

145 FERC ¶ 61,097
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony Clark.

North American Electric Reliability Corporation Docket No. RR13-9-000

ORDER ON 2014 BUSINESS PLAN AND BUDGET OF THE
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION
AND ORDERING COMPLIANCE FILING

(Issued November 1, 2013)

1. On August 23, 2013, North American Electric Reliability Corporation (NERC) filed its 2014 business plan and budget, the 2014 business plans and budgets of each Regional Entity, the 2014 business plan and budget of the Western Interconnection Regional Advisory Body (WIRAB), and the 2014 business plan and budget of the Reliability Coordination Company (RC Company) (collectively, NERC Application).¹ Except as otherwise discussed below, the Commission accepts the 2014 business plans and budgets of NERC, the Regional Entities, WIRAB, and RC Company, as well as the associated attachments and updates. NERC is authorized to issue billing invoices to fund the fiscal year 2014 operations of the Regional Entities, WIRAB, and itself. NERC is also directed to submit a compliance filing, as discussed below.

2. With respect to the RC Company business plan and budget, the Commission accepts the business plan and budget subject to the outcome of

¹ The eight Regional Entities include: Florida Reliability Coordinating Council; Midwest Reliability Organization; Northeast Power Coordinating Council, Inc.; ReliabilityFirst Corporation; SERC Reliability Corporation; Southwest Power Pool Regional Entity; Texas Reliability Entity; and Western Electricity Coordinating Council (WECC).

Docket Nos. EL13-52-001, RR13-10-000 and RR13-12-000.² The Commission does not authorize the issuance of billing invoices to fund the fiscal 2014 operations of RC Company until the Commission issues an order in the referenced Dockets. By this action, the Commission does not prejudge those pending matters.

3. While the Commission largely accepts the NERC 2014 business plan and budget, as discussed further below, the Commission rejects NERC's proposal to allocate \$3.8 million to "restricted working capital" to offset future liabilities under NERC's lease agreements based on the information contained in the NERC Application. The Commission directs NERC to submit a compliance filing within 30 days of the date of this order indicating how NERC will allocate the \$3.8 million consistent with NERC's Working Capital and Operating Reserve Policy (Reserve Policy).

I. Background

A. Regulatory History

4. Section 215 of the Federal Power Act (FPA) requires the Commission to certify an Electric Reliability Organization (ERO) to develop mandatory and enforceable Reliability Standards, subject to Commission review and approval.³ In July 2006, the Commission certified NERC as the ERO.⁴

5. FPA section 215(c)(2)(B) 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."⁵ On February 3, 2006, the Commission issued Order No. 672 to

² Docket No. EL13-52-001 involves Edison Electric Institute's (EEI's) July 22, 2013 rehearing request of the June 20, 2013 declaratory order, Docket No. RR13-10-000 involves the NERC's August 26, 2013 petition to amend the delegation agreement between NERC and WECC regarding the WECC bifurcation, and Docket No. RR13-12-000 involves WECC's September 20, 2013 filing containing the RC Company Bylaws, "RC Agreement," and the Termination Agreement Between Northeast Power Coordinating Council, Inc.

³ 16 U.S.C. § 824o (2012).

⁴ *North American Electric Reliability Corp.*, 116 FERC ¶ 61,062, *order on reh'g and compliance*, 117 FERC ¶ 61,126 (2006), *order on compliance*, 118 FERC ¶ 61,030, *order on clarification and reh'g*, 119 FERC ¶ 61,046 (2007), *aff'd sub nom. Alcoa Inc. v. FERC*, 564 F.3d 1342 (D.C. Cir. 2009).

⁵ 16 U.S.C. § 824o(c)(2)(B) (2012).

implement the requirements of FPA section 215, which generally provides for Commission authorization of funding for “statutory” functions, i.e., those functions carried out pursuant to FPA section 215.⁶ Among other things, Order No. 672 sets forth requirements for funding the ERO and the approval of an ERO business plan and budget.⁷ Moreover, the Commission’s regulations require the ERO to file with the Commission the ERO’s proposed annual budget for statutory and non-statutory activities 130 days before the beginning of its fiscal year.⁸ Further, the ERO’s filing must contain the annual budgets of each Regional Entity for statutory and non-statutory activities and provide supporting materials, including the ERO’s and each Regional Entity’s complete business plan and budget organizational chart. The filing must also explain the proposed collection of all dues, fees, and charges, as well as the proposed expenditure of funds collected.

6. In an October 2006 order, the Commission conditionally accepted NERC’s 2007 business plan and budget for its first year of operation as the ERO and provided NERC guidance on future business plan and budget submissions.⁹ Subsequently, the Commission provided additional guidance on future business plan and budget submissions when it accepted or conditionally accepted NERC’s 2008 through 2013 business plans and budgets.¹⁰

⁶ *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval and Enforcement of Electric Reliability Standards*, Order No. 672, FERC Stats. & Regs. ¶ 31,204, *order on reh’g*, Order No. 672-A, FERC Stats. & Regs. ¶ 31,212 (2006).

⁷ Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 197.

⁸ 18 C.F.R. § 39.4(b) (2013).

⁹ *North American Electric Reliability Corp.*, 117 FERC ¶ 61,091 (2006), *order on reh’g*, 119 FERC ¶ 61,059 (2007).

¹⁰ *North American Electric Reliability Corp.*, 121 FERC ¶ 61,057 (2007); *North American Electric Reliability Corp.*, 125 FERC ¶ 61,056 (2008), *order granting clarification*, 126 FERC ¶ 61,021 (2009), *order on compliance*, 128 FERC ¶ 61,025 (2009); *North American Electric Reliability Corp.*, 129 FERC ¶ 61,040 (2009); *North American Electric Reliability Corp.*, 133 FERC ¶ 61,062 (2010); *North American Electric Reliability Corp.*, 137 FERC ¶ 61,071 (2011); *North American Electric Reliability Corp.*, 141 FERC ¶ 61,086 (2012).

B. NERC's 2014 ERO Business Plan and Budget Application

7. The NERC Application contains NERC's proposed business plan and budget for the year ending December 31, 2014, as well as the proposed business plans and budgets of WIRAB, RC Company and each of the eight Regional Entities for the year ending December 31, 2014.

8. The proposed assessment for the total ERO (i.e., NERC, the Regional Entities, and WIRAB) for 2014 is \$144,084,738, which includes \$51,401,382 for NERC funding; \$92,094,948 for Regional Entity funding; and \$588,408 for WIRAB funding. NERC states that the portion of statutory activities of NERC, the Regional Entities, and WIRAB allocable to the United States is \$130,677,579. The proposed assessment for RC Company for 2014 is \$29,568,031; the portion of this assessment allocable to the United States is \$25,077,715. NERC states that it will continue to allocate costs to end users in the United States based on Net Energy for Load (NEL).

9. In addition to the NERC, Regional Entity, and WIRAB business plans and budgets, NERC includes various attachments in its Application, including: Discussion of Comments Received During Development of NERC's 2014 Business Plan and Budget (Attachment 13), Calculation of Adjustments for Alberta Electric System Operator (AESO), Ontario Independent Electric System Operator (IESO), New Brunswick and the Quebec NERC Assessment (Attachment 14), Status Report on NERC's 2013 Goals (Attachment 15), Regional Entity Budget Metrics (Attachment 16), and Metrics on NERC and Regional Entity Administrative (Indirect) Costs Based on the 2012 and 2013 Budgets (Attachment 17).

II. Notice and Responsive Pleadings

10. Notice of NERC's August 23, 2013 filing was published in the *Federal Register*, 78 Fed. Reg. 53,749 (2013), with interventions and protests due on or before September 13, 2013. On September 6, 2013, EEI moved to extend the comment period until September 20, 2013. On September 9, 2013, NERC filed a response in which it stated that it did not object to a reasonable extension of the comment period. On September 10, 2013, the Commission extended the comment period until September 20, 2013.

11. Motions to intervene were timely filed by WECC, Exelon Corporation, and American Municipal Power, Inc. Motions to intervene and comments were timely filed by EEI, WIRAB, and, jointly, by American Public Power Association (APPA) and National Rural Electric Cooperative Association (NRECA). Large Public Power Council (LPPC) moved to intervene out-of-time. Transmission Access Policy Study Group (TAPS) moved to intervene and file comments out-of-time.

III. Discussion

A. Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

13. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2013), the Commission will grant LPPC's and TAPS's late-filed motions to intervene given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

B. Substantive Issues

1. NERC Business Plan and Budget

NERC Application

14. NERC states that it prepared its 2014 business plan and budget, and worked with the Regional Entities in developing their business plans and budgets, through a rigorous process that provided ample opportunity for review and input by the Finance and Audit Committee of the NERC Board of Trustees (NERC Board) and stakeholders. NERC states that during the development process, successive versions of the 2014 business plans and budgets were discussed in meetings and conference calls of the Finance and Audit Committee and full NERC Board, in each case with opportunities for stakeholders to make comments.

15. NERC states that its principal goals in 2014 are to: (1) develop clear, reasonable, and technically sound mandatory Reliability Standards in a timely and efficient manner; (2) be a strong enforcement authority that is independent, without conflict of interest, objective and fair; (3) promote a culture of compliance that is driven by a culture of reliability excellence and addresses reliability risks across the industry; (4) identify the most significant risks to reliability – identify and prioritize reliability risks, facilitate effective solutions and interventions, and monitor results; (5) be accountable for mitigating reliability risks; (6) promote a culture of reliability excellence, by facilitating a learning environment throughout the industry through event causal analysis, communication of lessons learned, tracking of recommendations, and implementing best practices; and (7) improve transparency, consistency, and quality of results; operate as a collaborative enterprise; and improve efficiencies and cost effectiveness.¹¹

¹¹ NERC Application at 7-8.

16. NERC states that its 2014 business plan and budget is based on the following program areas: (1) Reliability Standards; (2) Compliance Monitoring and Enforcement, which is comprised of two groups - Compliance Operations and Compliance Enforcement; (3) Reliability Assessment and Performance Analysis; (4) Reliability Risk Management, which is comprised of two groups - Situation Awareness and Event Analysis; (5) Critical Infrastructure Protection, which is comprised of two groups – Critical Infrastructure Department, and Electricity Sector Information Sharing and Analysis Center (ES-ISAC); and (6) Training, Education, and Operator Certification.¹² For these program areas, NERC describes each program, identifies the program's goals and objectives, and provides the number of full-time equivalent employees (FTE), as well as the amount budgeted for 2014. NERC also provides 2013 approved budget data and 2013 year-end projected data for comparison.

17. NERC's proposed total funding for 2014 is \$53,735,382, an increase of \$1,482,726 (2.8 percent) over the 2013 budget. NERC's proposed 2014 net funding requirement is \$51,401,382 (i.e., total budget less funding from other sources), of which \$46,708,699 is allocated to the United States.¹³ The net funding requirement allocated to the United States is an increase of \$3,672,475 (8.5 percent) over the 2013 budget proposal.¹⁴ NERC states that its proposed total United States net funding requirement is equivalent to \$0.000012 per kWh, based on the aggregate NEL of the United States in 2012.¹⁵

18. NERC states that the proposed 2014 business plan and budget reflects a negative provision for working capital and operating reserve funding in the amount of \$1,660,724, whereas the 2013 business plan and budget reflected a negative provision for working capital and operating reserve funding of \$2,033,600.¹⁶ Finally, NERC proposes a 2014

¹² *Id.* at 22, Attachment 1 at 1.

¹³ *Id.* at 19-21. NERC's other funding sources are penalty payments, revenue from services and software, testing and workshop fees, and interest. *Id.* at 10.

¹⁴ Some of the increase in U.S. assessments is due to the decrease in penalty payments to NERC, which are used to offset the budget. The 2014 business plan and budget includes \$290,000 in penalty payments NERC received from registered entities during the period July 1, 2012 through June 30, 2013. The penalty offset for the 2013 budget was \$2,512,000. *Id.* at 20.

¹⁵ *Id.* at 21.

¹⁶ *Id.* at 20.

staffing level of 189.53 FTEs, which is an increase of 3.28 FTEs over the 2013 budget staffing level.

Comments

19. EEI, TAPS, APPA, and NRECA support approval of the 2014 NERC budget request. However, EEI, APPA and NRECA recommend that NERC take steps to ensure that budgets for 2015 and beyond increase no greater than inflation. APPA and NRECA state that, while most of their members accept that budget growth for the ERO was a necessary consequence of the transition to mandatory and enforceable standards regime, NERC and the Regional Entities need a mature, reliability-focused set of common ERO-wide business processes. Additionally, EEI states that stakeholders have found it difficult to compare budget proposals over time and that NERC should continue to identify ways to improve its budget development process.

20. EEI states that ES-ISAC needs additional resources to fulfill its mission. However, EEI believes that ES-ISAC is not a statutory function and should be funded through alternate means. Additionally, EEI states that, if the ES-ISAC function remains within NERC, it must have strong separations from other NERC activities. Alternatively, TAPS states that ES-ISAC falls within the Commission-approved NERC criteria for FPA section 215 activities. TAPS, APPA, and NRECA support NERC's increase in funding for ES-ISAC and state that funding the ES-ISAC through the NERC's FPA section 215 assessments "provide[s] both assured funding and business continuity to the ES-ISAC."¹⁷

Commission Determination

21. With the exception discussed below, we accept NERC's 2014 business plan and budget. We find that NERC's 2014 budget is reasonable and the associated costs of NERC's jurisdictional functions are equitably allocated among end users in the United States.¹⁸

¹⁷ APPA and NRECA Comments at 6; TAPS Comments at 2-3.

¹⁸ We note that EEI, TAPS, APPA, and NRECA support approval of the 2014 business plan and budget and only provide comments on future budgets and processes, not any protest to the instant filing. Additionally, as EEI supports NERC's 2014 business plan and budget, we do not view EEI's comments concerning FPA section 215 funding for ES-ISAC as a protest. Instead, it appears that EEI advocates using a different funding source for ES-ISAC going forward, beyond 2014.

Working Capital and Operating Reserves

NERC Application

22. NERC states that it budgeted \$6,635,548 for its working capital and operating reserves, with \$3.8 million allocated to “restricted working capital” reserves and \$2,768,493 allocated to operating reserves.¹⁹ NERC states that it “collected funding to offset future liabilities under lease agreements for the Atlanta and Washington, DC offices and that the projected \$3.8M year-end balance of these funds is being held as a restricted working capital reserve to offset these future liabilities.”²⁰ NERC also states that “[b]ased on its 2013 cash flow projection and taking into account the historic manner in which NERC’s assessments have been billed and paid (including the fact that WECC collects and pays its entire annual allocated share of the NERC assessments during the first quarter of the year), NERC does not anticipate needing access to working capital in 201[4] to meet monthly cash flow needs.”²¹ NERC states that, in the unlikely event NERC experiences a temporary cash flow shortage, NERC has the ability either to request authorization from the Finance and Audit Committee and NERC Board to temporarily access operating reserve funds, or draw on NERC’s \$4 million line of credit, as long as NERC is in compliance with the covenants under its bank credit agreement.

Commission Determination

23. NERC’s Working Capital and Operating Reserve Policy (Reserve Policy) provides that working capital addresses NERC’s “projected annual cash flow needs and cash balance requirements ... [based on] (a) the company’s projected cash flow needs over the applicable year and (b) cash balances required to satisfy any covenant under the terms of any loan, credit or other agreement to which the company is a party.”²² As noted above,

¹⁹ NERC Application, Attachment 2, Exhibit E at 160.

²⁰ *Id.*

²¹ *Id.*

²² North American Electric Reliability Corp., Petition, Docket No. RR12-13-000, at Attachment 2, Exhibit C at 142 (filed August 24, 2012). The Commission approved the Reserve Policy as part of the Commission’s acceptance of NERC’s 2013 business plan and budget. *North American Electric Reliability Corp.*, 141 FERC ¶ 61,086 (2012). NERC must also submit revisions to the Reserve Policy to the Commission for approval. *North American Electric Reliability Corp.*, 142 FERC ¶ 61,042 (2013) (Section 7(d) of the Settlement Agreement requires Commission approval of changes to the definitions in the Reserve Policy).

NERC states that it does not anticipate needing access to working capital in 2014 to meet monthly cash flow needs; however, NERC proposes to allocate \$3.8 million to “restricted working capital reserves,” to offset known liabilities. First, “restricted working capital reserves” is not a term used in NERC’s Reserve Policy, and NERC does not define or differentiate it in the instant filing. Second, NERC states that it does not need working capital to meet cash flow needs in 2014, and did not state that the \$3.8 million is needed to satisfy any covenants. For these reasons, NERC’s proposal is inconsistent with NERC’s Reserve Policy. Therefore, based on the information contained in the NERC Application, we reject NERC’s proposal to allocate to “restricted working capital” \$3.8 million to offset future liabilities regarding lease agreements. The Commission directs NERC to submit a compliance filing within 30 days of this order indicating how NERC will allocate the \$3.8 million consistent with NERC’s Reserve Policy.

2. Regional Entity Business Plans and Budgets

24. NERC’s Application includes the 2014 business plans and budgets of each Regional Entity. NERC states that it reviewed the Regional Entity business plans and budgets and concludes that each Regional Entity proposes necessary and adequate resources to carry out its delegated functions.²³ We find that each submission reasonably supports the level of expenditures identified in the budgets. We are satisfied that the Regional Entities are focused on adequately staffing and funding all of their program areas to perform the delegated, statutory functions. Accordingly, the Commission accepts the Regional Entity business plans and budgets.

3. WIRAB Budget

25. WIRAB proposes statutory expenses of \$703,700 in 2014, which is a \$108,520 increase from its 2013 budget. To fund its operations in 2014, WIRAB proposes a statutory assessment of \$588,408, \$53,716 over its 2013 assessment, of which \$499,050 would be allocable to end users in the United States. WIRAB explains that its increase in assessments is less than its overall budget increase because WIRAB proposes to include a contribution of \$114,792 from WIRAB’s working capital reserve. WIRAB explains that its 2014 budget is higher than its 2013 budget because: (1) WIRAB will be monitoring and potentially offering advice to two organizations, WECC and RC Company, instead of one; (2) changes that may be initiated by the independent boards of WECC and RC Company will require monitoring and evaluation by WIRAB; (3) WIRAB will be delving more deeply into actions RC Company, WECC, and the industry are taking to rectify the deficiencies in grid operations highlighted by the September 8, 2011 outage; (4) WIRAB

²³ NERC Application at 23-24.

will be considering ways to improve the analysis of the reliability implications of future scenarios evaluated in WECC studies of needed transmission expansion; and (5) WIRAB will be examining the reliability impacts of reforms to lower the cost of integrating variable generation and increase system efficiencies. WIRAB states that it will employ 2.85 FTEs for 2014, which is an increase of 0.10 over 2013.

26. Based on the information provided in the instant filing, the Commission concludes that WIRAB's 2014 budget is reasonable and, accordingly, the Commission accepts the WIRAB 2014 budget.

4. RC Company Business Plan and Budget

NERC Application

27. NERC's Application includes the 2014 business plan and budget for RC Company. NERC states that, because RC Company is not a Regional Entity and will not be performing delegated functions, NERC did not participate in the development of RC Company's budget or substantively review and approve its budget in the same manner that NERC does for Regional Entity business plans and budgets.

28. NERC states that RC Company's proposed budget for 2014, before provision for working capital, is \$32,958,648. NERC states that RC Company's proposed statutory assessment is \$29,568,031. NERC states that RC Company's only other budgeted source of funding, besides the assessment, is interest income of \$156,000. However, NERC states that RC Company will also use a portion of the working capital reserves being transferred from WECC to reduce assessments for 2014.

29. NERC states that RC Company's total proposed staffing for 2014 is 149.08 FTEs, comprised of 119.08 FTEs in the Situation Awareness and Infrastructure Security Program and 30.0 FTEs in Administrative Services. NERC states that RC Company is increasing the staffing for these functions over present levels by 34.08 FTEs. NERC states that 30 new FTEs are being added as a result of the recommendations of the Reliability Coordination Task Force, which was appointed by the WECC Board, to enhance the ability of the reliability coordinator to carry out its functions. NERC states that the new positions will be focused primarily on the areas of operations planning, real-time operations, and information technology applications, engineering and support. NERC states that, although some WECC Administrative Services personnel are expected to transfer to RC Company, it is necessary for RC Company to develop and support a complete, standalone Administrative Services organization sufficient to support the administrative and support needs of the organization.

30. NERC states that RC Company has established a target working capital reserve amount at December 31, 2014 of \$2,576,951, which is equal to approximately 8 percent of the budgeted 2014 expenses and capital expenditures. NERC states that, in connection

with the formation of RC Company, WECC is splitting its working capital reserves between RC Company and WECC in order to provide starting working capital reserves for the new entity. NERC states that WECC reserves in the amount of \$5,811,568 will be transferred to RC Company. Thus, RC Company's proposed 2014 assessment reflects a negative adjustment of \$3,234,617 to achieve the target working capital reserve amount at December 31, 2014.

Comments

31. EEI states that funding for RC Company is not authorized by FPA section 215, and EEI incorporates by reference the arguments raised in its pending rehearing request in Docket No. EL13-52-001. EEI states that the Commission should condition any action on RC Company's business plan and budget in this docket on the outcome of the pending request for rehearing in Docket No. EL13-52-001.

32. APPA, NRECA, and TAPS state that they do not object to the inclusion of the RC Company 2014 business plan and budget in NERC's 2014 business plan and budget filing. However, APPA, NRECA, and TAPS support prompt action on EEI's rehearing request in Docket No. EL13-52-001 and state that, as a matter of policy, entities responsible for the actual planning and operation of the bulk electric system should not be funded through the NERC budget.

33. WIRAB states that RC Company's business plan and budget reduces working capital from the December 31, 2013 level of \$5,811,568 to a proposed level of \$2,576,951. WIRAB states that the proposed reduction presents a significant risk that there will be insufficient reserves for RC Company to meet unexpected but necessary expenditures and to take advantage of new opportunities to improve system reliability. WIRAB states that supplemental funding requests would not be workable.

Commission Determination

34. The Commission accepts RC Company's 2014 business plan and budget as reasonable, subject to the outcome of Docket Nos. EL13-52-001, RR13-10-000 and RR13-12-000. We are not persuaded by WIRAB's concern regarding the sufficiency of RC Company's working capital. WIRAB has not provided evidence that would lead us to question the adequacy of the working capital reserves proposed by RC Company. Moreover, WIRAB does not explain why RC Company would be unable to seek supplemental funding should it require additional reserves.

35. While we conditionally accept RC Company's 2014 business plan and budget, the Commission does not authorize the issuance of billing invoices to fund the fiscal 2014 operations of RC Company until the Commission issues an order in the pending Dockets cited above.

The Commission orders:

(A) NERC's 2014 business plan and budget is hereby accepted in part and rejected in part. NERC is directed to submit a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

(B) The Regional Entity 2014 business plans and budgets are hereby accepted.

(C) The WIRAB budget is hereby accepted for funding.

(D) The RC Company 2014 business plan and budget is hereby conditionally accepted. The Commission does not authorize the issuance of billing invoices to fund the fiscal 2014 operations of RC Company at this time, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.