

## Agenda

# Finance and Audit Committee Meeting

September 28, 2021 | 12:15 p.m.-12:30 p.m. Eastern

Virtual via WebEx

**Attendee** WebEx Link: [Join Meeting](#)

**Call to Order and Chair's Remarks**

**NERC Antitrust Compliance Guidelines**

### Agenda

1. **Authorization for New Atlanta Office Lease\* – Approve and Recommend Board of Trustees Approval**
2. **Amendment to the 2022 NERC Business Plan and Budget\* - Approve and Recommend Board of Trustees Approval**

\*Background documents included.

# Antitrust Compliance Guidelines

## I. General

It is NERC's policy and practice to obey the antitrust laws and to avoid all conduct that unreasonably restrains competition. This policy requires the avoidance of any conduct that violates, or that might appear to violate, the antitrust laws. Among other things, the antitrust laws forbid any agreement between or among competitors regarding prices, availability of service, product design, terms of sale, division of markets, allocation of customers or any other activity that unreasonably restrains competition.

It is the responsibility of every NERC participant and employee who may in any way affect NERC's compliance with the antitrust laws to carry out this commitment.

Antitrust laws are complex and subject to court interpretation that can vary over time and from one court to another. The purpose of these guidelines is to alert NERC participants and employees to potential antitrust problems and to set forth policies to be followed with respect to activities that may involve antitrust considerations. In some instances, the NERC policy contained in these guidelines is stricter than the applicable antitrust laws. Any NERC participant or employee who is uncertain about the legal ramifications of a particular course of conduct or who has doubts or concerns about whether NERC's antitrust compliance policy is implicated in any situation should consult NERC's General Counsel immediately.

## II. Prohibited Activities

Participants in NERC activities (including those of its committees and subgroups) should refrain from the following when acting in their capacity as participants in NERC activities (e.g., at NERC meetings, conference calls and in informal discussions):

- Discussions involving pricing information, especially margin (profit) and internal cost information and participants' expectations as to their future prices or internal costs.
- Discussions of a participant's marketing strategies.
- Discussions regarding how customers and geographical areas are to be divided among competitors.
- Discussions concerning the exclusion of competitors from markets.
- Discussions concerning boycotting or group refusals to deal with competitors, vendors or suppliers.

- Any other matters that do not clearly fall within these guidelines should be reviewed with NERC's General Counsel before being discussed.

### **III. Activities That Are Permitted**

From time to time decisions or actions of NERC (including those of its committees and subgroups) may have a negative impact on particular entities and thus in that sense adversely impact competition. Decisions and actions by NERC (including its committees and subgroups) should only be undertaken for the purpose of promoting and maintaining the reliability and adequacy of the bulk power system. If you do not have a legitimate purpose consistent with this objective for discussing a matter, please refrain from discussing the matter during NERC meetings and in other NERC-related communications.

You should also ensure that NERC procedures, including those set forth in NERC's Certificate of Incorporation, Bylaws, and Rules of Procedure are followed in conducting NERC business.

In addition, all discussions in NERC meetings and other NERC-related communications should be within the scope of the mandate for or assignment to the particular NERC committee or subgroup, as well as within the scope of the published agenda for the meeting.

No decisions should be made nor any actions taken in NERC activities for the purpose of giving an industry participant or group of participants a competitive advantage over other participants. In particular, decisions with respect to setting, revising, or assessing compliance with NERC reliability standards should not be influenced by anti-competitive motivations.

Subject to the foregoing restrictions, participants in NERC activities may discuss:

- Reliability matters relating to the bulk power system, including operation and planning matters such as establishing or revising reliability standards, special operating procedures, operating transfer capabilities, and plans for new facilities.
- Matters relating to the impact of reliability standards for the bulk power system on electricity markets, and the impact of electricity market operations on the reliability of the bulk power system.
- Proposed filings or other communications with state or federal regulatory authorities or other governmental entities.
- Matters relating to the internal governance, management and operation of NERC, such as nominations for vacant committee positions, budgeting and assessments, and employment matters; and procedural matters such as planning and scheduling meetings.

## **New Atlanta Office Lease and Amendment to the 2022 NERC Business Plan and Budget**

### **Action**

- Approve and recommend that the Board of Trustees (Board) approve management's request for authorization to execute a final lease agreement for NERC's Atlanta office in terms materially consistent with those presented, and
- Approve and recommend Board approval of an amendment to the NERC 2022 Business Plan and Budget, confirm that the exigency of circumstances necessitated use of a shortened comment period for the amendment, and authorize management to submit the amendment to the applicable regulatory authorities.

### **Background**

As discussed during the August 9, 2021, Finance and Audit Committee (FAC) closed meeting, and August 12, 2021 FAC open meeting, NERC staff has been actively evaluating options for the NERC Atlanta office lease, and has identified a potential transaction that would provide significant cost savings over the current lease and facility costs for NERC's Atlanta office, of over \$900,000 per year, and other benefits. NERC is leveraging a changing real estate market to capture these cost savings, which will be reflected in future business plans and budgets. As shown in the financial analysis supplied to the FAC and the Board concomitant with these materials, these savings will result in a reasonable payback of the cost of exercising an option to exit NERC's current lease and other out of pocket expenditures in a period that is less than the remaining time on the existing lease. In addition to the cost savings, the move strategically aligns with NERC's Connected Workforce model, which contemplates balancing work-from-home flexibility (a long-term result of the pandemic experience, thereby requiring less physical office space) with the opportunity and need to collaborate in an office space. The enhanced collaboration space and the advantages relating to access to the new location will also provide a better experience for internal and stakeholder meetings.

In order to take advantage of this opportunity, NERC has sought and obtained the approval of the FAC and the Board to draw on its Operating Contingency Reserve (OCR) in 2021 to fund the termination costs associated with the early termination of its current Atlanta office lease. NERC's exercise of the early termination is conditioned on obtaining approval from the Federal Energy Regulatory Commission (FERC) for the draw on reserves, and the achievement of a satisfactory lease agreement in the new location.

### **Summary**

#### **Material Terms of the New Lease**

On September 10, 2021, NERC entered in to a non-binding letter of intent that outlines the material terms of the new lease. The letter of intent has been submitted to the FAC and the Board concomitant with these materials. Management requests that the FAC approve and recommend that the Board approve its request for authorization to execute a final lease agreement in terms materially consistent with those presented.

### **Amendment to the 2022 Business Plan and Budget**

In order to fund the portion of the construction and furnishing costs that, pursuant to the letter of intent, are not expected to be covered by the new landlord, NERC plans on drawing approximately \$709,000 from the Future Obligations Reserve and approximately \$64,000 out of the OCR in 2022. These expenditures and use of reserves are reflected in the proposed amendment to the 2022 business plan and budget.

The addition of these fixed asset addition expenditures to the 2022 budget results in a corresponding additional fixed asset allocation from Administrative to Statutory Programs, which slightly increases revenue requirements for the Cybersecurity Risk Information Sharing Program (CRISP) by approximately \$11,000 and the Personnel Certification and Continuing Education program by approximately \$16,000. The amendment does not result in a change to the 2022 assessments as presented in NERC's 2022 Business Plan and Budget filed with FERC on August 24, 2021, since the expenditures, net of the additional funding from CRISP and the Personnel Certification and Continuing Education program, will be funded by reserves as explained above. The ending balance of OCR in 2022 is projected to be 5.5% of the revised 2022 budget, within the policy target range of 3.5% to 7.0%.

As a result of the additional fixed asset allocation to the Compliance Monitoring and Enforcement Program (CMEP) areas, total Canadian credits for the 2022 budget are also increased by about \$14,000, or 0.02% of the total assessments. NERC proposes to add these credit adjustments to the 2023 Canadian credit calculations and to maintain no changes to the 2022 assessments previously approved by the FAC and the Board and filed with FERC.

Consistent with Article XIII, Section 5 of the NERC bylaws, management requests that the FAC approve and recommend for Board approval the proposed budget amendment and confirm that the exigency of circumstances necessitated the use of a shortened comment period for the proposed amendment, which was posted publicly on September 14, 2021. This shortened comment period was necessary to allow management to submit the amendment to FERC for approval within a time frame that permits management to proceed with the proposed transaction. The shortened comment period was also reasonable in light of (1) the substantial benefits to be accrued from the transaction; (2) the outreach to multiple stakeholders prior to the FAC and Board consideration of these requests; and (3) the fact that the proposed budget amendment does not require any increase in assessments over the assessments presented in the approved and filed 2022 business plan and budget.

NERC's use of these funds as contemplated in the amendment to the 2022 business plan and budget will be subject to the successful conclusion of lease negotiations, which are ongoing.

### **Additional Information**

[Proposed 2022 Budget Amendment Information](#)