

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Jon Wellingshoff.

North American Electric
Reliability Corporation

Docket No. RR06-3-000

ORDER CONDITIONALLY ACCEPTING
2007 BUSINESS PLAN AND BUDGET OF THE
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION
APPROVING ASSESSMENTS TO FUND BUDGETS
AND ORDERING COMPLIANCE FILINGS

(Issued October 24, 2006)

1. On July 20, 2006, the Commission granted the application submitted by the North American Electric Reliability Council (NERC Council), on behalf of its wholly-owned subsidiary, the North American Electric Reliability Corporation (NERC Corp.) (collectively NERC) for certification as the Electric Reliability Organization (ERO) for the continental United States under section 215 of the Federal Power Act (FPA).¹
2. The Commission's regulations require the ERO to file with the Commission its proposed entire annual budget for statutory and non-statutory activities 130 days before the beginning of its fiscal year. This filing must also contain the entire annual budget of each Regional Entity for statutory and non-statutory activities and include supporting materials, including the ERO's and each Regional Entity's complete business plan and organization chart, and explanation of the proposed collection of all dues, fees and charges and the proposed expenditure of funds collected.²
3. Pursuant to section 39.4 of the Commission's regulations, NERC filed its 2007 Business Plan and Budget as well as the 2007 Business Plans and Budgets of Regional Entities on August 23, 2006 (NERC Application), and supplemented this filing on

¹ *North American Electric Reliability Corporation*, 116 FERC ¶ 61,062 (2006), *reh'g pending (ERO Certification Order)*.

² 18 C.F.R. § 39.4(b) (2006).

October 6, 2006. Based on our review of NERC's ERO business plan and budget application and consideration of the public comments submitted on NERC's application, we conditionally accept the NERC budget and business plan, and the Regional Entity budgets in part, and order NERC to make compliance filings, as discussed below.

4. As noted above, we are conditionally accepting the first budget submitted by the ERO, as amended in the October 6 supplemental filing. The ERO's budget filing represents another important milestone toward achieving a strong ERO capable of developing and enforcing mandatory Reliability Standards. To this end the activities identified by NERC as statutory should be funded through the ERO under section 215 of the FPA, as NERC has proposed. We also find that NERC's proposed business plan is consistent with the activities described in its certification application as approved by the Commission; therefore, we conditionally accept NERC's budget, subject to NERC providing more information as described herein.

5. Likewise, we find that the proposed activities to be performed by the Regional Entities, as amended by NERC, are statutory activities entitled to funding through the ERO. However, we reserve judgment on the proposed Regional Entity business plans at this time, as the Regional Entity delegation agreements have yet to be executed or filed with the Commission for approval.

6. Other significant actions in this order include:

- We approve the NERC funding request of \$66,425,996, less the \$6.9 million requested for WECC reliability coordinator activities, for operation in the United States for fiscal year 2007. The Commission approves the proposed billing mechanics of the ERO. In addition, the Commission authorizes NERC to issue billing invoices by December 1, 2006, as planned. This will allow NERC to fund its first fiscal year as the ERO.
- We approve the budget and requested funding of \$402,839 for the Western Interconnection Regional Advisory Body (WIRAB).
- We direct that NERC submit compliance filings to provide additional information on NERC's accounting and recordkeeping, and supplemental budget information for each Regional Entity, among other things.

I. Background

A. Order No. 672

7. The Energy Policy Act of 2005 was enacted into law on August 8, 2005. It added a new section 215 to the FPA, which requires a Commission-certified ERO to develop mandatory and enforceable Reliability Standards, subject to Commission review and

approval.³ Once approved, the Reliability Standards are to be enforced by the ERO, subject to Commission oversight. With regard to funding, section 215(c)(2)(B) of the FPA provides that the ERO must have rules that “allocate equitably reasonable dues, fees and other charges among end users for all activities under this section.”

8. On February 3, 2006, the Commission issued Order No. 672 to implement the requirements of section 215 of the FPA.⁴ Order No. 672, among other things, sets forth requirements for the funding of the ERO and the approval of an ERO budget and business plan.⁵ Specifically, Order No. 672 concludes that section 215 of the FPA “provides for federal authorization of funding limited to the development of Reliability Standards and their enforcement, and monitoring the reliability of the bulk-power system. However, the ERO or a Regional Entity is not precluded from pursuing other activities, funded from other sources.”⁶ Likewise, any funding that is approved and provided by the ERO to a Regional Entity would be limited to a Regional Entity’s costs related to its delegated functions.⁷

9. On March 30, 2006, the Commission issued Order No. 672-A. While generally confirming the Commission’s determinations in Order No. 672, Order No. 672-A clarifies that the ERO may collect a Commission-approved assessment of dues, fees or charges for all activities performed pursuant to section 215 of the FPA, which would include all activities pursuant to the Commission’s associated regulations.⁸

³ Pub. L. No. 109-58, Title XII, Subtitle A, 119 Stat. 594, 941 to be codified at 16 U.S.C. 824o.

⁴ *Rules Concerning Certification of the Electric Reliability Organization; Procedures for the Establishment, Approval and Enforcement of Electric Reliability Standards*, Order No. 672, FERC Stats. & Regs. ¶ 31,204 (2006), *order on reh’g*, Order No. 672-A, FERC Stats. & Regs. ¶ 31,212 (2006).

⁵ 18 C.F.R. § 39.4 (2006).

⁶ Order No. 672 at P 202. Order No. 672 also discusses possible limitations on such other activities. *Id.* A Regional Entity is a body to which the ERO has delegated, under a Commission-approved agreement, authority to propose Reliability Standards to the ERO and to enforce Reliability Standards.

⁷ *Id.* at P 229.

⁸ Order No. 672-A at P 65.

B. ERO Certification Order

10. The subsequent *ERO Certification Order* generally accepted the funding proposal contained in NERC's ERO certification application, which allocates costs for statutory activities based on net energy for load (NEL).⁹ The order also approved NERC's proposal to have each Regional Entity bill and collect fees from the load serving entities (LSEs) within its geographic boundaries.

11. According to NERC's proposal, costs incurred to implement the statutory functions for one Interconnection, region or entity will be directly assigned to that Interconnection, region or entity and allocated within it based on NEL. NERC will require each Regional Entity to identify all LSEs within its footprint, as well as the NEL of each. The NEL reported by balancing authorities within a region will be used to rationalize and validate cost allocation for collection through a Regional Entity process. The Commission accepted this proposal and noted that in Order No. 672 it had found that a funding apportionment method based on NEL is a fair and reasonable method for allocating costs that minimizes the possibility of double-counting.¹⁰ The Commission accepted NERC's general approach that Regional Entities will either perform billing and collection for the ERO or will manage the billing and collection. However, it directed NERC to adopt appropriate safeguards in the delegation agreement to ensure that (1) the Regional Entities transfer the money to the ERO in a timely manner and (2) the Regional Entities do not use their position as billing agent and collector to unduly influence ERO's decisions. It clarified that this money belongs to the ERO, and that the Regional Entity simply serves as a collection agent.¹¹

12. In the *ERO Certification Order*, the Commission reserved judgment on what activities could be considered statutory and therefore eligible for funding under FPA section 215 until NERC files its detailed budget.¹² However, the Commission did state

⁹ The Commission defined NEL as "balancing authority area generation (less station use), plus energy received from other balancing authority areas, less energy delivered to balancing authority areas through interchange. It includes balancing authority area losses, but excludes energy required for storage at electric energy storage facilities, such as pumped storage." *ERO Certification Order*, 116 FERC ¶ 61,062 at P167, n.73.

¹⁰ *Id.* at P 167.

¹¹ *Id.* at P 169.

¹² *Id.* at P 185.

that it generally believes that anything required of the ERO or a Regional Entity by the statute, Order No. 672 pursuant to the statute, or any subsequent Commission order pursuant to section 215 of the FPA is a statutory activity.¹³

C. WIRAB Order

13. On July 20, 2006, the Commission granted the petition submitted by the Governors of a number of Western States to establish a Regional Advisory Body (RAB)¹⁴ for the Western Interconnection pursuant to section 215(j) of the FPA to be known as the Western Interconnection Regional Advisory Body (WIRAB).¹⁵ The Commission agreed in principle that reasonable costs incurred by an RAB in performing section 215(j) activities may be paid from mandatory fees collected under section 215. The Commission also reiterated that funding should be part of the overall ERO funding process, and that a proposed budget for WIRAB should contain sufficient detail to enable a determination regarding what portion thereof is for section 215(j) activities. Any WIRAB funding approved in connection with the overall ERO budget would be limited to WIRAB's costs incurred in performing section 215(j) activities.¹⁶

D. Description of NERC

14. NERC Corp. is a nonprofit New Jersey corporation. Its sole member is NERC Council, which is also a New Jersey nonprofit corporation whose members are the eight regional reliability councils covering the 48 states, several provinces in Canada, and a portion of Baja California Norte. NERC Council has operated as a voluntary, industry-sponsored reliability organization whose mission is to ensure that the bulk-power system

¹³ *Id.*

¹⁴ A RAB is a body established by the Commission pursuant to FPA section 215(j) upon a petition by a group of states. A RAB is authorized to provide advice to the ERO, a Regional Entity, or the Commission regarding the governance of an existing or proposed Regional Entity within the territory of the states represented in the RAB, on whether a Reliability Standard proposed to apply within the region is just, reasonable, not unduly discriminatory or preferential, and in the public interest, whether fees proposed to be assessed within the region are just, reasonable, not unduly discriminatory or preferential, and in the public interest, and to exercise any other responsibilities requested by the Commission.

¹⁵ *Governors of Arizona, California, Colorado, Montana, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming*, 116 FERC ¶61,061 (2006) (*WIRAB Order*).

¹⁶ *Id.* at P 33-36.

in North America is reliable, adequate and secure. In response to changes taking place in the electric industry, NERC Council has promoted the development of a mandatory system of Reliability Standards and compliance. NERC Council intends to merge into NERC Corp. prior to December 31, 2006, with NERC Corp. being the surviving entity.

E. NERC's ERO Business Plan and Budget Application

15. The NERC Application contains NERC's initial proposed ERO business plan and budget for the year ending December 31, 2007. It also includes proposed business plans and budgets for the year ending December 31, 2007, for the entities that NERC anticipates will become Regional Entities under FPA section 215, *i.e.*, NERC's current member regional reliability councils: Electric Reliability Council of Texas, Inc. (ERCOT), Florida Reliability Coordinating Council (FRCC), Midwest Reliability Organization (MRO), Northeast Power Coordinating Council (NPCC), Reliability First Corporation (RFC), Southeastern Reliability Council (SERC), and Western Electricity Coordinating Council (WECC). It also includes Southwest Power Pool, Inc.'s (SPP) and WIRAB's budgets.

16. In the October 6 supplemental filing, based on updated information provided by FRCC, MRO, RFC, SERC, SPP and WECC, NERC filed revised proposed assessments to LSEs or their designees within the footprint of each Regional Entity and revised allocations of NERC's proposed 2007 budget among the United States, Canada and Mexico.

II. Notice of Filing, Comments and Answers

17. Notice of filing was published in the *Federal Register*,¹⁷ with motions to intervene and protests due on or before September 13, 2006. Intervenors, including entities that filed comments, are listed in Attachment A to this order. On September 26, 2006, NERC filed an answer. On September 29, 2006, the New York Independent System Operator, Inc. (NYISO) filed an answer. On October 6, 2006, WIRAB filed comments. On October 6, 2006, the Committee on Regional Electric Power Cooperation (CREPC) filed a motion to intervene out-of-time and comments. On October 11, 2006, Alcoa filed an answer to NERC's answer.

¹⁷ 71 Fed. Reg. 52,785 (2006).

III. Procedural Matters

18. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹⁸ the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We will also grant the untimely motions to intervene and accept the late comments given the early stage of this proceeding, the parties' interests, and the absence of any undue burden or delay. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure¹⁹ prohibits an answer to a protest or an answer to an answer unless otherwise ordered by the decisional authority. We will accept the answers of NERC, NYISO and Alcoa because they have provided information that assisted us in our decisionmaking process.

IV. Discussion

A. Scope of ERO Activities to be Funded

19. The *ERO Certification Order* stated that the Commission would defer until review of NERC's proposed budget a decision regarding which specific activities should be considered statutory, that is authorized by section 215 of the FPA.²⁰ NERC had committed in its certification application to provide in its budget filing more description of its proposed activities. The Commission explained that it expected this to provide sufficient detail for it to determine the complete scope of statutory activities.

1. NERC Application

20. NERC states that its 2007 business plan and budget were developed based on the following major program elements: (1) Reliability Standards; (2) compliance enforcement and organization registration and certification; (3) reliability readiness audits and improvement; (4) training, education and operator certification; (5) reliability assessment and performance analysis; (6) situational awareness and infrastructure security; and (7) administrative services. NERC advises that all of these activities are statutory activities necessary and appropriate to carry out NERC's responsibilities as the

¹⁸ 18 C.F.R. § 385.214 (2006).

¹⁹ 18 C.F.R. § 385.213(a)(2) (2006).

²⁰ *ERO Certification Order*, 116 FERC ¶ 61,062 at P 184.

ERO.²¹ NERC also explains that the detailed information in its application and appendices demonstrates two²² of the budget principles the Commission directed NERC to submit in its compliance filing for Commission approval.²³

2. Comments

21. EEI agrees with the activities NERC designates as statutory in its 2007 business plan and budget. Nonetheless, EEI believes that in the future NERC should provide greater clarity in defining the criteria for designating activities statutory versus non-statutory “rather than relying on the regional self-selection.”

22. Alcoa comments that the proposed NERC application contains budget line items, such as organization certification, reliability readiness improvement, reliability performance analysis, training and education, and situational awareness and infrastructure security, that extend beyond any reasonable interpretation of the section 215 mandate with regard to the role and functions of the ERO. Alcoa points out that it is concerned, not only with ensuring that the non-statutory activities can be separately funded, but that those activities can be carried out without adversely affecting the ERO’s statutory responsibilities. For example, Alcoa explains that with regard to training and education, the ERO could, instead of allocating money, approve college education classes or industry classes that meet the criteria for accepted training. Alcoa is also concerned that the objectives of the reliability readiness audits are not clearly delineated. According to Alcoa, the reliability readiness audit is designed to give the ERO a preview of potential compliance issues to be investigated in the regular compliance audit, thus the very activity creates a conflict of interest since the ERO cannot both enforce and function as a

²¹ NERC Application at 8 & Att. 2.

²² Although NERC acknowledges that it has not yet adopted formal budget principles as required by the *ERO Certification Order*, NERC states that the budget development process used to formulate the 2007 NERC business plan and budget addresses these principles. NERC Application at 7, note 12. The two budget principles NERC references are budget principle (2) how the budgeted activity lends itself to the accomplishment of the statutory or other authorities and budget principle (5) affordability, sustainability, and efficiency and effectiveness of expenditures. NERC Application at 5.

²³ *ERO Certification Order*, 116 FERC ¶ 61,062 at P 202.

consultant giving advice on how to avoid enforcement. Accordingly, Alcoa requests that the Commission carefully consider whether such aforementioned activities are statutory under section 215.²⁴

23. New York Transmission Owners and IRC argue that the NERC filing does not provide adequate justification of NERC's designation of statutory/non-statutory activities. As a result, they request that the Commission require NERC to provide detailed support for its designation of statutory/non-statutory activities.

3. NERC Reply Comments

24. NERC responds that Congress' goal of preventing a recurrence of the 2003 blackout is not well served by a narrow reading of section 215 that limits the statutory activities of NERC and the Regional Entities.

25. According to NERC, the Commission, in the *ERO Certification Order*, has already recognized the importance of activities, services and tools such as situation awareness and infrastructure security, readiness review and improvement, tagging requirements, and the Interchange Distribution Calculator for the provision of adequate reliability, because they relate specifically to compliance with existing standards and they proactively help avert reliability standard violations and system disturbances.²⁵ NERC also asserts that the Commission stated that enforcement includes both proactive and compliance efforts by the ERO and Regional Entities as well as after-the-fact investigation and imposition of penalties.²⁶ Further, NERC argues that the Commission found that reliability readiness reviews are an important facet of proactively maintaining a reliable Bulk Power System.²⁷

26. Further, NERC states that Attachment 2 its Application describes its planned programs and explains why each program falls within its statutory functions. For example, Attachment 2 explains that the reliability readiness audit and improvement program will assess the readiness of operators of the bulk power system to execute their responsibilities for maintaining reliable operation of the system, and play a vital role in ensuring the reporting of all probable violations to the regional compliance officers. It explains that the training and education program provides a system of certification of the

²⁴ In its answer to NERC's reply comments, Alcoa reiterates its arguments.

²⁵ *See Id.* at P 188.

²⁶ *See Id.* at P 302.

²⁷ *See Id.* at P 332.

basic competencies of operating personnel, which helps ensure reliable operations, including the understanding and ability of operating personnel to perform their responsibilities in compliance with mandatory reliability standards.

27. NERC also asserts that the situation awareness and infrastructure security program ties to reliability improvement activities by providing for monitoring of conditions on the bulk power system and providing leadership coordination, technical expertise and assistance to the electric industry in responding to abnormal events on the bulk power system.

4. Commission Conclusion

28. We find that NERC's proposed activities reasonably fall within the types of activities the Commission considers to be covered by FPA section 215, *i.e.*, the development and enforcement of reliability standards, and are entitled to receive funding under section 215 of the FPA. As explained in the *ERO Certification Order*, anything required of the ERO or a Regional Entity by the statute, Order No. 672 pursuant to the statute, or any subsequent Commission order pursuant to section 215 of the FPA is a statutory activity.²⁸ NERC, in its budget filing and subsequent response, has provided an explanation for each of its program areas that relates to a function for which the ERO is responsible pursuant to section 215 of the FPA, Order No. 672 or the *ERO Certification Order*. Accordingly, we find acceptable NERC's designation of specific program activities as "statutory" (our determination regarding the reasonableness of the funding for these activities is discussed later).

29. With regard to Alcoa's specific comments that objectives of the reliability readiness reviews are not clearly delineated from the compliance audits, we disagree. In the *ERO Certification Order*, we explained that enforcement includes proactive compliance efforts by the ERO and each Regional Entity and that reliability readiness reviews are an important facet of these proactive efforts to maintain a reliable bulk-power system.²⁹ For that reason, we also see no conflict of interest between the ERO's requirement under the statute to enforce compliance and the ERO's proactive effort to aid and enhance compliance.

30. In the *ERO Certification Order*, the Commission directed NERC to submit a list of budget principles in its compliance filing for Commission approval.³⁰ These principles

²⁸ *Id.* at P 185.

²⁹ *Id.* at P 332.

³⁰ *Id.* at P 202.

should include among other things, how the budgeted activity lends itself to the accomplishment of the statutory or other authorities.³¹ We believe that the 2007 NERC business plan and budget provide sufficient information for the Commission to determine that the proposed designated activities are statutory because they are within the scope of the reliability functions required of the ERO and the Regional Entities under section 215. However, we acknowledge commenters' concerns that NERC should provide greater detail and justification for the criteria it uses to designate statutory activities. Accordingly, we require that, when NERC files its 2008 budget and business plan, it identify the general statutory activity, and which sub-activities, are covered by the 2008 budget and business plan.

B. Scope of Regional Entity Activities to be Funded

31. Regional Entities are entitled to receive funding under section 215 of the FPA for functions covered by section 215 (referred to herein as "statutory" functions), such as the development of Reliability Standards and their enforcement, and monitoring the reliability of the bulk-power system. Regional Entities are not precluded from pursuing other activities, but they may not use Commission-authorized funding for such activities.³² Any delegation of authority to a Regional Entity must occur through a Commission-approved delegation agreement.

1. NERC Application

32. The NERC application states that the Regional Entity budgets for section 215 statutory activities that are to be funded through NERC should include the following activities that will be delegated by NERC to the Regional Entity pursuant to a Commission approved delegation agreement: development of Reliability Standards, compliance enforcement, organization registration and certification, reliability readiness audit and improvement, reliability assessment and performance analysis, training and education, and situational awareness and infrastructure security.³³

33. NERC notes that two Regional Entity candidates (FRCC and NPCC) submitted budgets for statutory activities that do not encompass all of the activities that NERC

³¹ *Id.* The Commission recognized that the submission of NERC's budget principles in compliance with the *ERO Certification Order* will occur after the filing of the 2007 NERC business plan and budget.

³² Order No. 672 at P 34.

³³ NERC Application at 11.

designates as statutory under section 215. For example, FRCC's proposed budget for statutory activities did not include organization certification, reliability readiness improvement, reliability performance analysis, training and education or situational awareness and infrastructure security. NERC states that its projected costs for these additional activities that NERC designated as statutory under section 215 increase the FRCC budget by \$1,152,726 or roughly 89 percent for 2007.

34. Similarly, NPCC informed NERC that they agreed with FRCC that training and education, and situational awareness and infrastructure security are not statutory.³⁴ NERC states that NPCC's presentation of its budget permitted NERC to include amounts for NPCC that reflect NERC's designation of statutory activities in the NPCC proposed budget and assessment information. NERC made adjustments to NPCC's budget to include training and education, and situational awareness and infrastructure security.

35. NERC believes that Regional Entity budgets for statutory activities must be consistent across all eight Regional Entities. NERC therefore requests that the Commission accept the proposed Regional Entity candidates' proposed budgets as adjusted and filed by NERC.

2. Comments

36. EEI states that while it agrees with NERC's list of section 215 statutory functions, in the future NERC should provide greater clarity in defining the criteria for designating activities statutory versus non-statutory "rather than relying on the regional self-selection."³⁵

37. Commenters³⁶ observe that some of the proposed budgets submitted by the regions are inconsistent as to which functions are statutory and non-statutory. Exelon suggests that the Commission should require that Regional Entities submit budgets to NERC that are consistent with the statutory activities delegated to the Regional Entities by NERC.

³⁴ *Id.*, n.20.

³⁵ EEI is referring to FRCC's, NPCC's and WECC's initial budgets which did not match all of the activities deemed statutory by NERC.

³⁶ *See, e.g.*, Exelon, Alcoa, and New York Transmission Owners.

3. Commission Conclusion

38. NERC has proposed that funded statutory activities be consistent as between the ERO and each Regional Entity. We support NERC's proposal in this regard and NERC's adjustment of the budgets of NPCC and FRCC to correlate with NERC's designation of statutory activities. While the Commission reserved judgment in Order No. 672 and 672-A on what activities could be considered statutory and thus eligible for funding under section 215, the Commission gave guidance. NERC's proposed activities are the same that we find to be within the ambit of FPA section 215 and thus entitled to receive funding pursuant to section 215 of the FPA for the ERO and should be statutory in the context of the Regional Entities. We see no reason why they would differ on a regional basis. In the interest of consistency in funding section 215 activities, we accept the Regional Entity candidates' budgets as adjusted and filed by NERC, with the exclusion described below.

39. We share commenter concerns that Regional Entities budget submissions to NERC are inconsistent with the statutory activities delegated to the Regional Entities by NERC. We are concerned that NERC did not provide clear criteria for the design of statutory activities. Accordingly, we have addressed the concerns of the commenter that there are inconsistent budgets among Regional Entities. Because this is the first budget submitted by the ERO, we will be flexible to assist the start-up of the ERO and Regional Entities. In the future, we expect Regional Entity proposed budgets to be consistent in the activities that are funded. We direct NERC to provide the Regional Entities with better designations, descriptions and criteria of statutory activities for the 2008 budget.

C. Funding of Other Regional Entity Activities

40. In the *ERO Certification Order*, the Commission stated that it generally believes that anything required of the ERO or a Regional Entity by the statute, Order No. 672 pursuant to the statute, or any subsequent Commission order pursuant to section 215 of the FPA is a statutory activity.³⁷

41. However, the ERO or a Regional Entity is not precluded from pursuing other activities, funded from other sources, as long as the other activities do not interfere with implementation of section 215 activities.

³⁷ *ERO Certification Order*, 116 FERC ¶ 61,062 at P 185.

1. NERC Application

42. Although NERC includes \$6.9 million for WECC's reliability coordinator³⁸ function in its proposed budget at the request of WECC, NERC states that it is not sure whether the reliability coordinator function is a statutory function under FPA section 215. NERC points out that the other seven Regional Entity candidates do not include expenses for the reliability coordinator function in their proposed budgets. NERC requests that the Commission decide whether the reliability coordinator function performed by WECC is a statutory activity and whether it is appropriate to include \$6.9 million in WECC's budget to be recovered from users, owners, and operators of the bulk-power system.

43. WECC, in its proposed budget submission to the ERO, claims that the reliability coordinator function in the Western Interconnection is integral to the Western Interconnection's reliability. In fact, NERC's proposed reliability standards contain 137 requirements aimed at reliability coordinators. WECC claims that the reliability coordinator function is clearly a statutory function in the context of the Western Interconnection because it provides WECC with situational awareness that is required for reliable operation.

2. Comments

44. EEI supports WECC's claim that the reliability coordinator function in the west is a statutory function because WECC is an interconnection-wide entity. However, it states that the Commission should not require other Regional Entity candidates to perform this function in the Eastern Interconnection.

45. California IOUs assert that WECC should be permitted to recover costs it incurs for reliability coordinators in the region because they maintain real-time situational awareness of conditions on the bulk-power system. It also argues that at present, only WECC members fund the reliability coordinator function and several load-serving entities get a free ride, since not all load-serving entities are members of WECC. In addition, California IOUs claim that the reliability coordinators have authority and

³⁸ A Reliability Coordinator is "the entity that is the highest level of authority who is responsible for the reliable operation of the Bulk Electric System, has the Wide Area view of the Bulk Electric System, and has the operating tools, processes and procedures, including the authority to prevent or mitigate emergency operating situations in both next day analysis and real-time operations. The Reliability Coordinator has the purview that is broad enough to enable the calculation of Interconnection Reliability Operating Limits, which may be based on the operating parameters of transmission systems beyond any Transmission Operator's vision." See NERC's Glossary of Terms at <http://www.nerc.com>.

responsibility to mandate compliance with reliability standards. In fact, the reliability coordinators provide a strong enforcement mechanism within WECC, and their costs should be allowed to be recovered under section 215 of the FPA.

46. FRCC states that it does not have any problem with WECC performing the function of reliability coordinator for its region, but it opposes any statutory funding for this role. FRCC argues that if the reliability coordinator, which is one of the entities in NERC's Functional Model, is worthy of statutory funding, other entities such as balancing authority and transmission provider may also seek funding for the tasks they perform. Such funding is clearly outside the intent and scope of FPA section 215.

47. WECC explains that its reliability coordinators provide the services needed for situational awareness and that NERC is seeking that situational awareness be deemed a statutory activity. WECC states that its reliability coordinators are the "guardians of Reliability Standards in real-time" and a key part of WECC's enforcement program.

48. WECC adds that its reliability coordinators are independently operated and funded through WECC. It explains the structural differences between the Eastern Interconnection, where the reliability coordination function is performed by designated control areas, and the Western Interconnection, where the reliability coordination function is performed by an interconnection-wide regional reliability coordinators that is independent of control areas. According to WECC, in the Western Interconnection, reliability centers were established as entities independent of control area operators. WECC states that the reliability centers were incorporated into WECC's reliability coordination function and funded through WECC.³⁹ WECC claims that establishment of reliability coordinators as an independent entity was deliberate to ensure that the decision-making was independent of the interests of any individual control area. Such independence and absence of conflicts of interests has been a central theme in the recent orders issued by the Commission that implement section 215 of the FPA.

49. CREPC and WIRAB support funding of WECC's reliability coordinator function under section 215 of the FPA. CREPC and WIRAB argue that the reliability coordinator function is necessary for situational awareness, that funding is necessary for WECC to bring the reliability coordinator function into compliance with reliability standards, that funding through section 215 is necessary to eliminate the potential problem of free riders, and that funding through section 215 will ensure the independence of the reliability coordinator function. WIRAB adds that unlike approaches used for reliability coordinators in other regions, given the large number of individual transmission providers, a tariff funding approach in the West would result in duplicative funding mechanisms.

³⁹ WECC at 6-7.

3. NERC Reply Comments

50. NERC states that it takes no position concerning whether WECC's reliability coordinator duties are statutory under section 215. However, if the Commission determines that inclusion of reliability coordination costs is permissible, NERC states that it agrees with EEI that the Commission should not require all other Regional Entities to include such costs within their budgets. NERC states that funding of the reliability coordinator function is handled through other mechanisms in other regions, and it argues that each region should be allowed to continue with its existing mechanism if it believes it to be effective. In addition, NERC states that it has no intention of becoming involved in real-time operations, and it believes that real-time operations must remain with the owners and operators of the bulk power system.

4. Commission Conclusion

51. Although WECC's reliability coordinator function is independent of control areas, we are not persuaded that, in its current form, WECC's real-time reliability coordinator function should be funded under section 215 of the FPA. WECC's justification that its role as a reliability coordinator is similar to NERC's situational awareness activity is not persuasive. While WECC's reliability coordinators are involved in real-time operations of the bulk-power system, NERC's situational awareness activity is narrow in scope and limited to such things as providing tools and support services for the use and benefit of reliability coordinators and other bulk-power system operators.⁴⁰ Moreover, NERC makes it clear that it has no intentions of becoming involved in real-time operations.

52. WECC's claim that as a reliability coordinator, it is subject to 137 requirements of NERC's proposed reliability standards is also not convincing as to why its reliability coordinator function should be treated as a statutory activity. Unless there is a strong separation between oversight and real-time operations, the same entity should not oversee its own compliance with reliability standards. We are not persuaded that is the case here.⁴¹ Therefore, we exclude \$6.9 million of WECC's proposed budget from funding under FPA section 215.

53. We disagree with CREPC and WIRAB that a Regional Entity must fund reliability coordinator functions in order for it to maintain situational awareness. A reliability coordinator participates in operations but a Regional Entity can maintain situational awareness without participating in actual operational decisions. Also, funds collected by

⁴⁰ NERC Application at 31.

⁴¹ See Order No. 672 at P 698.

the ERO under section 215 should not be used to pay for entities to meet reliability standards. The potential problems of free riders, independence, and duplicative mechanisms may need to be addressed, but they should be addressed through other approaches. Funds collected under section 215 should be used for ERO and Regional Entity statutory responsibilities such as developing and enforcing reliability standards, not implementing reliability standards.

D. NERC Business Plan

1. NERC Application

54. NERC's proposed business plan divides the organization's activities into: (1) Reliability Standards; (2) compliance enforcement and organization registration and certification; (3) reliability readiness audits and improvement; (4) training, education and operator certification; (5) reliability assessment and performance analysis; (6) situation awareness and infrastructure security; and (7) administrative services.

55. Addressing its responsibility as the ERO to develop Reliability Standards, NERC describes five categories of objectives for the Reliability Standards program: standards development, regional standards development, standards improvement, business practice interface, and standards process improvement. Among these categories, NERC's business plan lists a number of specific 2007 objectives, such as approving training standards, completing field tests of planning standards, reviewing and approving 40 regional standards, updating one-third of existing standards to meet quality characteristics, and reducing the average time required to develop a high-priority standard to 12 months.

56. For the compliance enforcement and organization registration and certification program, NERC's objectives in 2007 include working with Regional Entities on audits, managing enforcement action appeals, overseeing Regional Entities' implementation of the organizational registration process, and undertaking organizational certification audits.

57. For the reliability readiness audits and improvement program, NERC plans to audit reliability coordinators, balancing authorities, transmission operators, and large local control centers. NERC also plans to train reliability readiness auditors, assist entities in developing mitigation plans, and develop enhanced tools to track the implementation of recommendations.

58. According to the business plan, as part of the training, education, and operator certification program, NERC will develop training and education materials on Reliability Standards, promote quality in the training offered by vendors, and provide certification credentials for operating personnel.

59. As part of the reliability assessment and performance analysis program, NERC plans to conduct reliability and adequacy assessments; investigate large-scale outages, disturbances, and near-misses; identify and track key reliability indicators; maintain the generating availability data system; and undertake other related activities.

60. For the situation awareness and infrastructure security program, NERC will, among other things, operate the electricity sector information sharing and analysis center, enhance and expand the critical spare transformer program, and provide a number of operating reliability support services.

61. Administrative services activities will include internal support services such as information technology, legal and regulatory, and human resources.

2. Comments

62. IRC requests that the Commission reject what IRC sees in the business plan as an effort by NERC to insert itself into operations. IRC is concerned that NERC's plans, for example, on risk management, could duplicate or conflict with the functions that transmission operators currently perform. IRC does not believe that NERC staff, who are fewer in number, less experienced, and more remotely located will find problems missed by other operators. IRC, therefore, asks the Commission to reinforce its holding in the *ERO Certification Order* and limit the scope of NERC's situation awareness and infrastructure security program to leadership coordination, technical expertise, and assistance to the industry in responding to events.⁴² It also asks that the Commission direct NERC not to engage in activities that would be redundant to the functions that ISOs and RTOs and other transmission operators perform.

3. NERC Reply Comments

63. NERC asserts that it "has no intention or interest in becoming involved in control functions, because the control functions must remain with the owners and operators of the bulk-power system."⁴³ It further asserts that its situation awareness and infrastructure security program is designed to enhance the reliable operation of the bulk power system and not to duplicate or infringe on existing arrangements and relationships. NERC asserts that it could not take on significant operational responsibilities for the bulk power

⁴² See 116 FERC ¶ 61,062 at P 186.

⁴³ NERC Answer at 8.

system without a substantial increase in resources and cites its allocation of only 4.5 FTEs to the situation awareness and infrastructure security program as evidence that it does not intend to do so.⁴⁴

4. Commission Conclusion

64. Section 39.4(b) of the Commission's regulations requires the ERO to file annually with the Commission its proposed budget, business plan, and organization chart. We find that NERC's submitted business plan provides sufficient detail for us to judge whether NERC intends to pursue appropriate activities. We further find NERC's proposed business plan consistent with the activities described in its certification application as approved by the Commission. In the *ERO Certification Order*, the Commission concluded that NERC does not have the ability to exercise real-time operating authority. Instead, NERC's role is limited to leadership coordination, technical expertise and assistance to the industry in responding to events.⁴⁵ We are not convinced by IRC that NERC shows any intention to exercise real-time operational control over the bulk-power system. Accordingly, we accept NERC's proposed business plan.

E. Regional Entity Business Plans

1. NERC Application

65. NERC's application contains proposed 2007 business plans for each of the Regional Entity candidates except SPP.⁴⁶ The business plans of MRO, NPCC, RFC, and SERC generally follow the same organizational structure as the business plan of NERC. ERCOT has created an independent reliability entity⁴⁷ that will be responsible for compliance, Reliability Standards, "legal/regulatory/enforcement," and corporate operations. In the category of compliance, ERCOT will address compliance audits, reliability readiness reviews, organization registration and certification, self-certification, event investigations, Reliability Standard enforcement, reliability assessment and performance analysis, and penalty and sanction administration. FRCC's business plan for statutory activities is divided into just Reliability Standards and regional reliability standards, compliance enforcement, and reliability assessment categories. The WECC

⁴⁴ *Id.*

⁴⁵ See 116 FERC ¶ 61,062 at P 186.

⁴⁶ The application does contain, as it does for the other regions however, a proposed budget for SPP, including some explanatory material.

⁴⁷ Texas Regional Entity.

business plan identifies the following categories of objectives for statutory functions: regional entity implementation, Reliability Standards, compliance enforcement, reliability centers, resource adequacy assessment, board and committee work, training, and administrative and general.

66. NERC explains that its staff provided guidance to the prospective Regional Entities on the expected scope and content of their budget submissions. Finance and accounting staff reviewed the submitted budgets, as did the Finance and Audit Committee of NERC's Board of Trustees. NERC states that its review focused on verifying that each Regional Entity's business plan and budget provided sufficient resources to adequately carry out the functions that NERC expects to delegate to the Regional Entity, as well as understanding the bases for any significant differences in the amounts budgeted by different Regional Entity candidates for the same function.⁴⁸

2. Comments

67. Alcoa notes that there are "significant disparities among the regions regarding their respective budgets." Based on this observation, Alcoa comments that the Commission must determine whether there are meaningful differences in the functions to be performed by each Regional Entity. Alcoa recognizes NERC's explanation that the disparities are, at least in part, the result of differences in each organization's approach to using professional staff or industry volunteers. However, Alcoa does not believe that this alone explains the disparity, and further claims that NERC's filing does not include sufficient information for the Commission to evaluate whether the approaches adopted by each region reflect a cost-effective way of performing Regional Entity functions.

3. NERC Reply Comments

68. NERC agrees that greater consistency among Regional Entity budgets is necessary, but notes that there was very little time to make this happen between certification as the ERO and the deadline for submittal of the 2007 budget. Further, NERC states that because this is the first budget request and addresses the start-up year, it is not yet clear which Regional Entity approach is the best for each function. NERC commits to making budget presentations more consistent in the future.

⁴⁸ As one example, RFC's proposed budget is significantly larger than SERC's proposed budget because RFC has a significantly larger staff, including a staff of full-time independent auditors. SERC, in contrast, intends at this time to place greater reliance on industry volunteers for audit functions.

4. Commission Conclusion

69. Because the Regional Entity delegation agreements have not been executed and approved by the Commission, we will reserve judgment on the proposed business plans. Potential overlap between the substance of the Regional Entity business plans and matters being negotiated for inclusion in the delegation agreements means that approval of these business plans could prejudice consideration of the delegation agreements that have yet to be filed with the Commission. We agree with Alcoa to the extent that differences between Regional Entity business plans should be minimized, and any that remain should be justified.

F. ERO Budget

1. NERC Application

70. NERC's proposed budget for 2007 is \$22,546,552 for activities in the U.S., Canada and Mexico. A portion of NERC's budget will be funded through fees charged to participants and users of certain NERC programs, including the operator certification program, and by interest earned on bank balances and short-term investments, resulting in a preliminary net funding requirement of \$21,682,552. In addition, for contingency reserve and working capital purposes, NERC seeks to increase its cash reserves balance to a level representing 10 percent of the projected 2007 net funding requirement (before provision for cash reserves), thus requiring an additional assessment of \$804,779. As a result, NERC's proposed net funding requirement for 2007 is \$22,487,331. Of this, \$19,797,162 is allocated to the U.S. Based on the aggregate NEL of the United States for 2005, NERC's proposed total U.S. net funding requirement, including Regional Entities and WIRAB, is equivalent to 17 mills per MWh.

71. NERC states that its business plan and budget were developed and are organized based on the following major program elements:

<u>Program</u>	<u>2007 Budget</u>
Reliability Standards	\$2,258,433
Compliance Enforcement and Organization Registration and Certification	\$3,436,668
Reliability Readiness Audits and Improvement	\$1,650,771
Training, Education and Operator Certification	\$1,380,087
Reliability Assessment and Performance Analysis	\$2,619,128
Situation Awareness and Infrastructure Security	\$3,255,644
Administrative Services	\$7,945,821

72. In addition, NERC proposes that its net U.S. funding requirement of \$19,797,162 be allocated to the Regional Entities⁴⁹ as follows:

ERCOT	\$1,394,183
FRCC	\$1,190,001
MRO	\$1,245,605
NPCC	\$1,504,824
RFC	\$4,948,769
SERC	\$5,161,805
SPP	\$1,109,871
WECC	\$3,242,103

73. NERC states that it believes that all the activities in its 2007 business plan and budget are FPA section 215 statutory activities necessary and appropriate to carry out the ERO's responsibilities. In order to accomplish its responsibilities as the ERO, NERC proposes to increase its total number of full-time equivalent employees (FTEs) from 69 in 2006 to 85 in 2007 (a 23 percent increase) and its total funding from \$17,732,928 in 2006 to \$22,546,552 in 2007 (a 27 percent increase). NERC proposes to devote 12 FTEs and \$2,258,433 to its Reliability Standards program and 20 FTEs and \$3,436,668 to its compliance enforcement and organization registration and certification program. It thus proposes to devote 37 percent of its total FTEs and 25 percent to its total dollars to these two programs.

	2007 FTEs	% of total FTEs	2007 budget	% of total budget
Reliability Standards	12	14%	\$2,258,433	10%
Compliance Enforcement & Organization Registration & Certification	20	23%	\$3,436,668	15%
Reliability Readiness Audits & Improvement	11	13%	\$1,650,771	7%
Training, Education, & Personnel Certification	6	7%	\$1,380,087	6%
Reliability Assessment & Performance Analysis	9	10%	\$2,619,128	12%
Situation Awareness &	4.5	5%	\$3,255,644	14%

⁴⁹ October 6, 2006 filing at 10.

Infrastructure Security				
Administrative ⁵⁰	22.5	26%	\$7,945,821	35%
Total Budget	85 FTEs		\$22,546,552	

2. Comments

74. EEI states that the Commission should approve the proposed budget because it provides for adequate staffing and resources. EEI points out that the 2007 budget and business plan clearly reflect a complex transition by NERC into the ERO. As part of the transition, NERC is expanding the staffing of the standards and compliance enforcement programs, and is purchasing compliance tracking software. However, EEI states that future budgets should demonstrate greater transparency and efficiency. EEI recommends that the Commission require NERC to clearly define the criteria for making determinations as to which expenditures⁵¹ are statutory and will be funded, “rather than relying on regional self-selection.”⁵²

75. EEI states that, given the transitional nature and complexities of starting up a new organization, the supporting documents of the 2007 budget are adequate for the Commission to approve the budget. However, EEI states that the Commission should require NERC to further standardize the reporting and formatting of the regional budgets for future budgets. EEI requests that the revisions include; (1) a common organizational approach or table of contents; (2) descriptions of major budget changes or additions, including a detailed description of any major new spending initiative, accompanied by its own business plan and budget; (3) highlights of the previous year’s achievements and descriptions of the coming year’s priorities; (4) cost allocation methods; and (5) a breakdown of the expenditures required to perform the various delegated functions. In addition, EEI points out that the filing does not appear to list all of the LSEs⁵³ or the NEL calculations for all LSEs, which is a problem since the calculations are the basis for allocating budgets. EEI requests that the Commission require NERC to submit a

⁵⁰ The administrative budget recognizes that NERC primarily manages, rather than performs, the work of its members. The administrative budget covers staff expenses to facilitate Members’ Forums; develop and maintain information technology; internal and external legal counsel; human resources; finance and accounting; office related expenses and outside professional services.

⁵¹ EEI states that at this time, it agrees with NERC’s list of statutory functions.

⁵² EEI at 3.

⁵³ EEI states that the LSEs are missing for ERCOT, RFC, NPCC and WECC.

complete listing of the NEL calculations for all LSEs in all of the regions prior to being allowed to issue any bill. Finally, EEI and SCE request that NERC be directed to more clearly describe what is meant by the term “LSE or designee” and explain whether this term represents an alternative billing formula which requires Commission approval.

76. EEI states that the *ERO Certification Order* allows approved Regional Entities to propose to allocate funding requirements using a method other than NEL, which the Commission has approved. EEI suggests that the Commission exercise caution in approving an alternative method.

77. WIRAB recommends that the Commission approve NERC's proposed allocation of costs among the Regional Entities.

78. Alcoa requests that the Commission hold the ERO and Regional Entities accountable for their expenditures. Alcoa questions whether the budget submission has provided enough information for the Commission to determine whether the amounts being proposed in the budget are specifically related to the identified tasks and represent a reasonable expenditure for the tasks. Alcoa urges the Commission to “engage in follow-up questioning regarding individual budget items until it is satisfied that what is being proposed relates to specific steps necessary to design and implement reliability standards.” Alcoa points out that the allocation of ERO funding costs on the basis of NEL is still pending rehearing; therefore, it is possible that the allocation figures may change depending on the Commission’s decision and that NERC must be prepared to revise all the figures proposed in the Application.

79. Alcoa also comments that, with regard to the training, education, and personnel certification activity, NERC could approve college education classes or industry classes that meet the criteria for accepted training instead of allocating money to provide such training and certification in-house.

3. NERC Reply Comments

80. In its answer, NERC requests that the Commission recognize that 2007 is a transitional year; that the 2007 budget is the first of its kind and given the limited time reflects the manner in which the Regional Entities have historically developed budgets and have accomplished their duties. NERC agrees that greater consistency among Regional Entity budgets is necessary and will work with the Regional Entities to establish a standard method by which the Regional Entities’ budgets are organized and developed. NERC commits to continuing to work to make the budgets more consistent and more transparent. NERC states that the principal causes of the differences between budgets are the one time issues in the start-up year, such as the pending questions concerning the scope of the funding mechanism under section 215.

4. Commission Conclusion

81. We agree with EEI and NERC, that the 2007 budget reflects the transition of NERC into the ERO; and given complexities of starting up the new ERO and the fact that the 2007 budget is the first budget, we accept the proposed budget and find that it is a reasonable first submittal. In addition, we note that NERC's proposed U.S. net funding requirement, including funds for Regional Entities and WIRAB, is equivalent to 17 mills per MWh. The majority of the requested funding represents expenditures that were also made in earlier years and are not incremental.

82. We accept NERC's commitment to (1) work with the Regional Entities to establish a standard method by which the Regional Entities' budgets are organized and developed; and (2) work to make the budgets more consistent and more transparent. However, we are concerned that the proposed budget may be inadequate to permit NERC's active participation in the various audits that will be conducted by the Regional Entities as part of their delegated authority during 2007. In its filing, NERC has included estimates on staffing and the number of audits in which it will be involved each year. However, NERC has not provided enough information on the number of staff that it will provide to assist the Regional Entities, the number of ERO staff on each audit team, in what percentage of Reliability Standard compliance audits the ERO will participate, or how the ERO will select which such audits to monitor. While the ERO may delegate its responsibilities to a Regional Entity, it must retain oversight responsibility for any authority that is delegated. Thus, while NERC is to a large degree delegating the audit process to the Regional Entities, it remains responsible for that process, and we expect NERC to actively participate and be present during the audits.

83. Since this is NERC's initial budget to fund its responsibilities as the ERO, it is appropriate for NERC to continue to evaluate whether the level of funding for its audit programs is sufficient to fulfill its audit responsibilities. If NERC determines during 2007 that it has incorrectly estimated its funding needs to accomplish its statutory activities, we will allow NERC to revisit the 2007 budget in order to enable them to satisfy their obligations.⁵⁴ Further, we direct NERC to provide more detail in its 2008 budget proposal: (1) on its compliance enforcement activities, including comparisons to its 2007 accomplishments; (2) on the estimated number of staff it will provide to assist the Regional Entities; (3) the estimated number of ERO staff on each audit team; and (4) in what percentage of reliability standard compliance audits the ERO will participate and how the ERO will select which such audits to monitor.

⁵⁴ See Order No. 672 at P 199.

84. We agree with EEI's comments regarding consistency and direct NERC to provide further consistency and standardization in the formatting of its budget and the Regional Entities' budgets for 2008. Consistency and standardization of the formatting will provide greater transparency, which, in turn, will facilitate our evaluation of whether the ERO's and Regional Entities' budgets enable them to meet Order No. 672's goal of "provid[ing] for an appropriate level of uniformity in Reliability Standard development and enforcement policies."⁵⁵

85. We are not persuaded by Alcoa's comments NERC should approve college education classes or industry classes that meet the criteria for accepted training instead of allocating money to provide such training and certification in-house. Training and education to help system operators achieve the necessary ability to operate the system reliably is an important aspect of the ERO's proactive compliance efforts. Moreover, we note that the ERO indicates that it will charge fees for participation in ERO-sponsored training and education to defray the cost of such programs. Further, NERC's activities involve highly specialized programs. That subject matter is unlikely to be generally available in college curricula. Alcoa identifies no particular industry sources for such training.

G. Regional Entity Funding

86. Section 39.4(b) of the Commission's rules requires that the ERO's annual budget filing include "the entire annual budget for statutory and non-statutory activities for each Regional Entity, with supporting materials, including . . . each Regional Entity's complete business plan and organization chart, explaining . . . the proposed expenditure of funds collected in sufficient detail to justify the requested funding collection and budget expenditures" This section further states that the ERO's annual budget filing "shall include the line item budgets for the activities of each Regional Entity that are delegated or assigned to each Regional Entity pursuant to § 39.8."

1. NERC Application

87. NERC's application includes proposed budgets for the year ending December 31, 2007, for statutory activities of the following proposed Regional Entities: ERCOT, FRCC, MRO, NPCC, RFC, SERC, SPP, and WECC. NERC acknowledges that these entities are not Regional Entities as defined in FPA section 215(a)(6) and 18 C.F.R. § 39.1 until they have entered into regional delegation agreements with NERC that have been approved by the Commission.⁵⁶ However, NERC states that each of these entities is

⁵⁵ See *Id.* at P 654.

⁵⁶ NERC Application at 1-2 & n.1.

actively engaged in the negotiation of a delegation agreement. In support of this, NERC has included with its Application a letter of intent from each proposed Regional Entity stating that it intends to enter into a delegation agreement with NERC to perform delegated statutory functions.

88. NERC states that the proposed Regional Entity budgets for statutory activities that are to be funded through it are the budgets for the functions and activities that will be delegated by NERC to the Regional Entity pursuant to a Commission-approved delegation agreement. These activities relate to development of Reliability Standards, compliance enforcement, organization registration and certification, reliability readiness review and improvement, reliability assessment and performance analysis (including necessary data gathering activities), training and education, and situational awareness and infrastructure security. NERC states that it anticipates that it will have complete delegation agreements to present to the NERC Board of Trustees for approval at its November 1, 2006 meeting, and that the delegation agreements will be filed with the Commission promptly thereafter. NERC states that although negotiation of the delegation agreements has not been completed, the functions that will be delegated to the proposed Regional Entities are for the most part well understood, which has permitted the proposed Regional Entities to prepare business plans and budgets for 2007 for their anticipated delegated statutory activities (as well as non-statutory activities).

89. NERC states that it initially provided guidance to the Regional Entity candidates on the expected scope and content of their budget submissions, and provided a template to be used in supplying budget information. The Regional Entity candidates' budget proposals were reviewed by NERC's finance and accounting staff. NERC states that where necessary, it requested additional information. In addition, NERC states that it also reviewed the internal processes used by each Regional Entity candidate, in order to verify that the internal processes were rigorous. The proposed regional budgets were then submitted to the Finance and Audit Committee of the NERC Board of Trustees. Further, NERC states that it has satisfied itself that for the transitional year of 2007, each Regional Entity's business plan and budget provide for necessary and adequate resources to carry out the Regional Entity's anticipated delegated functions.⁵⁷ In addition, NERC points out that several of the Regional Entities have other sources of income, such as fees for workshops and interest on bank deposits, to offset the costs of performing the delegated functions.

90. NERC states that its review focused on verifying that the Regional Entity's business plan and budget provided sufficient resources to adequately carry out the functions expected to be delegated to the Regional Entity under the delegation agreement

⁵⁷ Order No. 672 at P 229.

and understanding the basis for any significant differences in the amounts budgeted by different Regional Entity candidates for the same function.⁵⁸ NERC states that at this time it does not believe it is appropriate to dictate to the Regional Entity candidates the specific methods they should use to carry out Regional Entity responsibilities (*e.g.*, use of in-house staff versus industry volunteers for audits). In addition, NERC commits to continuing to monitor and compare the different approaches chosen by different regions as to the efficiency and effectiveness in maintaining bulk-power system reliability. However, NERC states that in the future, it is possible that NERC (and the Commission) will determine there is a need to be more prescriptive with respect to the means used by Regional Entities to carry out delegated statutory activities.

91. NERC requests the following ERO funding for U.S. statutory functions of NERC, the Regional Entities and WIRAB:⁵⁹

	NERC Funding	Regional Entity Funding	WIRAB Funding	Total Funding Request
ERCOT	\$ 1,394,183	\$ 4,870,755	-	\$ 6,264,938
FRCC	\$ 1,190,001	\$ 2,450,294	-	\$ 3,640,296
MRO	\$ 1,245,605	\$ 4,194,826	-	\$ 5,440,430
NPCC	\$ 1,504,824	\$ 2,341,915	-	\$ 3,846,739
RFC	\$ 4,948,769	\$ 9,372,472	-	\$14,321,241
SERC	\$ 5,161,805	\$ 5,518,555	-	\$10,680,360
SPP	\$ 1,109,871	\$ 3,176,026	-	\$ 4,285,897
WECC	\$ 3,242,103	\$14,301,152	\$402,839	\$17,946,094
Total	\$19,797,162	\$46,225,996	\$402,839	\$66,425,996

⁵⁸ For example, RFC's proposed budget is significantly larger than SERC's proposed budget because RFC has a significantly larger staff, including a staff of full-time auditors. SERC, in contrast, intends at this time to place greater reliance on industry volunteers for audit functions. NERC states that there are advantages and disadvantages to each approach. Application at 13, n. 23.

⁵⁹ The dollars for the statutory funding of each Regional Entity candidate are taken from the various tables in the Application. Columns do not add to Total Requested in all cases because of different degrees of detail submitted and cost allocations performed by the Regional Entities.

2. ERCOT

92. NERC states that ERCOT proposes to increase its number of FTEs for statutory activities from 9 in 2006 to 22 in 2007, with Compliance receiving the greatest increase. ERCOT proposes to devote 2.0 FTEs and \$288,757 to its Reliability Standards program and 15.0 FTEs and \$1,180,655 to its compliance program. It thus proposes to devote 77 percent of its FTEs and 30 percent to its dollars in its filed budget to these two programs. In addition, ERCOT has budgeted \$350,000 or 7 percent of its budget for contingency expenses. Further, ERCOT has budgeted \$643,464 in miscellaneous income for non-statutory functions; however ERCOT has not identified what these functions are.

93. The funding requests for the Regional Entity candidates are supported with varying levels of details. The Commission recognizes that in some cases it is difficult to make comparisons between proposed and past budgets because past budgets were not necessarily organized along the lines of proposed statutory activities. However, in general, the Regional Entity candidates propose increases in both personnel and expenditures, with large portions of their budgets devoted to the areas of the Reliability Standards program and the compliance program. In addition, some candidates (such as ERCOT and SERC), provide estimates of the number of audits they plan to complete in 2007. Most do not provide that information.

94. ERCOT states that it is currently leading an effort to register all users, owners, and operators of the bulk-power system. The registered entities will be responsible for complying with NERC Reliability Standards. ERCOT has already identified some users, owners, and operators of the bulk-power system. These entities include ERCOT ISO, 26 qualified scheduling entities, 16 transmission operators sub-entities, 130 generator owners, 26 generator operators, 26 transmission owners/planners, and 4 distribution providers with responsibility for complying with the requirements of the under-frequency load shedding program.

95. ERCOT has initially identified approximately 96 potential compliance audits per year.⁶⁰ In addition, ERCOT will provide on a yearly basis, staff for approximately 75 possible NERC readiness reviews and approximately 123 annual self-certification and associated spot checks. ERCOT states that the number of organization certification audits is unknown at this time.

⁶⁰ The compliance audits include yearly audits of transmission operations, ERCOT ISO and generation owners and operators plus possible compliance audits of qualifying scheduling entities that are only purchasing-selling entities.

96. ERCOT's budget did not specify an allocation of monies for readiness reviews;⁶¹ however, ERCOT proposes to increase its number of FTEs for compliance from 9 in 2006 to 15 in 2007.

3. FRCC

97. NERC states that FRCC's budget for statutory functions does not conform in all respects to NERC's view of the delegated, statutory activities to be performed by the Regional Entity. FRCC has not included in its budget all the activities that NERC believes should be included in delegated statutory functions. NERC states that based on data supplied by FRCC, it revised FRCC's budget to include provisions for the additional activities which NERC believes should be included in delegated statutory functions.⁶² NERC revised FRCC's budget to include monies for situational awareness and infrastructure security (\$489,169) and training and education (\$41,503). NERC requests that the Commission accept NERC's revised budget for FRCC.

98. NERC states that FRCC proposes to budget a total of 5.14 FTEs in 2007.⁶³ FRCC proposes to devote 0.77 FTEs and \$168,568 to its Reliability Standards program and 3.94 FTEs and \$1,033,321 to its compliance program. It thus proposes to devote 91.6 percent of its total FTEs and 49 percent to its total dollars to these two programs. In addition, FRCC has budgeted \$170,344 or 7 percent of its budget for contingency expenses. Further, FRCC has budgeted \$3,306,346 for non-statutory expenses which will be funded through membership dues.

99. FRCC's proposed budget does not include any estimate of the number of users, owners, and operators that are required to comply with the ERO Reliability Standards in its region or the number of audits which it will perform.

⁶¹ While NERC failed to identify this information for the Commission, it appears that ERCOT may have included it as part of its compliance function, as ERCOT has listed readiness reviews under compliance in its business plan.

⁶² NERC Application at 11, n.20.

⁶³ FRCC's proposed budget and business plan do not include FTEs for 2006.

100. FRCC does, however, include an extensive list of non-statutory functions, including: the FRCC transmission planning process, FRCC reliability coordinator⁶⁴, readiness audits, FRCC gas study project, multiple working groups,⁶⁵ subcommittees⁶⁶ and operating reliability support services. In addition, FRCC states that it has a service agreement with Florida Electric Power Coordinating Group to provide administrative services.

4. MRO

101. NERC states that MRO's budget proposes 20 FTEs in 2007, with compliance/enforcement receiving the greatest number of FTEs (5.25). MRO proposes to devote 2.25 FTEs and \$284,623 to its Reliability Standards program and 5.25 FTEs and \$1,278,901 to its compliance program. MRO proposes to devote 37.5 percent of its total FTEs and 31 percent to its total dollars to these two programs. In addition, MRO has budgeted \$239,000 or 5 percent of its budget for contingency expenses.

102. MRO's proposed budget does not include the approximate numbers of entities with responsibility for complying with the ERO Reliability Standards in its region or the number of audits which it will be responsible for performing. Further, MRO has not included 2006's budget for each of the functions for comparison.⁶⁷

103. Other than its work in Canada, MRO does not list any other non-statutory functions.

104. MRO states that it has a coordination agreement with RFC and works closely with SPP. In addition, MRO states that in 2007 its budget includes a service agreement to provide a non-profit cooperative, MAPPCOR, limited information technology, human

⁶⁴ FRCC uses three agents to perform reliability coordinator functions, including backup responsibility. FRCC states that the reliability coordinator agents' performance is monitored and overseen by FRCC's operating reliability subcommittee and operating committee. The reliability coordinator function is included in the operating committee budget. NERC Filing, Att. 2, FRCC Business Plan and Budget at 9.

⁶⁵ FRCC has listed the following working groups: available transfer; resource; stability; transmission; and data exchange.

⁶⁶ FRCC has listed the following subcommittees: operating reliability; system operator; and telecommunications.

⁶⁷ MRO's budget states that its 2005 financials are attached as Appendix 3.2.1, which is not part of the filing.

resources and finance services, which is subject to approval later in 2006. MRO states that the value of the contract is \$463,467.

5. NPCC

105. NERC states that NPCC proposes to increase its total number of FTEs supported by these budget functions from 16 in 2006 to 24 in 2007, with compliance/enforcement receiving the greatest number of FTEs (7.5). NPCC proposes to devote 3.5 FTEs and \$768,642 to its Reliability Standards program and 7.5 FTEs and \$1,382,177 to its compliance program. NPCC proposes to devote 45.8 percent of its total FTEs and 41 percent to its total dollars to these two programs.

106. NPCC's proposed budget does not include the approximate numbers of entities with responsibility for complying with the ERO Reliability Standards in its region or the number of audits which it will be responsible for performing. Further, NPCC has not included 2006's budget for each of the functions for comparison.

107. In its Budget proposal, NPCC has inserted a placeholder for future reliability services agreements between itself and the ERO under each statutory function. NPCC states that it would be willing to contract its services to the ERO in order to make available regional technical expertise.

108. NPCC identifies as non-statutory (\$2,136,754) its cross border regional activities for: personnel certification; readiness reviews; reliability assessment and performance analysis; training and education; situational awareness; and infrastructure security.

6. RFC

109. NERC states that RFC proposes to budget 34 FTEs in 2007, which matches its FTEs usage in 2006. Compliance/enforcement receives the greatest number of FTEs (10.5). RFC proposes to devote 3.0 FTEs and \$1,006,907 to its Reliability Standards program and 10.5 FTEs and \$2,842,417 to its compliance program. RFC proposes to devote 39.7 percent of its total FTEs and 41 percent to its total dollars to these two programs.

110. RFC's proposed budget does not include the approximate numbers of entities with responsibility for complying with the ERO Reliability Standards in its region or the number of audits which it will be responsible for performing. However, RFC's budget does include 2006's total dollars for each of the functions for comparison

111. RFC states that the ERO will bill all entities in 2007, and it will assist the ERO by identifying the balancing authorities within its footprint based on NEL. However, the balancing authorities will need to provide all the entity names, contact information and NEL information for the LSEs in their area.

112. RFC has listed \$578,969 or 6 percent of its budget for contingency funds to be used at the discretion of its president. In addition, RFC is considering at this time whether to also establish a 10 percent “reserves” budget item. RFC states that the saving from the 2006 assessments may be used to fund the “reserves” budget. RFC’s budget includes \$71,500 in interest income. RFC has not listed any monies for non-statutory functions. However, RFC states that it is currently evaluating certain heritage regional council (ECAR, MAAC and MAIN) activities to determine whether to continue them. RFC does not state whether it will propose that the continued activities be statutory or non-statutory.

113. RFC states that the 2007 budget also contains a one time moving cost of \$855,000 associated with relocating its corporate office to a new permanent location, which will be funded through the Regional Reliability Organization and not by the ERO.

7. SERC

114. NERC states that SERC’s budget proposes 28.0 FTEs in 2007, with Compliance/enforcement receiving the greatest number of FTEs (10.56). SERC proposes to devote 3.66 FTEs and \$638,500 to its Reliability Standards program and 10.56 FTEs and \$1,549,705 to its compliance program. SERC proposes to devote 50.7 percent of its total FTEs and 38.7 percent to its total dollars to these two programs. In addition, SERC has budgeted for \$173,500 workshop income and \$10,000 interest income. SERC has not budgeted any monies for contingency expenses or non-statutory items. SERC does not list any non-statutory activities.

115. As part of its compliance enforcement audit program, SERC states that they will conduct 10 operating audits, 10 planning audits, 10 combined operating and planning audits and 15 certification audits. Further, compliance staff will participate in up to 11 readiness reviews. SERC does not identify the approximate numbers of entities with responsibility for complying with the ERO Reliability Standards in its region.

8. SPP

116. NERC states that SPP’s budget proposes 11.15 FTEs in 2007, with Reliability Standards receiving the greatest number of FTEs (2.70). SPP proposes to devote 2.70 FTEs and \$540,135 to its Reliability Standards program and 2.55 FTEs and \$690,171 to its compliance program. SPP proposes to devote 47 percent of its total FTEs and 38.6 percent to its total dollars to these two programs. In addition to the ERO funding, SPP has budgeted \$5,000 in interest income. SPP has budgeted \$645,985 for non-statutory expenses. SPP has not budgeted any monies for contingency expenses. SPP does not list any non-statutory activities.

117. SPP’s proposed budget does not include the approximate numbers of entities with responsibility for complying with the ERO Reliability Standards in its region or the

number of audits which it will be responsible for performing. Further, SPP has not included its 2006's budget for each of the functions for comparison. SPP states that its budget has not been approved by its Board of Directors, nor has it been reviewed by its membership. SPP commits to providing its approved 2007 budget to NERC by November 1, 2006.

9. WECC

118. NERC states that WECC's budget proposes 46.84 FTEs in 2007, with reliability assessment and performance analysis receiving the greatest number of FTEs (12.30). WECC proposes to devote 2.21 FTEs and \$290,040 to its Reliability Standards program and 6.63 FTEs and \$919,800 to its compliance program. WECC proposes to devote 18.8 percent of its total FTEs and 6.7 percent to its total dollars to these two programs. In addition to the ERO funding, WECC has budgeted for \$528,801 workshop income, \$352,000 interest income and \$8,400 miscellaneous income for statutory functions. WECC has budgeted \$645,985 for non-statutory expenses and \$1,184,732 in income received for non-statutory functions from membership dues. WECC has budgeted \$3,210,000 or 16.8 percent of its total budget for contingency expenses.

119. WECC's proposed budget does not include the approximate numbers of entities with responsibility for complying with the ERO Reliability Standards in its region or the number of audits which it will be responsible for performing. WECC's budget does include the total annual assessments from 2001 through 2007 and the reserves for 2003 through 2007. However, it does not include the total dollars for each of the functions for comparison purposes.

120. WECC's budget has adopted all of the statutory functions defined by NERC. In addition, WECC asserts that reliability coordination is a statutory function.⁶⁸ WECC identifies as non-statutory: the Market Interface Committee; North American Energy Standards Board activities; Western renewable generation Information system; compliance enforcement in Canada and Mexico; reliability management system; and staff support for non-statutory activities.

10. Comments

121. EEI points out that the Regional Entities' activities reflect NERC's transition into the ERO. The Regional Entities' budgets reflect additional staffing for the standards and compliance enforcement programs.

⁶⁸ We address WECC's request that the Commission accept reliability coordination as a statutory function above in the discussion of the scope of activities being funded.

122. Alcoa points out that the Regional Entity budgets result in different regions funding different charges. For example, the users in MRO would pay the largest funding charge, at 25 mills/MWh, while users in SERC would only pay 11 mills/MWh. Alcoa argues that the Commission must determine whether these differences are meaningful in the functions performed by each Regional Entity. Alcoa points out that NERC states that the differences in funding costs are due in part to the staff levels at each Regional Entity. Some Regional Entities plan to rely more on volunteers and less on their own staff. Alcoa states that the material provided by NERC does not include enough information for the Commission to evaluate whether the approach adopted by each Regional Entity reflects a cost-effective way of administering Reliability Standards and/or otherwise performing the necessary Regional Entity functions.

123. WIRAB supports WECC's 2007 budget but also recommends that future budget submissions by Regional Entities identify "best practices" and "innovations" so that the process will encourage Regional Entities to learn from each other's successes and continually improve.

11. Commission Conclusion

124. We agree with EEI, that the 2007 budget reflects the transition of NERC into the ERO and of the regional organizations into Regional Entities. Given the complexities of starting up the new ERO, the proposed budgets are reasoned first submittals. Therefore, we accept the Regional Entity candidates' total budget dollars as amended and filed by NERC, with the exception of WECC's proposed \$6.9 million dollars for reliability coordinator activities, as discussed above. However, we are concerned with the lack of consistency among the statutory functions of Regional Entities. We direct NERC and the Regional Entities to examine the various activities proposed by each Regional Entity to be performed under each statutory function, and to determine what activities need to be performed consistently across the Regional Entities. They should develop their budgets for 2008 to reflect the best practices found from this examination. We will revisit this issue at that time.

125. We note that FRCC, MRO, NPCC, RFC, SPP and WECC do not state the number of audits that will be conducted during a year or the total number of entities that would be subject to their oversight. Therefore, once NERC and the Regional Entities have obtained Commission approval of the delegation agreements, we direct NERC to file a supplement to the budget for each Regional Entity that should state: (1) the total budget for statutory and non-statutory activities as required in Order No. 672; (2) the total number of entities subject to each Regional Entity's oversight; and (3) the total number of audits to be conducted during the year for each audit type.

126. In addition, it is appropriate for NERC and the Regional Entities to continue to evaluate whether the level of funding for their audit programs are sufficient to fulfill their

audit responsibilities. If NERC and the Regional Entities determine during 2007 that the Regional Entities have incorrectly estimated its funding needs to accomplish its statutory activities, we will allow the Regional Entities to revisit the 2007 budget in order to enable them to satisfy their obligations.⁶⁹

H. Invoicing

127. In its ERO certification application, NERC stated that it intends to bill LSEs and have the Regional Entities serve as intermediary collection agents, but will allow a Regional Entity to allocate its funding obligation using an alternative method, including billing balancing authorities. The Commission found that this flexibility allows NERC to accommodate the specific needs of a Regional Entity. The Commission stated that “Any proposed alternative billing formula must be submitted to the Commission for approval in either a delegation agreement or other documents.”⁷⁰

1. NERC Application

128. NERC states that it intends to directly invoice assessments to LSEs or their designees in all regions except WECC. WECC will invoice LSEs or designees within the WECC footprint, collect the assessments and remit the funds to NERC. In addition, NERC states that while the members of NPCC initially decided that NERC should invoice each ISO or RTO, on July 25, 2006, NPCC notified NERC that NPCC’s U.S. members had changed their position and now wanted NERC to directly invoice the LSEs within NPCC’s U.S. footprint. NPCC is currently preparing a list of LSEs within the New York ISO and the ISO-New England. NERC commits to supplementing the filing to show the assessment amounts for each LSE in New York ISO and the ISO-New England.⁷¹ In addition, NERC states that FRCC, MRO, RFC, SERC and SPP have indicated that they will be submitting revised lists of LSEs within their respective footprints and NERC commits to filing the undated lists of LSEs and assessments with the Commission as soon as possible.

129. In the October 6 supplemental filing, based on updated information provided by FRCC, MRO, RFC, SERC, SPP and WECC, NERC filed revised proposed assessments to LSEs or their designees within the footprint of each Regional Entity and revised allocations of NERC’s proposed 2007 budget among the United States, Canada and Mexico. NERC states that as of October 6, 2006, NPCC has not submitted an updated

⁶⁹ See Order No. 672 at P 199.

⁷⁰ *ERO Certification Order*, 116 FERC ¶ 61,062 at P 168.

⁷¹ NERC Application at 18, n.34.

list of LSEs to NERC. NERC states that the total 2007 funding requirements for NERC, each Regional Entity and WIRAB have not changed from the values presented in the Budget Request; however, the allocations of these amounts to the U.S. and the Regional Entities have changed.

2. Comments

130. National Grid requests that the Commission require NERC and NPCC to continue the existing billing arrangements through the ISOs until the stakeholders have been afforded an opportunity to reach consensus on alternative billing arrangements and until necessary tariff revisions have been put in place at the federal and state levels. New York Transmission Companies request that the Commission clarify that the role of the ISO/RTO in the allocation and collection process should be addressed in the delegation agreements between NERC and the Regional Entities.

131. National Grid and New York Transmission Companies state that the proposal that NERC directly invoice and collect monies from the LSE's raises concerns about the compatibility of NERC's billings with retail access and would result in a new reliability cost allocation and could result in unnecessary administrative burdens and risks on the part of utilities that may be directly billed by NERC. Previously NPCC and NERC's dues were recovered as part of the administrative costs of New York ISO and the ISO-New England through established tariffs approved by FERC and the states; and there has been "no substantive discussion within NPCC or New York or New England" as to whether or how the reliability cost allocation should be revised. National Grid asserts that NPCC should not prepare a list of the LSE's within New York ISO and ISO-New England on its own; instead the preparation of the list will require the effort of all stakeholders in order to ensure that all LSEs are appropriately allocated a share of these reliability costs.

132. New York Transmission Owners state that in regions that encompass ISOs and RTOs, NERC and the Regional Entities should be permitted to invoice allocated ERO and Regional Entity costs to the ISO/RTO, which are well positioned to collect the charges from LSEs based on up-to-date load share allocations. Further, the New York Transmission Owners request that the Commission clarify that the role of the ISO/RTO in the allocation and collection process should be addressed in the delegation agreements between NERC and the Regional Entities.

133. NYISO supports NERC's proposal.

3. NERC Reply Comments

134. NERC agrees that its billing efficiency would be enhanced if NERC billed ISOs and RTOs rather than directly billing the LSE members of the ISOs and RTOs. NERC points out that it would mean fewer entities for NERC to deal with in the billing and

collection process. NERC also points out that billing efficiency would be enhanced from the perspective of the LSEs, since the ISOs and RTOs may be better able to bill the individual LSEs on more current NEL data. Finally, NERC points out that PJM will be acting as the collection agent for the LSEs within its footprint.

4. Commission Conclusion

135. We approve NERC's proposed invoicing of the LSEs or their designees in all regions except WECC. In addition, we approve NERC's proposal to allow WECC to invoice LSEs or designees within its footprint, collect the assessments and remit the funds to NERC. In the *ERO Certification Order*, the Commission granted NERC the flexibility to allow a Regional Entity to allocate its funding obligation using an alternative method, including billing balancing authorities in order to accommodate the specific needs of a Regional Entity.⁷² In the case of NPCC, NERC and the Regional Entity may propose a workable arrangement which will accommodate the specific needs of the region. This arrangement may be the one proposed by NERC in this filing, or it may need to be an entirely new proposal. In response to New York Transmission Companies, we do not agree that the ISO/RTO's role in the allocation and collection process in a specific region should be addressed in the delegation agreements. The delegation agreements address the relationship between the ERO and the Regional Entity, not the ERO and an ISO or RTO.

136. In response to intervenors' requests, NERC may contract with an ISO or RTO for collection purposes; however, consistent with our direction in the *ERO Certification Order*, NERC must adopt appropriate safeguards to ensure that (1) the collection contractor transfers the money to the ERO in a timely manner and (2) the collection contractor states that it will not use its position as billing agent and collector to unduly influence the ERO's decisions.⁷³

I. WIRAB Funding Request

137. As noted above, the Commission agreed in principle that reasonable costs incurred by a RAB in performing section 215(j) activities may be paid from mandatory fees collected under section 215. However, any approval of a specific RAB funding should be part of the overall ERO funding process.

⁷² 116 FERC ¶ 61,062 at P 168.

⁷³ *Id.* at P 169.

1. NERC Application

138. NERC's application seeks funding for WIRAB. NERC states that WIRAB has submitted to NERC an organization chart and a proposed 2007 budget for activities that fall under section 215(j). NERC states that it has reviewed WIRAB's submission and believes it complies with the requirements of the WIRAB Order. WIRAB's overall funding request of \$477,260 includes \$402,839 allocated to the U.S.

2. Commission Conclusion

139. We approve the requested funding for WIRAB. Order No. 672-A stated that any Regional Advisory Body funding request must specify if such funding is for employees or consulting fees. The Commission in the WIRAB Order neither approved nor rejected these funding categories, instead preferring to evaluate such specific funding requests at the time the ERO submits its budget to the Commission for approval. The funding of two full-time equivalent employees and consulting fees appears reasonable for the role of WIRAB in advising the Commission, the ERO and the Regional Entity.

J. System of Accounts and Record Keeping Requirements

140. The Commission has not established accounting or record keeping requirements for the ERO. Rather, we stated that ". . . we will allow the ERO flexibility to develop a reasonable and consistent system of accounts, with a level of detail and record keeping comparable to the Uniform System of Accounts and sufficient to allow the Commission to compare each Commission-approved ERO fiscal year budget with the actual results at the ERO and Regional Entity level."⁷⁴ The Commission directed NERC in the *ERO Certification Order* to identify a specific accounting process for the funding of statutory and, as necessary, non-statutory activities, including the costs of billing such activities, to ensure that funding pursuant to section 215 will support only statutory activities. The Commission acknowledged that the compliance filing would occur after NERC filed its budget proposal, but it noted that it expected NERC's budget proposal would answer many of these questions.⁷⁵

1. NERC Application

141. NERC's Application does not identify its specific accounting and record keeping processes as required by the Commission. NERC states that it believes all the activities

⁷⁴ Order No. 672 at P 246.

⁷⁵ *ERO Certification Order*, 116 FERC ¶ 61,062 at P 184, 202 & n.83.

in its 2007 business plan and budget are statutory activities necessary and appropriate to carry out NERC's responsibilities as the ERO. NERC explains that for this reason it has not presented such an accounting process.⁷⁶ No parties filed comments on this issue.

2. Commission Conclusion

142. In the *ERO Certification Order* concerning accounting issues and the associated record keeping requirements, the Commission directed NERC "to identify a specific accounting process for the funding of statutory and, as necessary, non-statutory activities, including the costs of billing such activities, to ensure that funding derived from section 215 will exclusively support statutory activities."⁷⁷ The Commission thus directed NERC to present an accounting process for statutory activities regardless of whether or not it would engage in any non-statutory activities. We therefore reiterate that consistent with Order No. 672, NERC should develop a reasonable and consistent system of accounts, with a level of detail and record keeping comparable to the Uniform System of Accounts and sufficient to allow the Commission to compare each Commission-approved ERO fiscal year budget with the actual results at the ERO and Regional Entity level. We require NERC to develop its proposed system of accounts and record keeping requirements and include it as part of NERC's 2008 budget filing. In addition, we require NERC to make a filing within 60 days of the date of this order explaining the organization and structure of its existing accounting and record keeping systems and indicating whether its current accounting practices and procedures comply with generally accepted accounting principles.

K. Collection of Funds

1. NERC Application

143. NERC has developed the proposed assessments to recover the ERO funding requirement using lists of LSEs and designees and their NELs provided to NERC by each Regional Entity candidate. The data used to calculate the allocations and assessments are from 2005, which NERC states is the most recent year for which NEL data is available.

144. NERC states that questions have arisen as to whether it should be required to adjust an LSE's assessment if during the course of the year to which the assessment applies, or the preceding year, the LSE's NEL changes materially from that of year used to calculate the assessments. NERC believes that the assessments to each LSE or designee should be based on the NEL data NERC receives from the Regional Entities and

⁷⁶ NERC Application at 10, n.19.

⁷⁷ *ERO Certification Order*, 116 FERC ¶ 61,062 at P 184.

uses to develop the assessments submitted to the Commission in the annual budget filings, and that once the Commission approves an assessment it should not be modified to reflect subsequent changes in an LSE's NEL. NERC also believes that the Regional Entities should identify for NERC the LSEs and designees to be billed for assessments and the NEL data that is to be used to calculate their assessments, and that NERC should be entitled to rely on the information it receives from the Regional Entities.

145. NERC maintains that consistent with these principles, if changes in an LSE's NEL compared to the Year 1 amount are established to the satisfaction of the Regional Entity, then the Regional Entity should be free to reflect the post-Year 1 change in NEL in the data that it submits to NERC for use in calculating the Year 3 assessments. In short, it would be appropriate for the Regional Entity to adjust Year 1 NEL data consistent with the recognized public utility ratemaking principle of "known and measurable changes" to "test year" (*i.e.*, Year 1) data occurring or recognized after the end of Year 1 (but before NERC must submit the proposed Year 3 assessments to the Commission for approval).⁷⁸ NERC states that in other circumstances the LSE should continue to be responsible for the full assessment approved by the Commission, at least from the perspective of NERC's billing and collection activities. On a going forward basis, LSEs can begin to address the possibility of such situations occurring through appropriate contractual arrangements with their customers.

2. Billing Lag

Comments

146. Exelon states that NERC and the regional entity assessments should be assigned to LSEs based on load served during the current budget year. National Grid states that NERC's proposal to build in a two year lag by relying on 2005 load data fails to reflect the fact that changes are to be expected in dynamic competitive markets, and, thus, it could result in LSEs being overcharged or undercharged.

147. New York Transmission Owners state that in regions with retail competition, it is critical to base the charges on current load share. Failure to charge the LSEs on current year load could result in LSEs that are either overcharged or undercharged. Allocating costs to LSEs on two year old data is not equitable, and could lead to risks of non-collection in the event that the LSE goes out of business. The New York Transmission Owners note that NERC's budget does not provide NERC or the Regional Entities with the flexibility of after-the-fact true-up.

⁷⁸ NERC Application at 41.

NERC Reply Comments

148. NERC states that the list of LSEs and associated NEL figures contained in the budget request reflect the best data available to NERC at the time the filing was made on August 23, 2006. MRO, RFC, SERC and SPP indicated that they will submit revised lists of LSEs to NERC. NERC gave the Regional Entities a deadline of September 30, 2006 to complete their revisions to the lists of LSEs. NERC stated that it would promptly file the updated lists of LSEs with the Commission. On October 6, 2006 FRCC, MRO, RFC, SERC, SPP and WECC submitted revised lists of LSEs to NERC; however, NERC states that as of October 6, 2006, NPCC has not submitted an undated list of LSEs to NERC.

149. NERC notes that PJM will be acting as the collection agent for the LSEs within its footprint, and that the RTO has proposed to use current NEL (on a monthly basis) to assess ERO and Regional Entity charges. NERC states that it supports PJM's proposed method for collecting assessments from its LSEs. NERC states that it will allocate its overall ERO budget among the U.S., Canada and Mexico and among LSEs (or their collection agents or "designees") on the basis of the most recent NEL data made available to NERC, with known and measurable changes provided by PJM up to the time NERC makes its annual budget filing. Once the Commission approves the budget and the allocations, PJM will collect the amounts allocated to PJM from its LSEs through a tariff mechanism based on current NEL. NERC argues that this method seems entirely appropriate and consistent with the statutory requirements and it anticipates that other large entities having a number of LSEs within their footprints (*e.g.*, ERCOT and certain entities in Canada) may eventually use a similar mechanism.

Commission Conclusion

150. The 2007 budget reflects the transition of NERC into the ERO, and regional organizations into Regional Entities. Previously, as a voluntary organization, NERC Council (the predecessor to NERC Corp.) relied on the Regional Reliability Councils for support and financing. Now, because it has been certified by the Commission as the ERO, the authority of NERC Corp. derives from section 215 of the FPA, while the Regional Entities are delegated authority from NERC, are subject to the oversight of NERC, and receive funding from NERC. Therefore, given the complexities of starting up the new ERO and the fact that the 2007 budget is the first budget covering the new financial arrangements, we approve NERC's proposed allocation of assessments to recover the ERO funding requirements; its proposed method for adjusting an LSE's assessment to account for the two year lag in NEL data used to calculate the assessments; and its proposal that it rely on the Regional Entities to identify for NERC the LSE or designee to be billed.

151. NERC chose to use 2005 data because it is the most recent data available. Therefore, to the extent an LSE's NEL changes materially it will need to inform the Regional Entity in a timely manner and the Regional Entity will need to be diligent and timely in identifying for NERC the new LSE or designee to be billed for assessment associated with that load. NERC and the Regional Entities may choose to propose language addressing New York Transmission Owners' concern that the Budget does not provide NERC or the Regional Entities with the flexibility to reassess the charges to the remaining LSEs within the budget year. Alternatively, Regional Entities can encourage LSEs to address the possibility of an exiting LSE in contractual arrangements with their customers. In addition, NERC may choose to adjust assessments part way through the year in order to reflect the most recent NEL data available for LSEs. In the future, NERC may also choose to explore possible alternative assessment methods that use current load data to allocate costs; however, we will not mandate it here. NERC must submit any proposed alternative billing formula to the Commission for approval.

3. Registry List

Comments

152. Southern California Edison (SCE) reiterates its belief that NERC should form and post a listing of LSEs responsible for funding statutory costs and should not rely on the Regional Entities to develop and provide the lists. SCE is concerned that if the Regional Entities put together the lists a significant number of LSEs will be left off the list and there will not be a public review of the lists. In addition, SCE states the using such a publicly available list will ensure that all end users fund the ERO and Regional Entities pursuant to section 215(c)(2)(B). SCE requests that NERC be directed to form a mandatory funding registry and allow public input on its completeness by posting the registry on its website for public access. Further, SCE requests that NERC update the funding registry on a continuous basis in order to assure a complete and accurate listing of all LSEs or "designees" that must fund ERO and Regional Entity statutory activities.

153. Exelon points out that NERC has not listed assessments to specific LSEs in RFC; instead it has listed assessments by balancing authorities. Exelon requests that the Commission require NERC to make a compliance filing listing the assessments by LSE's and the amount billed.

NERC Reply Comments

154. NERC states that the list of LSEs and associated NEL figures contained in the budget request reflect the best data available to NERC at the time the filing was made on August 23, 2006. Since then MRO, RFC, SERC and SPP have indicated that they will submit revised lists of LSEs to NERC. NERC has given the Regional Entities a deadline of September 30, 2006 to complete their revisions to the lists of LSEs. NERC states that it will promptly file the updated lists of LSEs with the Commission.

Commission Conclusion

155. In the *ERO Certification Order*, the Commission stated that it would not require NERC to establish a funding registry listing entities that are responsible for paying dues, fees and charges; instead, the ERO could consider whether such a registry has merit. We note that NERC's Application contains tables showing the allocation of the NERC and Regional Entity funding requirements to the LSEs or balancing authority within the footprint of each Regional Entity.⁷⁹ In addition, we note that NERC's Business Plan and Budget were noticed and the public was invited to comment.

156. While the Commission did not require NERC to produce a registry list of assessed entities and NERC was given the flexibility to bill either LSEs or balancing authorities, the mixed and matched approach and the ambiguity as to the status of certain entities (*e.g.*, PJM) lacks clarity and consistency. During 2007, NERC will acquire experience in its position as the ERO and should have the knowledge and resources in place to submit a more complete budget. The Commission understands that the ERO is in a transition period; however, we require NERC to clearly define the roles of LSEs, balancing authorities, designees, and collection agents in funding and clearly state which entity fits in each category.

4. Miscellaneous – File as a Rate Schedule

157. Exelon comments that NERC should be required to file its assessments to recover its statutorily permitted costs as a rate schedule under section 215, consistent with the statutory notice policy under the filed rate doctrine.

NERC Reply Comments

158. NERC argues that the ERO assessment should not be filed as a rate schedule under section 215, because the ERO will not be a public utility under the FPA. NERC states that neither it nor the ERO is a public utility under the FPA.⁸⁰ NERC further argues that the public notice function that would be served by a filed rate schedule will be served by the public process through which NERC's ERO budget is developed and by public posting of the budget filing that lists the entities to which NERC looks for funding.

⁷⁹ NERC Application, Att. 2, section B, App. C. For each Regional Entity, the table lists a variety of data inserts including the name of the Entity, country, Entity's total NEL, Entity's U.S. NEL, percentage of the Regional Entity's total, percentage of Regional Entity's U.S. total, and percentage of ERO total.

⁸⁰ NERC's Answer at 15.

Commission Conclusion

159. We agree with NERC. The budget filings should not be filed as rate schedules; section 215 does not fall under the filed rate doctrine. As NERC points out, rate schedules are governed by sections 205 and 206 of the FPA. Sections 205 and 206 apply to public utilities, whereas the ERO is not a public utility under the FPA. Thus, its budget does not constitute a rate under sections 205 and 206 of the FPA. Instead, the budget is a report filed in compliance with section 39.4 of the Commission's regulations. The budget report is similar to refund reports or reports filed consistent with section 8 of the Natural Gas Act. Consistent with Commission action on other reports, once the budget report has been reviewed by the Commission it will be either accepted, rejected, remanded or modified by the Commission. In addition to the public posting of the budget filing as NERC develops the budget, there will be public notice of the budget when it is filed with the Commission.

The Commission orders:

(A) NERC's 2007 business plan and budget is hereby conditionally accepted, as discussed in the body of this order.

(B) The Regional Entities' 2007 budgets are hereby conditionally accepted in part and rejected in part, as discussed in the body of this order.

(C) NERC's proposal for billing is hereby approved, as discussed in the body of this order.

(D) The proposed WIRAB budget is hereby approved for funding, as discussed in the body of this order.

(E) NERC is hereby directed to submit its proposed system of accounts and record keeping requirements as part of NERC's 2008 budget filing, as discussed in the body of this order.

(F) NERC is hereby directed to submit a compliance filing to explain the organization and structure of its accounting and record keeping systems and indicating whether its current accounting practices and procedures comply with generally accepted accounting practices within 60 days of the date of this order, as discussed in the body of this order.

(G) NERC is hereby directed to submit compliance filings to address budget information for each Regional Entity, as discussed in the body of this order.

By the Commission. Commissioner Moeller not participating.

(S E A L)

Magalie R. Salas,
Secretary.

Attachment A

Interventions, Protests and Comments⁸¹

Alcoa Inc. and Alcoa Power Generating Inc. (collectively, Alcoa)

Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., LIPA, New York Power Authority, New York State Electric & Gas Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation (collectively, New York Transmission Owners)

Committee on Regional Electric Power Cooperation (CREPC) (filed October 6, 2006)

Edison Electric Institute (EEI)

Exelon Corporation (Exelon)

Florida Reliability Coordinating Council (FRCC)

ISO/RTO Council (IRC), on behalf of itself and its members (Alberta Electric System Operator, California Independent System Operator Corporation, ERCOT, the Independent Electricity System Operator of Ontario, ISO New England, Inc., Midwest Independent Transmission System Operator, Inc., New York Independent Transmission System Operator, Inc., PJM Interconnection, L.L.C., and SPP)

National Grid USA (National Grid)

Southern California Edison Company (SCE), Pacific Gas and Electric Company and San Diego Gas & Electric Company (collectively, California IOUs)

Western Electricity Coordinating Council (WECC)

Western Interconnection Regional Advisory Body (WIRAB) (filed October 6, 2006)

Interventions Raising No Substantive Issues

Allegheny Power and Allegheny Energy Supply Company, LLC

Ameren Services Company, Inc.

⁸¹ All of the interventions are timely unless otherwise noted.

Duke Power Corporation (filed September 14, 2006)

Consumers Energy Company

Northern California Power Agency

Wisconsin Electric Power Company

Southwest Power Pool (SPP) (filed September 29, 2006)