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

North American Electric Reliability)
Corporation) Docket No. _____

**REQUEST OF THE NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION
TO EXPEND FUNDS FROM ITS OPERATING CONTINGENCY RESERVE**

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September 15, 2021

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In accordance with the provisions of its Commission-approved Working Capital and Operating Reserve Policy (“WCOR Policy”) and Paragraph 7(b)(ii) of the Settlement Order and Agreement in Docket No. FA11-21-000,¹ the North American Electric Reliability Corporation (“NERC”) submits this request for Federal Energy Regulatory Commission (“Commission”) approval to expend up to \$2.0 million from NERC’s Operating Contingency Reserve² (“OCR”) to fund exercise of an early termination option in NERC’s Atlanta office lease, which NERC has determined to be cost-effective and beneficial to its operations, subject to successful execution of a new Atlanta office lease agreement.³

I. INTRODUCTION

As shown in this filing, the plan to move the location of the NERC headquarters within Atlanta provides significant cost savings. NERC’s current lease includes an early termination option that can be exercised by the end of October 2021. NERC reviewed other office opportunities and determined that significant long-term cost savings can be achieved by terminating the current

¹ *N. Am. Elec. Reliability Corp.*, 142 FERC ¶ 61,042 (2013).

² Since the proposed expenditure from OCR exceeds \$500,000, NERC is required to seek Commission approval in accordance with Paragraph 7(b)(ii) of the Commission-approved settlement agreement in Docket No. FA11-21-000 [hereinafter Paragraph 7(b)(ii)]. Paragraph 7(b)(ii) provides that the proposed expenditure is approved if the Commission does not act on it or issue a tolling order within 30 days following this filing.

³ Due to ongoing lease negotiations, NERC is not identifying in this filing the name, owner, or specific address of the New Office Space.

lease and relocating elsewhere. NERC is leveraging a changing real estate market to capture these cost savings, which will be reflected in future business plans and budgets. These savings will result in a reasonable payback of the cost of exercising the option to exit our current lease, as the payback period is less than the remaining time on the existing lease itself. In addition to the cost savings, the move strategically aligns with NERC's Connected Workforce model, which contemplates balancing work-from-home flexibility (a long-term result of the pandemic experience, thereby requiring less physical office space) with the opportunity and need to collaborate in an office space.

In this filing, NERC: (1) describes the financial and strategic considerations supporting the termination of the current lease and relocation as well as the cost savings to be realized; (2) outlines the funding strategies to pay for the option to terminate the current lease; and (3) seeks Commission approval to expend up to \$2.0 million from the OCR to pay for the cost of exercising the early termination option.⁴

In addition, NERC requests that the Commission either (1) issue an order by October 15, 2021, approving the requests herein; or (2) allow 30 days from the date of this filing to pass without acting on the filing or issuing a tolling order, as thereby resulting in the requests being deemed approved as provided in Paragraph 7(b)(ii). Either action will allow NERC to execute the new lease on or around October 15, and to proceed to exercise the early termination option in the current lease prior to its expiration date of October 31, 2021.

II. REQUEST FOR EXPEDITED COMMISSION ACTION AND SHORTENED COMMENT PERIOD

NERC respectfully requests that the Commission consider this filing on an expedited basis

⁴ The exact amount of the termination fee will be determined closer to the payment date and is likely to be just below \$2 million. Payment of the fee is subject to the successful conclusion of ongoing negotiations and execution of a new lease agreement.

to allow the issuance of an order in this proceeding by October 15, 2021. NERC also requests a shortened comment period of no more than 14 days. The requested timeline is necessary to allow NERC to enter into a new lease on or around October 15, 2021, and to provide the required advance notice of its option to terminate the existing lease by October 31, 2021 and thus realize the benefits described herein.

A shortened comment period is also warranted due to the fact that the transactions described herein will have no impact on overall assessments for 2021 or 2022 and will result in a significant reduction in office lease expenses in 2023 and beyond and have an overall positive impact on NERC's future budgets.

III. REQUEST FOR PRIVILEGED TREATMENT OF ATTACHMENT 1

Pursuant to 18 C.F.R. §388.112, NERC respectfully requests privileged treatment for Attachment 1 of this filing. Attachment 1 contains confidential business information, specifically, a financial analysis of the benefits associated with the proposed move to the New Office Space which is the subject of ongoing negotiations. For this reason, NERC seeks privileged treatment for Attachment 1 to withhold this information from public disclosure.

IV. NOTICES AND COMMUNICATIONS

Notices and communications with respect to this filing may be addressed to the following:⁵

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⁵ Persons to be included in Commission's official service list are indicated with an asterisk.

V. FINANCIAL AND STRATEGIC BENEFITS OF PROPOSED ATLANTA OFFICE MOVE

The early termination of the current lease and proposed relocation is expected to provide significant long-term cost savings over current lease costs.⁶ Recognizing that it would have a one-time option to terminate its current lease that could be exercised by October 31, 2021, NERC began to explore potential relocation options in the current Atlanta commercial real estate market to determine if early termination and relocation to another property would be cost-effective. Of several options analyzed with the assistance of an experienced commercial real estate broker, early termination of its current lease and a move to the New Office Space under terms offered by that landlord was the most cost-effective option discovered.⁷ **Attachment 1** to this filing provides an analysis of the cost savings anticipated from these transactions. Essentially, NERC expects to save over \$900k per year on budgeted rent and facility expense for the Atlanta office under the anticipated new lease. The three-year net present value savings, including out of pocket costs related to the relocation, is also projected to exceed \$900k. As indicated above, the relocation makes financial sense even when we consider the termination costs and other out of pocket costs such as tenant improvement costs and furnishings, net of landlord incentives. As shown in Attachment 1, the total amount of out of pocket costs to be funded by NERC is approximately \$2.7 million (including the early termination option payment not to exceed \$2.0 million), which is paid back sooner than the natural expiration of the current lease.⁸

⁶ This analysis assumes the successful completion of a lease consistent with the terms currently being negotiated.

⁷ NERC and its agent attempted negotiations with the current landlord to downsize its existing space; however, the proposal received offered less cost savings and benefits than the proposal from the New Office Space, which also provided the strategic and qualitative benefits outlined in this filing.

⁸ The only out of pocket expenses being funded in 2021 out of the OCR request in this filing are the termination costs. Any 2022 expenses relating to the relocation will be addressed separately.

The benefits of the referenced transactions go beyond cost savings. Throughout the pandemic, NERC's workforce demonstrated its ability to successfully execute NERC's responsibilities in remote, "work from home" settings. Going forward, NERC, like many employers, is striving to balance work-from-home flexibility with keeping its workforce and stakeholders connected through in-office collaborations and meetings as needed. With greater work-from-home flexibility, NERC recognizes that it can decrease the square footage of its leased office space from that needed in the pre-pandemic environment. The New Office Space location allows NERC to decrease its office footprint by approximately 40%. The New Office Space additionally offers several building amenities to its tenants, of which free employee parking is the most significant positive impact to the NERC budget.

The New Office Space also provides excellent transportation and accommodation options for the workforce and stakeholders, with access to two major expressways and a MARTA station nearby. An adjacent hotel and conference center has a full-service restaurant, over 20 rentable meeting rooms, and a 10,000 square foot ballroom, providing flexibility to support stakeholder meetings. Additional hotels and restaurants are nearby. Further, the New Office Space offers enhanced security at the reception area and roaming security officers inside and outside the building. Badges are required to access the elevators and walk-out services are also available for anyone leaving the office after dark.

VI. REQUEST FOR APPROVAL TO EXPEND FUNDS FROM OPERATING CONTINGENCY RESERVE TO EXERCISE OPTION FOR EARLY TERMINATION OF EXISTING ATLANTA LEASE

NERC proposes to fund the early termination fee out of its OCR. In accordance with Paragraph 7(b)(ii) of the Settlement Agreement in Docket No. FA11-21-000, NERC seeks Commission approval (whether by issuance of an order or by non-action in 30 days) to expend up

to \$2.0 million from its OCR to fund the cost of exercising the early termination option in its current lease. Paragraph 7(b)(ii) specifies:

NERC will file for Commission review and approval Board-of-Trustees-approved proposals to expend \$500,000 or more from operating reserves designated for “unforeseen contingencies” (as that term is defined in NERC’s Working Capital and Operating Reserve Policy (Reserve Policy)). Each such filing will include supporting materials in sufficient detail to justify the proposed expenditure. The filing will be deemed approved if the Commission does not act on it or issue a tolling order extending the time for Commission action within thirty days of the filing date.

Under NERC’s WCOR Policy, reserves may be made available for “contingencies that were not anticipated, assumed to be likely or the timing of which was uncertain, at the time of preparation and approval of the company’s business plan and budget.” The unanticipated contingency necessitating the proposed expenditure from NERC’s OCR in 2021 is the proposed early termination of its current lease and the move of the Atlanta headquarters to the New Office Space. A local office move was not contemplated, and certainly had not been decided upon, at the time NERC prepared its 2021 business plan and budget, particularly in light of uncertainty surrounding pandemic conditions and local reopening guidance. NERC did not fully consider moving offices in Atlanta until August 2021, when NERC received sufficient financial, logistical, and functional information to allow it to make an informed and financially sound decision to pursue the New Office Space. NERC further notes that exercising the option to terminate the current lease will have no impact on overall 2021 or 2022 assessments.

NERC’s Commission-approved WCOR Policy requires that for expenditures from the OCR in excess of \$1,000,000, approval of the NERC Board is required, after notice to and recommendation by the Finance and Audit Committee (“FAC”). On September 9, 2021, the NERC FAC, after reviewing the financial and strategic benefits of the proposed move, recommended by

written consent, that the Board approve the proposal to expend up to \$2.0 million from NERC's WCOR to pay for the cost to exercise the option to terminate the lease. The NERC Board of Trustees approved the proposed expenditure by written consent on September 15, 2021. The aforementioned approval actions comply with NERC's WCOR Reserve Policy.

For the reasons set forth in this filing, NERC submits that the exercise of the early termination option for the lease and the move to the New Office Space is a prudent and cost-effective decision, and therefore approval of the proposed use of funds from the OCR (without which NERC will not have sufficient resources for the early termination payment) should be approved by the Commission.

Moreover, the requested use of funds from the OCR will not adversely impact NERC's OCR position and its ability to meet other unanticipated contingencies that could require the use of funds in the OCR. After withdrawal of the proposed \$2.0 million in 2021 to fund the early termination fee, the projected OCR amount at year-end 2021 is estimated at 5.9% of the budget baseline, which is within the target range of 3.5% to 7.0% under the Reserve Policy. Based on the foregoing analysis, NERC management has determined that \$2.0 million can be expended from the OCR in 2021, as proposed herein, without adversely impacting NERC's OCR position and its ability to meet other unanticipated contingencies that could require the use of funds in the OCR.

VII. CONCLUSION

For the reasons set forth above, NERC respectfully requests Commission approval to (1) expend up to \$2.0 million from the OCR in 2021 to fund the cost of the early termination option to exit the current lease; and (2) issuance of an order by October 15, 2021 approving these requests, or alternatively, allowing 30 days to pass from the date of this filing without acting on it or issuing

a tolling order, as provided under Paragraph 7(b)(ii) of the Settlement Agreement in Docket No. FA11-21-000.

Respectfully submitted,

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September 15, 2021