or other remedy is not obtained or the issuing Party waives compliance with the provisions, the recipient agrees to furnish only that portion of the Confidential Information which the recipient's counsel advises is legally required and to exercise best efforts to obtain assurance that confidential treatment will be accorded to such Confidential Information. In addition, each Party shall ensure that its officers, trustees, directors, employees, subcontractors and subcontractors' employees, and agents to whom Confidential Information is exposed are under obligations of confidentiality that are at least as restrictive as those contained herein. This confidentiality provision does not prohibit reporting and disclosure by NERC, as the CEA with respect to the WECC Registered Functions, in accordance with Section 8.0 and other provisions of the NERC Uniform CMEP.

13. Amendment.

Neither this Agreement nor any of the terms hereof, may be amended unless such amendment is made in writing and signed by the Parties.

14. Dispute Resolution.

In the event a dispute arises under this Agreement between NERC and WECC, representatives of the Parties with authority to settle the dispute shall meet and confer in good faith in an effort to resolve the dispute in a timely manner. In the event the designated representatives are unable to resolve the dispute within thirty (30) days or such other period as the Parties may agree upon, each Party shall have all rights to pursue all remedies, except as expressly limited by the terms of this Agreement. Neither Party shall have the right to pursue other remedies until the Dispute Resolution procedures of this Section 14 have been exhausted. This Section 14 shall not apply to enforcement actions or Remedial Action Directives by NERC, as the CEA, against a WECC Registered Function, or hearings conducted at the request of WECC as the Registered Entity for a WECC Registered Function, pursuant to the NERC Uniform CMEP.

15. Notices.

Whether expressly so stated or not, all notices, demands, requests, and other communications required or permitted by or provided for in this Agreement shall be given in writing to a Party at the address set forth below, or at such other address as a Party shall designate for itself in writing in accordance with this Section, and shall be delivered by hand or reputable overnight courier:

If to NERC:

North American Electric
Reliability Corporation
116-390 Village Blvd.
Princeton, NJ 08540-5721
Attn: David W. Hilt
Facsimile: (609) 452-9550

If to WECC:

Western Electricity Coordinating Council
615 Arapeen Drive, Suite 210
Salt Lake City, UT 84108-1262
Attn: Louise McCarren
Facsimile: (801) 582-3918

Provided, that the foregoing notice provision shall not be applicable to notices and other communications between NERC, as the CEA, and WECC as the Registered Entity for a WECC Registered Function, which notices and other communications shall instead be provided or transmitted in accordance with the NERC Uniform CMEP.

16. Governing Law.

When not in conflict with or preempted by federal law, this Agreement will be governed by and construed in accordance with the laws of New Jersey without giving effect to the conflict of law principles thereof. The Parties recognize and agree not to contest the exclusive or primary jurisdiction of the Commission to interpret and apply this Agreement; provided however, that if the Commission declines to exercise or is precluded from exercising jurisdiction of any action arising out of or concerning this Agreement, such action shall be brought in any state or federal court of competent jurisdiction in New Jersey. All Parties hereby consent to the jurisdiction of any state or federal court of competent jurisdiction in New Jersey for the purpose of hearing and determining any action not heard and determined by the Commission.

17. Headings.

The headings and captions in this Agreement are for convenience of reference only and shall not define, limit, or otherwise affect any of the terms or provisions hereof.

18. Entire Agreement.

This Agreement constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, among the Parties with respect to the subject matter of this Agreement.

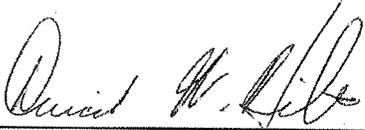
19. Execution of Counterparts.

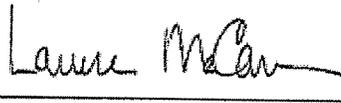
This Agreement may be executed in counterparts and each counterpart shall have the same force and effect as the original.

NOW, THEREFORE, the Parties have caused this Agreement to be executed by their duly authorized representatives, to be effective as of the Effective Date.

NORTH AMERICAN
ELECTRIC RELIABILITY CORPORATION

WESTERN ELECTRICITY
COORDINATING COUNCIL

By: 

By: 

Name: David W. Hilt

Name: V. Louise McCarren

Title: Vice President and Director of
Compliance

Title: Chief Executive Officer

Date: 11/21/08

Date: 11/21/08

EXHIBIT A

Description of WECC geographic boundaries from NERC-WECC Delegation Agreement

WECC's physical boundaries coincide with the boundaries of the Western Interconnection. The Western Interconnection consists of the synchronously operated electric transmission grid in the western part of North America, which includes parts of Montana, Nebraska, New Mexico, South Dakota, Texas, Wyoming, and Mexico and all of Arizona, California, Colorado, Idaho, Nevada, Oregon, Utah, Washington and the Canadian Provinces of British Columbia and Alberta. The WECC region encompasses approximately 1.8 million square miles.

WECC's northern border runs along the northern border of British Columbia and Alberta. The western border extends along the western coast of North America from British Columbia into northern Baja California, Mexico. The southern border traverses northern Baja and extends along the southern United States border to Texas. The eastern border bisects North America from Alberta, Canada through the states of Montana, South Dakota, Wyoming, Nebraska, Texas and New Mexico to the southern United States border.

EXHIBIT B

Balancing Authority Areas in the WECC Region for which WECC is the Registered Entity on the NERC *Compliance Registry* for the Interchange Authority function:

[Initial List of Balancing Authority Areas will be inserted prior to the Effective Date.]