

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Western Electricity Coordinating Council) Docket No. EL13-52-000

**MOTION TO INTERVENE AND COMMENTS OF THE
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION**

Pursuant to Rules 212 and 214 of the Federal Energy Regulatory Commission’s (“Commission” or “FERC”) Rules of Practice and Procedure, 18 C.F.R. §§ 385.212 and 385.214, the North American Electric Reliability Corporation (“NERC”) moves to intervene and comment on the petition for declaratory order filed by the Western Electricity Coordinating Council (“WECC”) in the above-referenced proceeding.¹

In its petition, WECC describes its intention to form a new company, RC Company, to which WECC will transfer the registered functions of Reliability Coordinator and Interchange Authority that WECC currently performs for the Western Interconnection. WECC seeks confirmation that the RC Company may continue to fund the Reliability Coordinator and Interchange Authority functions it will perform under section 215 of the Federal Power Act (“FPA”). WECC also seeks confirmation that, after transferring those functions to the RC Company, WECC will not be precluded from undertaking compliance and enforcement actions with respect to RC Company. WECC has requested a Commission order in response to the petition no later than June 21, 2013.²

¹ See *Western Electricity Coordinating Council*, Petition for Declaratory Order, *Docket No. EL13-52-000* (Mar. 12, 2013) (“WECC Petition”).

² WECC Petition at 1-2.

I. EXECUTIVE SUMMARY

NERC strongly supports WECC's decision to separate the Reliability Coordinator and Interchange Authority functions from the WECC organization and activities devoted to serving as the Regional Entity for the Western Interconnection. NERC is willing to include the costs of funding the new RC Company in its annual budget submission to the Commission and collect those amounts, in the same manner as NERC includes the costs and collects the amounts to support the Western Interconnection Regional Advisory Body (WIRAB³). Except for the limited involvement necessary to implement the funding mechanism, the separation between NERC and WECC, on the one hand, and the new RC Company, on the other hand, must be complete. The Commission may defer to the advice of WIRAB. Whatever decisions the Commission reaches on these issues should be limited in applicability to the Western Interconnection.

II. BACKGROUND

The Commission certified NERC as the Electric Reliability Organization ("ERO") for the purpose of establishing and enforcing Reliability Standards for the bulk power system in the United States.³ NERC's mission is to improve the reliability and security of the bulk power system in North America. NERC implements its responsibilities under section 215, in part, through eight Regional Entities to which NERC has delegated certain authorities. WECC is one such Regional Entity, and the Commission has approved the delegation agreement between NERC and WECC. WECC is the Regional Entity for the portion of the Western Interconnection within the United States.

³ *North American Electric Reliability Council, Order Certifying North American Electric Reliability Corporation as the Electric Reliability Organization and Ordering Compliance Filing*, 116 FERC ¶ 61,062 (2006) ("ERO Certification Order").

WECC is also a “user, owner, or operator” of the bulk power system within the meaning of section 215, performing the functions of Reliability Coordinator and Interchange Authority for the Western Interconnection. WECC is thus a registered entity and is included on the NERC Compliance Registry for those two functions. The Commission has ruled that WECC may not serve as the Regional Entity under NERC’s Compliance and Enforcement Program with respect to matters involving the Reliability Coordinator and Interchange Authority functions performed by WECC.⁴

Funding is provided under section 215 for NERC’s implementation of its ERO statutory activities, whether performed by NERC or by a Regional Entity to which NERC has delegated any of its section 215 responsibilities. The Commission reviews and approves the business plans and budgets of NERC and the eight Regional Entities on an annual basis. The Commission has ruled that WECC may include the costs of WECC’s performing the Reliability Coordination and Interchange Authority functions in WECC’s portion of its business plan and budget under section 215.⁵ Those costs are collected as part of the annual assessments to load-serving entities in the Western Interconnection that the Commission has approved each year.

⁴ *North American Elec. Reliability Council*, 119 FERC ¶ 61,060 (2007) (“*Initial Delegation Order*”) PP 453ff., *order on reh’g*, 120 FERC ¶ 61,260 (2007). *See, also, North American Elec. Reliability Corp.*, Docket No. RR12-2-000 (March 1, 2012) (unpublished letter order approving amendments to WECC regional delegation agreement).

⁵ *North American Elec. Reliability Corp.*, 119 FERC ¶ 61,059 at P 21, (2007)(order on rehearing of 2007 business plan and budget); *see, e.g., North American Elec. Reliability Corp.*, 141 FERC ¶ 61,086 (2013)(order approving 2013 business plan and budget).

III. NOTICES AND COMMUNICATIONS

Notices and communications with respect to this filing may be addressed to:⁶

Gerald W. Cauley
President and Chief Executive Officer
North American Electric Reliability Corporation
3353 Peachtree Road
Suite 600, North Tower
Atlanta, GA 30326
(404) 446-2560
(404) 467-0474 – facsimile

Charles A. Berardesco*
Senior Vice President and General Counsel
Rebecca J. Michael*
Associate General Counsel
Meredith M. Jolivert*
Attorney
North American Electric Reliability Corporation
1325 G Street, N.W., Suite 600
Washington, D.C. 20005
(202) 400-3000
(202) 644-8099– facsimile
charles.berardesco@nerc.net
rebecca.michael@nerc.net
meredith.jolivert@nerc.net

*Persons to be included on the
Commission’s official service list

IV. MOTION TO INTERVENE

NERC has a substantial and direct interest in this case for the following reasons:

1. NERC is the certified ERO under section 215 of the FPA;
2. NERC has entered into an agreement, approved by the Commission, delegating certain responsibilities under section 215 to WECC, making WECC a Regional Entity;
3. WECC is also a registered entity in the Western Interconnection, performing the functions of Reliability Coordinator and Interchange Authority;

⁶ Persons to be included on the Commission’s service list are identified by an asterisk. NERC respectfully requests a waiver of Rule 203 of the Commission’s regulations, 18 C.F.R. § 385.203 (2012), to allow the inclusion of more than two persons on the service list in this proceeding.

4. The new company WECC intends to form, RC Company, would be a registered entity in the Western Interconnection, performing the functions of Reliability Coordinator and Interchange Authority;
5. According to the petition, WECC will need to seek an amendment to its delegation agreement with NERC to carry out its plans;
6. Funding for WECC's current activities, including those of Reliability Coordinator and Interchange Authority, are collected through a funding mechanism approved as part of NERC's overall business plan and budget; and
7. According to the petition, WECC is requesting that costs for the Reliability Coordinator and Interchange Authority functions performed by the new RC Company would continue to be collected through a funding mechanism approved as part of NERC's overall business plan and budget.

No other entity can adequately represent NERC on the issues presented in the petition.

Accordingly, NERC seeks leave to intervene and comment on the petition.

V. COMMENTS

- A. **NERC strongly supports WECC's decision to separate the Reliability Coordinator and Interchange Authority functions from the WECC organization and activities devoted to serving as the Regional Entity for the Western Interconnection under section 215.**

When the Commission first approved the delegation agreement between NERC and WECC under section 215, the Commission expressed concern about the combination of WECC compliance staff and WECC operational functions in the same entity.

456. * * * we remain concerned that WECC's compliance staff is not sufficiently separated from its reliability coordinators. For example, both WECC's compliance staff and reliability coordinators are hired and have their performance reviewed by WECC

management, and both have their work product reviewed by the same member committees and management personnel. The result is a lack of independence in compliance monitoring and enforcement for WECC operational functions. Accordingly, we direct NERC and WECC to remedy these deficiencies. If it chooses, and NERC agrees, WECC may engage NERC to oversee the compliance and enforcement functions as they relate to WECC's compliance with reliability standards. This is just one possible way to help establish the strong separation that we require.⁷

NERC and WECC addressed that concern by having first NERC, and then the Northeast Power Coordinating Council, serve as the compliance enforcement authority for the WECC registered functions.⁸ One consequence of WECC's combination of compliance responsibilities and operational functions within the same organization was that WECC was not able to participate in the investigation and analysis of the September 8, 2011, disturbance in the Southwest, except as an affected party.

NERC has encouraged WECC to consider separating the governance of functions delegated by NERC from functions performed as a registered entity.⁹ NERC is pleased that WECC is taking the necessary action to achieve that separation, and NERC strongly supports WECC's efforts. That separation will enable both WECC and the new RC Company to concentrate their efforts on their respective, central missions.

B. NERC is willing to include the costs of funding the new RC Company in its annual budget submission to the Commission and collect those amounts, in the same manner as NERC includes the costs and collects the amounts to support the Western Interconnection Regional Advisory Body.

In its petition, WECC asks the Commission to confirm that the costs of the new RC Company may be collected as part of the section 215 assessments to those within the Western

⁷ See Initial Delegation Order at P 456.

⁸ *North American Elec. Reliability Corp.*, Docket No. RR11-2-000 (November 15, 2011) (unpublished letter order approving Compliance Monitoring and Enforcement agreement between Northeast Power Coordinating Council, Inc. and Western Electricity Coordinating Council.

⁹ <http://www.nerc.com/fileUploads/File/News/WECC%20July%2026%202012.pdf>

Interconnection. That decision would continue the result the Commission reached for such costs when it considered the issue in approving WECC's 2007 business plan and budget.¹⁰ To support the separation of WECC's Regional Entity activities from the operating functions for which WECC is currently registered, NERC is willing to include the costs of funding the new RC Company in its annual budget submission to the Commission and collect those amounts, in the same manner as NERC includes the costs and collects the amounts to support WIRAB.¹¹ When the Commission approves WIRAB's budget submission each year, it does so based on the information supplied by WIRAB:

Based on the information provided by WIRAB, the Commission concludes that WIRAB's 2013 budget is reasonable and, accordingly, the Commission accepts the WIRAB 2013 budget.¹²

How NERC would expect to implement WECC's request for the new RC Company is that NERC would accept the budget and supporting material from the new RC Company and include that information in NERC's overall business plan and budget submission to the Commission, including calculating the appropriate allocation for assessment and billing purposes for the appropriate entities within the Western Interconnection. NERC would not expect to separately evaluate the sufficiency or adequacy of the new RC Company budget or the information in support of that budget. If the new RC Company filing were deemed deficient in

¹⁰ *North American Elec. Reliability Corp.*, 119 FERC ¶ 61,059 at P 21 (2007)(order on rehearing of 2007 business plan and budget).

¹¹ While the petition contains certain factual errors, those errors should not affect the result of the analysis in this case: NERC no longer funds the TSIN registry. Responsibility for TSIN was transferred to the North American Energy Standards Board effective November 13, 2012. NERC's contract for Interchange Distribution Calculator ("IDC") services for the Eastern Interconnection ended by its own terms on March 31, 2013, and after that date, NERC no longer funds the IDC.

¹² *North American Elec. Reliability Corp.*, "Order Accepting 2013 Business Plan and Budget of the North American Electric Reliability Corporation and Ordering Compliance Filing, 141 FERC ¶ 61,086 (2012), at P 36.

any respect, NERC would endeavor to obtain the needed information from the new RC Company and file it with the Commission for the Commission's consideration.

C. Except for the limited involvement necessary to implement the funding mechanism, as described in the prior section, the separation between NERC and WECC, on the one hand, and the new RC Company, on the other hand, must be complete.

Neither NERC nor WECC should have oversight or review authority over the budget, governance, or administration of the new RC Company. Under NERC's Reliability Standards, the proposed new RC Company will have responsibility for the real-time operation of the bulk power system, and it will be registered as a user, owner, or operator of the bulk power system. If NERC (or WECC) were to have responsibility for the sufficiency, adequacy or oversight of the new RC Company budget, it would present a conflict of interest for NERC or WECC acting as the compliance enforcement authority under section 215. That is the very conflict of interest that is sought to be remedied by the separation of the registered functions from WECC's Regional Entity activities and responsibilities.

With the transfer of the registered functions to the new RC Company and complete separation, NERC believes the Commission should confirm WECC's request that WECC not be precluded from undertaking compliance and enforcement actions with respect to RC Company. NERC and WECC would have regulatory responsibility for the actions of the new RC Company only through the Reliability Standards related to the functions for which the new RC Company is registered and the NERC Rules of Procedure.

D. The Commission may defer to the advice of the Western Interconnection Regional Advisory Body.

Section 215(j) states that the Commission "may give deference to the advice of any such regional advisory body if that body is organized on an Interconnection-wide basis." WIRAB is

organized on an Interconnection-wide basis and thus meets that statutory prerequisite. In ruling on the Reliability Coordinator issues in WECC's 2007 business plan and budget, the Commission exercised its discretion and expressly gave deference to the advice provided by WIRAB regarding the importance of the funding for the Reliability Coordinator funding.¹³ In the event WIRAB provides advice to the Commission in this proceeding, the Commission could again decide to grant deference to that advice.

E. Whatever decisions the Commission reaches on these issues should be limited in applicability to the Western Interconnection.

NERC has 20 other Reliability Coordinators on its Compliance Registry in addition to WECC. Those other 20 Reliability Coordinators carry out their responsibilities under a variety of organizational structures and funding mechanisms. The Commission should restrict any decisions it reaches regarding WECC's Reliability Coordination function and plan to the Western Interconnection. Decisions made with respect to the unique circumstances of the Reliability Coordinators in the Western Interconnection should not be extended to other entities and locations.

When the Commission granted rehearing in 2007 and permitted the WECC Reliability Coordinators to be funded under section 215, it did so "based on the circumstances presented in this case."¹⁴ The Commission expressly declined WECC's suggestion to adopt a general policy regarding Reliability Coordinators.¹⁵ The Commission should follow that same course on this petition.

¹³ *North American Elec. Reliability Corp.*, 119 FERC ¶ 61,059 at P 22 (2007).

¹⁴ *Id.* at P 21.

¹⁵ *Id.* at P 24.

VI. CONCLUSION

For the forgoing reasons, NERC requests that the Commission act favorably on WECC's petition for a declaratory order, consistent with the recommendations made in these comments.

Respectfully submitted,

/s/ Rebecca J. Michael

Gerald W. Cauley
President and Chief Executive Officer
North American Electric Reliability
Corporation
3353 Peachtree Road, N.E.
Suite 600, North Tower
Atlanta, GA 30326
(404) 446-2560
(404) 446-2595– facsimile

Charles A. Berardesco
Senior Vice President and General Counsel
Rebecca J. Michael
Associate General Counsel
Meredith M. Jolivert
Attorney
North American Electric Reliability
Corporation
1325 G Street, N.W., Suite 600
Washington, D.C. 20005
(202) 400-3000
(202) 644-8099– facsimile
charles.berardesco@nerc.net
rebecca.michael@nerc.net
meredith.jolivert@nerc.net

*Counsel for North American Electric
Reliability Corporation*

Dated: April 15, 2013

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 15th day of April, 2013.

/s/ Rebecca J. Michael

Rebecca J. Michael
*Attorney for North American
Electric Reliability Corporation*