UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

North American Electric Reliability Corporation	**)** **)**	**Docket No. RR22-4-000 RR22-4-001**

COMPLIANCE FILING OF THE
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION

I. INTRODUCTION

The North American Electric Reliability Corporation ("NERC") appreciates the opportunity to clarify certain aspects of its 2023 Business Plan and Budget ("BP&B") for the Commission in furtherance of NERC's commitment to public accountability in developing its annual BP&B. In its November 2, 2022 Order accepting NERC's 2023 BP&B (the "Order"), the Commission directed NERC to submit a compliance filing that explains and answers specific questions concerning the following:

(A) all costs (direct and indirect) attributable to the Electricity Information Sharing and Analysis Center ("E-ISAC"), particularly with respect to Business Technology ("BT")[1] department expenses in compliance with its required budgetary processes and procedures;

(B) NERC's policy and procedure for assigning fixed asset costs, including a breakdown of the $5.3 million capital software investments and an explanation for why the $4.0 million loan for capital software investment was budgeted in General & Administrative ("G&A") and later directly assigned to a department;

(C) the E-ISAC's Vendor Affiliate Program; and

[1] NERC's Information Technology department has been renamed "Business Technology" as shown in the 2023 BP&B; however, there has been no material change to the function of the department.

(D) the E-ISAC and Natural Gas sector stakeholder partnership.[2]

II. NOTICES AND COMMUNICATIONS

Notices and communications with respect to this filing may be addressed to the following:[3]

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III. EXPLANATION OF COSTS ATTRIBUTABLE TO THE E-ISAC, INCLUDING ANY COSTS OF BUSINESS TECHNOLOGY PROJECTS SPECIFIC TO THE E-ISAC

The Commission requested a detailed explanation of costs attributable to the E-ISAC, with a particular focus on BT department costs directly assigned to the E-ISAC. Below, NERC outlines how it creates its budget and how it assigns direct costs and allocates indirect costs. Furthermore, NERC will explain how budgeting in this manner is consistent companywide and with NERC's historical practices.

[2] *N. Am. Elec. Reliability Corp.*, 181 FERC ¶ 61,095 (2022) at PP 26-30.

[3] Persons to be included in the Commission's official service. The Petitioners respectfully request a waiver of Rule 203 of the Commission's regulations, 18 C.F.R. § 385.203, to allow the inclusion of more than two persons on the service list in this proceeding.

NERC develops its annual BP&B through a multi-step process. This process includes a detailed, department-specific review coordinated with each department's management and finance and accounting ("F&A") staff that (a) compares actual costs to budgeted costs from the prior budget year, and (b) identifies line items and associated costs for the next budget year. Once these costs are identified, NERC prepares its annual budget by department. NERC has departments, including the E-ISAC, dedicated to performing NERC's statutory functions and other departments dedicated to providing administrative services and tools (physical and electronic) supporting the entire company. The budgets for both the statutory and administrative departments contain the same cost categories, e.g., Personnel Expenses, Meeting and Travel, Consultants and Contracts, Fixed Asset Additions, and Office Costs and Other Operating Expenses, which are considered direct costs incurred by each department in its activities. Consistent with NERC's attached Allocation Policy for Electric Reliability Organization ("ERO") Reporting ("Allocation Policy"), all costs specific to each statutory and administrative department are budgeted as direct costs in that department's budget.[4] Any material costs shared across multiple departments, including technology costs, will be divided and assigned directly to the applicable departments (e.g., the cost for software licenses that are only used by three different statutory departments is split among those departments).

Also consistent with the Allocation Policy, costs that are directly assigned to administrative departments in providing support to all the statutory departments are reflected as "indirect costs" in each statutory department's budget, this includes the E-ISAC budget. Additionally, "Fixed Asset Additions" and "Financing Activity" categories from the administrative departments are

[4] The Statement of Activities for the E-ISAC in NERC's 2023 BP&B shows the specific amounts budgeted to E-ISAC in each of these cost categories.

allocated to each statutory department. For example, the 2023 E-ISAC budget, excluding CRISP, reflects "Fixed Asset Additions" of $1,186,143, of which $258,000 are directly assigned "Fixed Asset Additions" and $928,143 are allocated "Fixed Asset Additions" from the administrative departments. CRISP's 2023 budget reflects "Fixed Asset Additions" of $182,592, of which $50,000 are directly assigned "Fixed Asset Additions" and $132,592 are allocated from the administrative departments. For "Financing Activity," 100% of the "Borrowing and Principal Payments" in the 2023 E-ISAC budget, including CRISP, were allocated from the administrative departments. NERC allocates administrative department costs to each statutory department consistent with the Allocation Policy based on the ratio of the statutory department's full time equivalent employees ("FTEs") to NERC's total statutory FTE count. NERC has accounted for and allocated its costs using this process throughout its history as the ERO.

NERC's BT department is an administrative department that exists to support the entire company, including the E-ISAC, to ensure NERC is able to carry out its mission. BT's expenditures provide the fundamental technological resources and support required for NERC to operate as the ERO, including (but not limited to) audio-visual systems, voice communications, email, productivity tools, document management, network storage, and cybersecurity tools. The BT department's budget includes the same cost categories as every other department, such as "Personnel expenses," "Meeting and Travel," "Consultants and Contracts," "Office Costs" and "Other Operating expenses," and "Fixed Asset Additions" (including capital investments for software or equipment).

Given the breadth of technology and security needed to support the E-ISAC's mission, the E-ISAC is a significant focus area for BT.[5] As stated above, to the extent that any technology costs are primarily incurred to support a particular department, such as the E-ISAC, the costs are directly assigned to that department's budget. For the E-ISAC, these directly assigned costs include technology expenses, including contract and/or dedicated BT staff support, for the following:

- Various software licenses and support for data analysis and cyber and intelligence tools;
- GridEx activities;
- Critical broadcast capability;
- Customer relationship management system;
- the E-ISAC Portal;
- Automated Information Sharing; and
- Various software needs to support the Cybersecurity Risk Information Sharing Program ("CRISP").

The E-ISAC does receive a larger allocation of indirect costs relative to other statutory departments, but this is because E-ISAC has the highest statutory department FTE count. Further, to answer the Commission's questions in P 26 of the Order, NERC budgets technology costs specific to E-ISAC operations directly to the E-ISAC program area budget while also allocating indirect costs to the E-ISAC for its share of administrative services based on the size of the E-ISAC's FTE staff relative to other statutory departments. The BT department's budget is thus allocated to the E-ISAC in the same manner as it is for every other statutory department's budget.

[5] The E-ISAC's mission is to provide the electricity industry quality analysis and rapid sharing of security information on how to mitigate complex, constantly evolving threats to the grid, which includes a 24/7 watch operation, constantly updated expert in-house analysis of ongoing incidents, and a suite of analytical products and services accessible through the secure E-ISAC Portal.

IV. EXPLANATION OF FIXED ASSET COSTS BY PROGRAM AREA AND CLARIFICATION OF CAPITAL SOFTWARE LOAN ALLOCATION

As described in greater detail below, NERC is clarifying for the Commission its accounting practices for capital financing activities. In particular, NERC will explain the reasoning for its budgeting of the capital software loan borrowing proceeds and related debt service payments (principal and interest) in G&A, and why it was allocated to the statutory departments using the FTE ratio allocation.

Consistent with NERC's Allocation Policy, all costs specific to each statutory department are applied directly to that department's budget, which includes fixed asset expenditures like capital software investments. Costs for the administrative departments that support the entire company, including any applicable fixed asset expenditures, are allocated to the statutory departments based on the ratio of each department's total FTEs to the total statutory FTEs. In the 2023 BP&B, capital software investments related to the administrative departments make up $2.5 million (approximately 47%) of the $5.3 million of budgeted 2023 capital software costs, and are primarily budgeted in the BT department with a portion budgeted in the Human Resources ("HR") and F&A departments. This includes fixed asset expenditures related to:

- Cybersecurity enhancements,
- Identity and access governance,
- Collaboration tool enhancements, and
- HR and F&A system enhancements.

The remaining $2.8 million of the budgeted capital software costs are directly budgeted to the applicable statutory department(s) that is/are responsible for or benefits from the capital software item(s). These capital software costs are outlined in the 2023 BP&B in each statutory department's budget narrative that discusses technology resources, as applicable, and primarily relate to:

- Solar data collection application and integration of energy storage with solar and wind facilities

- Reliability Assessment Data System
- Reliability Coordinator Information System
- Enterprise data analytics center, and
- Continued enhancements for the Generator Availability Data System, Transmission Availability Data System, Centralized Organization Registration ERO System, Align, and the Secure Evidence Locker.

As discussed in NERC's 2023 BP&B, NERC's capital software investments are part of a technology strategy that requires significant investment over the next three years. The 2023 BP&B includes $4.0 million in loan proceeds for the 2023 capital software projects, in order to spread the investment cost over multiple years to reduce the volatility in annual assessments resulting from the increased investment. This financing activity (capital loan proceeds and related debt service payments) was budgeted in G&A, which is consistent with NERC's historical practice when budgeting its general capital software financing activities when using the capital borrowing program. NERC acknowledges that this historical practice was being used prior to the inclusion of financing activity in NERC's Statement of Activities in its BP&B. To date, the only software projects that have actually been financed using capital loan proceeds are the Align and Secure Evidence Locker projects, and as a result the financing for these projects has been budgeted and accounted for as direct costs in the Compliance Assurance and Compliance Enforcement departments.

NERC acknowledges the Commission's concern with NERC budgeting general statutory department capital software financing activity in G&A and using the FTE ratio allocation to statutory departments. However, budgeting the financing activity through G&A and allocating it as an indirect cost in the 2023 BP&B does not materially impact the allocation of 2023 funding between statutory assessments and third party funding from CRISP and the System Operator Certification and Credential Maintenance program. NERC performed an analysis comparing the allocation procedure NERC employs to an alternative allocation approach using weighted percentages of each department's capital software project costs. NERC determined that had NERC budgeted the capital software financing activity using a weighted percentage of capital software projects costs, rather than using the FTE ratio allocation, the impact to the allocation of funding between statutory assessments and third party funding from CRISP and the System Operator Certification and Credential Maintenance program would have been approximately $38,000. However, for future business plans and budgets, NERC will update its budgeting method to allocate the budgeted capital financing activity for any capital software projects using weighted percentages of departments' capital software spending.

To the extent that any capital projects require loan financing in 2023, NERC will prioritize and apply loan financing to the capital software projects in the administrative departments first, followed by statutory department capital software projects requiring the largest investments. In the latter case, any financing will be reflected as a direct cost of the responsible department(s) based on actual financing activity incurred. NERC will report any variances in its quarterly variance reports.

V. E-ISAC VENDOR AFFILIATE PROGRAM

In this section, NERC outlines the membership structure, vetting process, and activities and value of the E-ISAC's Vendor Affiliate Program ("VAP"). Furthermore, NERC explains the limitations on VAP participants' ("Vendor") marketing and business development activities as part of the VAP as well as any applicable budget impacts for NERC.

A pillar of the E-ISAC's mission is to facilitate the timely dissemination of actionable intelligence from diverse sources to its members in the interests of protecting and improving their reliability, resilience, and security. To be effective, the E-ISAC must take a holistic approach to cyber and physical security. In addition to sharing threat indicators, action plans, or other intelligence with its electricity asset owner and operator members, it is important for the E-ISAC to address supply chain issues by providing information about vendors to the electricity sector and bringing Vendors servicing the electric sector into the E-ISAC information sharing. The VAP serves as a way to bring security-focused professionals, service providers, and original equipment manufacturers servicing the electric sector together with E-ISAC members to share information and enhance security practices.

The VAP is complementary to the well-established annual GridSecCon, which also promotes information sharing between E-ISAC members and the vendor community. The VAP is another way the E-ISAC provides value to its members. The VAP membership fees help fund this initiative and offset assessments. As described below, the E-ISAC has structured the program to ensure the security and confidentiality of the E-ISAC's information sharing community and ensure that Vendors become a productive part of that community. Participating Vendors are not permitted to directly solicit E-ISAC members for sales of the Vendors' products and services. Vendors have certain limited general promotion opportunities, but only with E-ISAC-pre-approved content and in limited channels such as GridSecCon, monthly briefings, or in limited, well-defined areas of the Portal.

a. Vendor Affiliate Program Governance

The VAP is restricted to Vendors that the E-ISAC screens before accepting them into the VAP. The E-ISAC's screening process is designed to allow participation by Vendors that do not jeopardize security. The VAP has criteria ("VAP Criteria") specifying that at a minimum, a Vendor must be a known provider of cybersecurity products or services, an original equipment manufacturer, or a provider of other related services to electricity industry stakeholders. The E-ISAC has sole discretion to reject any requests to join the VAP, and to terminate a Vendor's participation if it does not meet (or ceases to meet) the VAP Criteria, presents a security risk, or fails to comply with the terms and conditions governing the VAP. While some Vendors may be non-U.S.-based companies, the E-ISAC does not approve any Vendor (1) that is subject to U.S. sanctions or other federal restrictions, (2) that engages in activities inconsistent with E-ISAC security practices, or (3) that presents other risk factors, including if there are operations in certain locations outside the U.S.

All approved Vendors are required to execute a form that includes applicable terms and conditions governing confidentiality, security, conduct, and acceptable use. The terms and conditions require Vendors to provide accurate responses when contacted by the E-ISAC to verify that the Vendor meets the VAP Criteria, which includes verifying: (1) the corporate/organizational existence of the Vendor; (2) the address and physical location of the Vendor's headquarters; and (3) that the applying individual is a current employee of the applicant Vendor with authority to bind the Vendor to the terms and conditions. The E-ISAC employs various resources to verify the veracity of Vendor responses such as leveraging Dun & Bradstreet, Better Business Bureau, and the Internal Revenue Service's EIN check, in addition to reviewing publicly available information and having conference calls with the Vendor. E-ISAC further retains audit rights to ensure compliance with the terms and conditions and Program Criteria.

Additionally, at any time following admission to the VAP, all Vendors are required to promptly notify the E-ISAC if the Vendor becomes aware that its eligibility status has changed or is likely to change such that it no longer meets the Program Criteria.

Further, Vendors are not given full access to the E-ISAC Portal and are limited to certain discussion channels created specifically for the VAP. Approved Vendors are subject to the same confidentiality and use restrictions applicable to all Portal users. The E-ISAC maintains control of Vendor access and can suspend or terminate access at any time in the event of a violation of the Portal confidentiality and use restrictions, or as otherwise set forth in the Vendor Affiliate Program Agreement ("VAP Agreement").

b. Vendor Affiliate Program Tiered Membership Structure

The VAP is structured to have different priced tiers to increase participation. The tiers accommodate Vendors of different sizes and resources. Each tier offers benefits relative to the Vendor's investment. For example, the highest tier fee includes the opportunity to participate in a panel session or training day at GridSecCon. The tiered structure also offers Vendors more opportunities to participate in additional or supplemental speaking engagements throughout the year, such as during E-ISAC hosted monthly briefings or other forums the E-ISAC makes available based on the selected tier. As the E-ISAC gains experience administering the VAP, it may choose to modify this model to improve the program.

c. Vendor Affiliate Program Business Development Limitations

Vendors are not permitted to promote their products and services on the E-ISAC Portal. Each Vendor executes the VAP Agreement, the terms and conditions of which include specific restrictions on marketing activity, specifically in the Vendor Affiliate Conduct Policy section. Discussions must be limited to specifically agreed-upon topics as determined by the E-ISAC that are directly relevant to the security of the electricity industry, such as trainings on threat analytics, "hunting," "playbook" creation, and tools for mitigating risks. The E-ISAC does not promote any particular Vendor, product, or service in the VAP. The VAP Agreement prohibits Vendors from promoting products or making any post suggesting that the E-ISAC endorses that Vendor. Furthermore, the VAP Agreement incorporates the E-ISAC Application User Agreement ("Portal

Agreement") that governs Vendor access to the areas the E-ISAC permits Vendors to access, as applicable.

To ensure compliance, the E-ISAC reviews any Vendor material prior to the Vendor being allowed to present at an E-ISAC event, such as its monthly briefings, and monitors Vendor Portal posts to ensure the material does not contain promotional content or otherwise serve a sales purpose. Any business relationship that may occur between an E-ISAC member and a Vendor is indirect, incidental to the Vendor's participation in the VAP, and occurs outside the VAP. The relationship is exclusively between that member and the Vendor. The E-ISAC is not involved.

While the E-ISAC does not permit or intend to promote any particular Vendors, the E-ISAC has an interest in advising its members about tools and techniques that are available to enhance their security posture. Providing Vendor access allows for members to obtain actionable information useful to mitigating the relevant risks otherwise discussed on the Portal. Vendors may only post information to the E-ISAC Portal pursuant to Section XIII (Application Conduct Policy) of the Portal Agreement, which restricts content. These offerings are particularly helpful for the E-ISAC's smaller members that do not have the same level of access to this information as the larger members.

d. Vendor Affiliate Program Costs and Expenses

The VAP is funded through membership fees paid by the Vendors. At this time NERC does not anticipate any additional staffing requirements in the E-ISAC, but will reflect any changes in its annual budget filings. NERC will adjust charges to VAP participants to cover any increased costs in future budget cycles.

The VAP benefits all E-ISAC members and is one of many programs the E-ISAC employs to fulfill its mission. The program is tightly controlled to ensure it is Vendor agnostic and the primary function and purpose is and remains increasing the security, situational awareness, and preparedness of its members. The VAP is self-funded and offsets any direct or indirect costs to NERC.

VI. <u>EXPLANATION OF THE E-ISAC AND NATURAL GAS SECTOR PARTNERSHIP</u>

In the Order, the Commission expressed its concern over any potential electricity sector subsidization of the natural gas sector. Below, NERC outlines the funding of the collaboration.

The E-ISAC's collaboration with the Downstream Natural Gas ISAC benefits the E-ISAC's members through increased insights into threats affecting a sector that has many overlaps with the E-ISAC's mission. In 2022, the E-ISAC shared 756 bulletins with the Downstream Natural Gas-ISAC and they shared 96 bulletins with the E-ISAC and its members. At this time, there are no new or incremental costs associated with this collaboration. No additional tools, FTEs, or other investment are required at this time. As referenced in NERC's quarterly budget filings, the American Gas Association/Interstate Natural Gas Association of America have already been providing $60,000 per year to the E-ISAC to cover costs associated with increased engagement stemming from any collaboration.[6] Any natural gas sector participant in CRISP will execute the CRISP Master Agreement and pay for its operational and direct costs in the same manner as existing participants.

Collaborations like the Downstream Natural Gas ISAC collaboration are done to benefit E-ISAC members. Costs associated with the collaboration are funded by the participating entities. Participation in any E-ISAC facilitated program, such as CRISP, will be funded by each participant.

[6] Note that many of the DNG-ISAC utilities are also electric utilities having access to the Portal.

VII. CONCLUSION

NERC respectfully requests that the Commission accept this compliance filing as satisfying the requirements of PP 26-30 of the 2023 Business Plan and Budget Order.

Respectfully submitted,

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Dated: January 3, 2023

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document upon all parties listed on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C. this 3rd day of January, 2023.

/s/ Nina Jenkins-Johnston

Nina Jenkins-Johnston
Counsel for North American Electric Reliability Corporation

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ATTACHMENT

North American Electric Reliability Corporation Allocation Policy for
Electric Reliability Organization Reporting

NERC
NORTH AMERICAN ELECTRIC
RELIABILITY CORPORATION

North American Electric Reliability Corporation Allocation Policy for Electric Reliability Organization Reporting

Purpose and Background

The purpose of this allocation policy is to summarize the methods and procedures that the North America Electric Reliability Corporation (NERC) uses to budget and allocate costs to various program areas (i.e., departments) for the Electric Reliability Organization (ERO) statement of activities budget reporting.

NERC has two general categories of program areas, or "departments." The statutory departments perform functions for the ERO as identified in the NERC Rules of Procedure. The administrative departments perform functions that support all NERC departments.

Budgeting Direct Costs

Each statutory and administrative department's budget should include direct expenses that include (but are not limited to) the following: technology capital projects, software licenses and support, contractors, consultants, and personnel. During the annual Business Plan & Budget (BP&B) preparation process, NERC should ensure that costs that directly benefit a statutory department are budgeted in that department, and costs that support the entire company are budgeted in the respective administrative department, with the following guiding considerations.

Costs Directly Benefiting Multiple Departments

If a cost directly benefits more than one department (but not all departments), NERC should budget that cost directly across each benefiting department budget. For example, if a technology solution directly benefits both the Compliance Assurance and Compliance Enforcement program areas, the costs related to the solution for licensing, software support, enhancements, etc. should be split and budgeted in the Compliance Assurance and Compliance Enforcement budgets as direct costs.

Administrative Department Resources Directly Benefiting Certain Departments

To the extent that administrative department personnel or contract resources are identified as materially supporting a statutory department or departments, the resource should be directly budgeted to the statutory department(s) even though the resource may report through the administrative department. For example, if a Business Analyst in the Information Technology (IT) department primarily supports two technology solutions, one in Event Analysis and one in Performance Analysis, that Business Analyst will be managed by the IT department but should be budgeted directly in the Event Analysis and Performance Analysis departments (either split equally or proportionally to the amount of work expected for each solution).

Allocating Administrative Department Budgets

The administrative departments include General and Administrative (G&A), Executive, External Affairs, Legal and Regulatory, IT, Human Resources, and Finance and Accounting. Since the administrative department costs support the entire company to enable the work of the statutory departments, the budgets of the administrative departments should be allocated to statutory department budgets using the following method.

<u>Full Time Equivalent (FTE) Ratio Allocation</u>

The administrative department budgets, including income, should be allocated to the statutory departments using the FTE Ratio Allocation method. The FTE Ratio Allocation method uses a percentage calculation of the number of FTEs in each statutory department divided into the total statutory FTEs. This calculated percentage should be used for the following allocations to the statutory departments:

1. **Investment Income** – Allocated from administrative departments using the “Investment Income Allocation” general ledger account # 49001. Note that the Cybersecurity Risk Information Sharing Program (CRISP) and the System Operator Certification and Credential Maintenance program are excluded from the investment income allocation, since these programs earn investment income from cash directly generated and assigned to their program.
2. **Miscellaneous Funding** – Allocated from administrative departments using the “Miscellaneous Funding Allocation” general ledger account # 49901
3. **Direct and Non-Operating Expenses** – Allocated from administrative departments using the “Indirect Expense Allocation” general ledger account # 98000
4. **Fixed Asset Additions** – Allocated from administrative departments using the “Fixed Asset Allocation” general ledger account # 99909
5. **Net Financing Activity** – Allocated from administrative departments using the
    a. “Loan or Financing Lease – Borrowing Allocation” general ledger account # 99615
    b. “Loan or Financing Lease – Principal Payments Allocation” general ledger account # 99635