

157 FERC ¶ 61,043
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, and Colette D. Honorable.

North American Electric Reliability Corporation

Docket No. RR16-6-000

ORDER ACCEPTING 2017 BUSINESS PLANS AND BUDGETS

(Issued October 20, 2016)

1. On August 23, 2016, the North American Electric Reliability Corporation (NERC) filed 2017 business plans and budgets for NERC, each Regional Entity,¹ and the Western Interconnection Regional Advisory Body (WIRAB) (collectively, NERC Application). For the reasons discussed below, we accept the 2017 business plans and budgets of NERC, the Regional Entities, and WIRAB, as well as the associated attachments and updates, and authorize issuance of billing invoices to fund the fiscal year 2017 operations of NERC, the Regional Entities, and WIRAB.

I. Background

A. Regulatory History

2. Section 215 of the Federal Power Act (FPA) requires the Commission to certify an Electric Reliability Organization (ERO) to develop mandatory and enforceable

¹ The eight Regional Entities are Florida Reliability Coordinating Council (FRCC); Midwest Reliability Organization (MRO); Northeast Power Coordinating Council, Inc. (NPCC); ReliabilityFirst Corporation (ReliabilityFirst); SERC Reliability Corporation (SERC); Southwest Power Pool Regional Entity (SPP RE); Texas Reliability Entity (Texas RE); and Western Electricity Coordinating Council (WECC).

Reliability Standards, subject to Commission review and approval.² In July 2006, the Commission certified NERC as the ERO.³

3. 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.”⁴ On February 3, 2006, the Commission issued Order No. 672 to implement the requirements of section 215 of the FPA, which generally provides for Commission authorization of funding for “statutory” functions conducted by the ERO, the Regional Entities, and WIRAB (i.e., those functions carried out pursuant to section 215 of the FPA).⁵ Among other things, Order No. 672 established requirements for funding the ERO and the approval of an ERO business plan and budget.⁶ 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 the ERO’s fiscal year.⁷ 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 and 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.

² 16 U.S.C. § 824o (2012).

³ *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).

⁴ 16 U.S.C. § 824o(c)(2)(B).

⁵ *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).

⁶ Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 197.

⁷ 18 C.F.R. § 39.4(b) (2016).

B. NERC Application

4. The NERC Application contains NERC's proposed business plan and budget for the year ending December 31, 2017, as well as the proposed business plans and budgets of each of the eight Regional Entities and WIRAB for the year ending December 31, 2017.

5. NERC states that it prepared its 2017 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 NERC Board of Trustees Finance and Audit Committee and stakeholders. According to NERC, successive versions of the 2017 business plans and budgets were discussed by the Finance and Audit Committee as well as the full NERC Board of Trustees, in meetings and conference calls, with each event providing opportunities for stakeholders to comment.

6. NERC states that the proposed assessment for the total ERO (i.e., NERC, the Regional Entities, and WIRAB) for 2017 allocable to the United States is \$154,832,467, which includes \$54,326,337 for NERC funding; \$99,746,574 for Regional Entity funding; and \$759,556 for WIRAB funding.⁸ NERC states that it will continue to allocate costs to end users in the United States based on net energy for load. NERC states that its proposed total United States net funding requirement for the ERO enterprise is equivalent to \$0.0000389 per kWh, based on the aggregate net energy for load of the United States in 2015.⁹

7. In addition to the NERC, Regional Entity, and WIRAB business plans and budgets, the NERC Application contains various attachments including: Discussion of Comments Received During Development of NERC's 2017 Business Plan and Budget (Attachment 12); Calculation of Adjustments for Alberta Electric System Operator, Ontario Independent Electric System Operator, New Brunswick and the Quebec NERC Assessment (Attachment 13); Metrics Comparing Regional Entity Operations Based on 2017 Budgets (Attachment 14); and Metrics on NERC and Regional Entity Administrative (Indirect) Costs Based on the 2016 and 2017 Budgets (Attachment 15).

⁸ NERC Application, Attachment 1 (Summary Tables for NERC and Regional Entity Proposed 2017 Budgets and Assessments) at 2, Attachment 11 (Western Interconnection Regional Advisory Body Proposed 2017 Business Plan and Budget) at 3.

⁹ *Id.* at 37.

8. On September 23, 2016, NERC submitted a supplemental filing clarifying certain aspects of NPCC's and ReliabilityFirst's business plans and budgets (NERC Supplemental Filing).

II. Notices and Responsive Pleadings

9. Notice of NERC's August 23, 2016 filing was published in the *Federal Register*, 81 Fed. Reg. 59,617 (Aug. 30, 2016), with interventions and protests due on or before September 13, 2016.

10. On September 13, 2016, WIRAB filed advice pursuant to section 215(j) of the FPA stating it reviewed WECC's 2017 business plan and budget, and finds all of the proposed activities to be eligible and appropriate for funding under section 215 of the FPA.¹⁰

11. Notice of NERC's supplemental filing was published in the *Federal Register*, 81 Fed. Reg. 66,952 (Sept. 29, 2016), with interventions and protests due on or before September 30, 2016. No interventions or protests were filed.

III. Discussion

A. NERC Business Plan and Budget

12. NERC states that its strategic goals and objectives for 2017 are focused on the following areas: (1) maintaining timely and risk-responsive Reliability Standards; (2) conducting objective and risk-informed compliance monitoring, enforcement, and organization certification and registration activities; (3) identifying and mitigating significant current risks to reliability; (4) identifying and assessing emerging risks to reliability; and (5) operating the ERO enterprise in an effective, efficient, and collaborative manner that improves transparency, consistency, quality, effectiveness, cost-effectiveness, and timeliness of results.¹¹

13. NERC states that its 2017 business plan and budget is based on the following program areas: (1) Reliability Standards; (2) Compliance Monitoring and Enforcement Program and Organization Registration and Certification; (3) Reliability Assessment and System Analysis; (4) Performance Analysis; (5) Reliability Risk Management, which is comprised of Situation Awareness and Event Analysis; (6) Electricity Information Sharing and Analysis Center; and (7) Training, Education, and Operator Certification.¹²

¹⁰ 16 U.S.C. § 824o(j).

¹¹ NERC Application at 7.

¹² *Id.* at 3-4.

For these program areas, NERC describes each program, identifies the program's goals and objectives, and provides the current number of full-time equivalent employees (FTE), as well as the FTEs budgeted for 2017. NERC also provides 2016 accepted budget data and 2016 year-end projected data for comparison to the 2017 proposed budget data.

14. NERC's proposed total funding requirement for 2017 is \$69,602,175, which is an increase of \$2,415,510 (3.6 percent) over NERC's 2016 budget.¹³ NERC's proposed 2017 net funding requirement is \$59,856,314 (i.e., total budget less funding from other sources), of which \$54,326,337 is allocated to the United States.¹⁴ The net funding requirement allocated to the United States is an increase of \$2,540,509 (4.9 percent) over the 2016 budget proposal.

15. NERC states that the proposed 2017 business plan and budget reflects a provision for working capital and operating reserve funding in the amount of \$530,402.¹⁵ Finally, NERC proposes a 2017 staffing level of 189.9 FTEs, a decrease of 2.5 FTEs from 2016 budget staffing levels.¹⁶

16. NERC states that it received \$500,000 in penalty monies for the period of July 1, 2015 through June 30, 2016.¹⁷ In accordance with the Commission's June 18, 2015 order,¹⁸ and pursuant to section 1107.4 of the NERC Rules of Procedure, NERC requests an exception to section 1107.2 of the NERC Rules of Procedure to deposit the \$500,000 of penalty monies into its assessment stabilization reserve.¹⁹ NERC also requests approval to use \$1,100,000 of funds from the assessment stabilization reserve to reduce 2017 assessments.²⁰

¹³ *Id.* at 8.

¹⁴ *Id.* at 22. NERC's other funding sources are penalty payments; third-party funding for the Cyber Risk Information Sharing Program; revenue from services and software; testing and workshop fees; and interest. *Id.* at 21-22.

¹⁵ *Id.* at 21.

¹⁶ *Id.* at 42, Attachment 2 at 12.

¹⁷ *Id.* at 79.

¹⁸ *North American Electric Reliability Corp.*, 151 FERC ¶ 61,225, at P 19 (2015).

¹⁹ NERC Application at 79.

²⁰ *Id.*

Commission Determination

17. We accept NERC's 2017 business plan and budget. We find that NERC's 2017 budget is reasonable and that the associated costs of NERC's jurisdictional functions are equitably allocated among end users in the United States. Additionally, based on the details provided by NERC in its application, we grant NERC's request for exception under section 1107 of the NERC Rules of Procedure and allow NERC to allocate \$500,000 in penalty monies to its assessment stabilization reserve. We note that the decision here is limited to this case. Any future requests for exception to section 1107.2 of the NERC Rules of Procedure will be addressed based on the facts at that time.

B. Regional Entity Business Plans and Budgets

18. NERC's Application includes the 2017 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.²¹

19. In the 2016 Budget Order, the Commission directed WECC to include additional information in its 2017 business plan and budget.²² Specifically, the Commission directed WECC to include information on any further payments made and to be made for penalties imposed on WECC.²³

20. In the instant filing, WECC complied with the 2016 Budget Order, including additional information regarding its civil penalty sanctions. Specifically, WECC noted that it has a \$1M remaining liability associated with the 2011 Arizona-Southern California outage, which will be paid in May 2017 and is included in accrued expenses on WECC's balance sheet. WECC states that the penalties do not impact WECC's 2017 budget.²⁴

21. In its supplemental filing, NERC states that certain aspects of its original filing may require clarification. Specifically, NERC notes that NPCC's business plan and

²¹ *Id.* at 30.

²² *North American Electric Reliability Corp.*, 153 FERC ¶ 61,134 (2015) (2016 Budget Order).

²³ *Id.* P 54.

²⁴ NERC Application, Attachment 10 (Western Electricity Coordinating Council's Proposed 2017 Business Plan and Budget) at 45.

budget filing states: “In order to reflect and respect the international membership and nature of NPCC, any sub-regional reliability assessment costs in response to U.S. only regulatory initiatives will be considered for allocation to U.S. only [balancing authority areas] consistent with NERC Rules of Procedure section 1102.”²⁵ NERC clarifies that NPCC is not proposing any allocation of any specific “sub-regional reliability assessment costs in response to U.S. only regulatory initiatives” to U.S.-only balancing authority areas, nor is NPCC requesting pre-approval of any such allocation. NERC states that any such allocation could and would be requested only in a future year’s business plan and budget filing (or in a supplemental filing requesting approval to revise assessments) based on specific activities and costs and with complete supporting information.²⁶

22. Additionally, NERC notes that ReliabilityFirst’s business plan and budget includes a table that shows \$250,000 of penalty sanction funds released from restriction on January 1, 2016 being placed into ReliabilityFirst’s operating reserve during 2016.²⁷ NERC also notes that the “Explanation of the Working Capital Reserve” included with that table states that “ReliabilityFirst’s proposed increase in its target Working Capital Reserve [for 2017] to \$2,399,357 ‘is being funded by the 2015 budget under run and the penalty dollars that will be released in 2017.’”²⁸ However, NERC further observes that the table shows that the full amount of penalties collected during the 12 months ended June 30, 2016, \$659,000, is being used to reduce the 2017 statutory assessments.²⁹ NERC clarifies that ReliabilityFirst used its penalty collections for the 12 months ended June 30, 2015 solely to reduce 2016 assessments, and that ReliabilityFirst is proposing to use its penalty collections for the 12 months ended June 30, 2016 solely to reduce 2017 assessments. NERC includes a revised version of ReliabilityFirst’s table to reflect these clarifications in its Supplemental Filing.

²⁵ NERC Supplemental Filing at 1 (quoting NERC Application, Attachment 5 (Northeast Power Coordinating Council, Inc. Proposed 2017 Business Plan and Budget) at 59-61).

²⁶ NERC Supplemental Filing at 2.

²⁷ NERC Supplemental Filing at 2-3 (citing NERC Application, Attachment 6 (ReliabilityFirst Corporation Proposed 2017 Business Plan and Budget) at 53).

²⁸ NERC Supplemental Filing at 3 (citing NERC Application, Attachment 6 at 53).

²⁹ *Id.*

Commission Determination

23. We find that each Regional Entity submission, as supplemented with respect to NPCC and Reliability*First*, reasonably supports the level of expenditures identified in their respective budgets and that each Regional Entity is focused on adequately staffing and funding all of their respective program areas to perform the delegated, statutory functions. Accordingly, we accept the Regional Entity business plans and budgets, as supplemented.

C. WIRAB Business Plan and Budget

24. WIRAB proposes statutory expenses of \$1,229,080 in 2017, which is a \$141,194 decrease from its 2016 budget.³⁰ To fund its operations in 2017, WIRAB proposes a statutory assessment of \$901,452, of which \$759,556 would be allocable to end users in the United States.³¹

25. WIRAB notes that its proposed key activities in 2017 include the following: (1) encouraging WECC and Peak Reliability, the reliability coordinator for the Western Interconnection, to set strategic planning priorities and align budgets and work plans based on rigorous analyses of existing and emerging risks to reliability in the Western interconnect; (2) encouraging Peak Reliability and WECC to develop policies to protect critical electricity infrastructure information (CEII) and promote sharing of non-CEII data with third parties to foster research and development; (3) encouraging WECC to systemically assess availability of essential reliability services under a wide range of future resource scenarios; and (4) encouraging and working with Peak Reliability to identify, disseminate, and promote best operational practices. WIRAB's budget includes 5.5 FTEs for 2017, which is the same as in its 2016 budget.

Commission Determination

26. Based on the information provided in the instant filing, we conclude that WIRAB's 2017 budget is reasonable and, accordingly, we accept the WIRAB 2017 budget.

The Commission orders:

(A) NERC's 2017 business plan and budget is hereby accepted.

³⁰ NERC Application at 32.

³¹ NERC Application, Attachment 11 at 3.

(B) The Regional Entities' 2017 business plans and budgets, as supplemented, are hereby accepted.

(C) WIRAB's 2017 business plan and budget is hereby accepted.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.