

177 FERC ¶ 61,078
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;
James P. Danly, Allison Clements,
and Mark C. Christie.

North American Electric Reliability Corporation

Docket No. RR21-9-000

ORDER ACCEPTING 2022 BUSINESS PLANS AND BUDGETS

(Issued November 2, 2021)

1. On August 24, 2021, as amended on September 29, 2021, the North American Electric Reliability Corporation (NERC) filed 2022 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 2022 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 2022 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 Reliability Standards, subject to Commission review and approval.² In July 2006, the Commission certified NERC as the ERO.³

¹ The six Regional Entities are: Midwest Reliability Organization (MRO); Northeast Power Coordinating Council, Inc. (NPCC); ReliabilityFirst Corporation; SERC Reliability Corporation (SERC); Texas Reliability Entity; and Western Electricity Coordinating Council (WECC).

² 16 U.S.C. § 824o.

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).

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 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.

B. NERC Application

4. The NERC Application contains NERC’s proposed business plan and budget for the year ending December 31, 2022, as well as the proposed business plans and budgets of each of the six Regional Entities and WIRAB for the year ending December 31, 2022.

5. NERC states that it prepared its 2022 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 2022 business plans and budgets were discussed by the Finance and Audit Committee, as well as the full NERC Board of Trustees, in

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, 114 FERC ¶ 61,104, at P 186, *order on reh’g*, Order No. 672-A, 114 FERC ¶ 61,328 (2006).

⁶ *Id.* P 197.

⁷ 18 C.F.R. § 39.4(b) (2020).

meetings and conference calls, with each event providing opportunities for stakeholders to comment.⁸

6. NERC states that the proposed assessment for the total ERO (i.e., NERC, the Regional Entities, and WIRAB) for 2022 allocable to the United States is \$181,297,158, which includes \$70,691,258 for NERC funding; \$110,019,127 for Regional Entity funding; and \$586,773 for WIRAB funding.⁹ NERC explains that it will continue to allocate costs to end users in the United States based on net energy for load. NERC maintains that its proposed total United States net funding requirement for the ERO enterprise is equivalent to \$0.000018 per kWh, based on the aggregate net energy for load of the United States in 2020.¹⁰

7. In addition to the NERC, Regional Entity, and WIRAB business plans and budgets, the NERC Application contains various attachments including: NERC Management's Responses to Stakeholder Comments Submitted on Drafts of NERC's 2022 Business Plan and Budget (Attachment 10); Calculation of Adjustments for the Alberta Electric System Operator, Ontario Independent Electric System Operator, New Brunswick, and Québec 2022 NERC Assessments (Attachment 11); Memorandum for NERC Board of Trustees Describing NERC's Participation in Preparation of and Review of Regional Entity 2022 Business Plans and Budgets (Attachment 12); Donation Holdback Agreement between WECC and Peak Reliability (Peak) (Attachment 13); Metrics Comparing Regional Entity Operations Based on the 2021 Budgets (Attachment 14); and Metrics on NERC and Regional Entity Administrative (Indirect) Costs Based on the 2021 and 2022 Budgets (Attachment 15).

C. NERC Amendment

8. On September 29, 2021, NERC filed an amendment to the NERC 2022 business plan and budget. NERC explains that while it has been contemplating a move to a new headquarters office in Atlanta, Georgia, the decision to pursue an available early termination option for NERC's current lease was not reached until after NERC's business plan and budget had been finalized and posted for final review by NERC's Board of Trustees. The amendment would increase expenditures by \$800,000 from the Future Obligation Reserve for costs relating to NERC's planned move expected to be incurred in 2022.

⁸ NERC Application at 3-4.

⁹ *Id.*, Attachment 1 (Summary Tables for NERC and Regional Entity Proposed 2021 Budgets and Assessments) at 2.

¹⁰ *Id.* at 16.

9. NERC explains that although the terms of its planned move are still being negotiated, it expects that the move to a new office space would result in significant cost savings that will be reflected in NERC's future budgets in coming years. NERC states that upon exercising the early lease termination option, its current lease would terminate on October 31, 2022, and NERC would take occupancy of the new office space no later than November 1, 2022.

10. To facilitate its planned move, NERC explains that in 2021, it would need to expend approximately \$1.9 million from its Operating Contingency Reserve to make the early termination payment required for the current office space lease.¹¹ Moreover, NERC states that it anticipates an expenditure of an estimated \$800,000 from the Future Obligation Reserve for construction build-out and furnishings, net of landlord-tenant improvement allowances, for the new office space.¹²

11. NERC states that by using the funds from the Operating Contingency Reserve in 2021 and the Future Obligation Reserve in 2022, it does not need to increase 2022 assessments from the original 2022 budget proposal. NERC does note, however, that while the amendment to the 2022 business plan and budget does not impact NERC's total assessment, the increase for the budget for the individual statutory program areas as a result of the additional fixed asset allocation affects the calculation of credits for certain Canadian entities. NERC estimates that the total impact is about \$14,000, or 0.02% of assessments. NERC proposes to add these credit adjustments resulting from this amendment during the Canadian credit calculation process in the 2023 business plan and budget assessment.¹³

II. Notice and Responsive Pleading

12. Notice of NERC's August 24, 2021 filing was published in the *Federal Register*, 86 Fed. Reg. 48,673 (Aug. 31, 2021), with interventions and protests due on or before September 14, 2021. Notice of NERC's September 29, 2021 filing was published in the *Federal Register*, 86 Fed. Reg. 54,962 (Oct. 5, 2021), with interventions and protests due before October 13, 2021. No interventions or protests were filed.

¹¹ NERC made a filing pursuant to Paragraph 7(b)(ii) of the 2013 Settlement Agreement in Docket No. RR20-6-001 to expend up to \$2 million to terminate the lease on its current office space, which was approved on October 8, 2021.

¹² Amendment Filing, Attachment 1 at 1.

¹³ *Id.* at 2.

III. Discussion

A. NERC Business Plan and Budget

13. NERC states that its 2022 business plan and budget is based on the following program areas: (1) Reliability Standards and Power Risk Issue Strategic Management; (2) Compliance Assurance, Organization Registration and Certification, and Compliance Enforcement; (3) Reliability Assessment and Performance Analysis; (4) Situation Awareness; (5) Event Analysis; (6) Electricity Information Sharing and Analysis Center (E-ISAC), including the Cyber Risk Information Sharing Program (CRISP); (7) Personnel Certification and Continuing Education; and (8) Training and Education.¹⁴ For these program areas, NERC describes each program, identifies the program's goals and objectives, and provides the current number of full-time equivalent (FTE) employees, as well as the FTEs budgeted for 2022. NERC also provides 2021 accepted budget data and 2021 year-end projected data for comparison to the 2022 proposed budget data.

14. NERC's proposed total funding requirement for 2022 is \$88,828,284, which is an increase of \$5,945,045 (7.2%) over NERC's 2021 total funding requirement of \$82,883,239.¹⁵ NERC's 2022 budget, excluding E-ISAC costs, of \$55,980,879 is 5.5% higher than its 2021 budget excluding E-ISAC costs.¹⁶ NERC's proposed 2022 net funding requirement is \$78,387,280 (i.e., the total funding requirement less \$9,881,646¹⁷ in funding from other sources), of which \$70,691,258 is allocated to the United States.¹⁸

15. NERC shows that the 2022 budget for E-ISAC, including funding for CRISP, is 10.1% higher than its 2021 budget.¹⁹ NERC explains that the E-ISAC budget reflects the

¹⁴ NERC Application at 6-7.

¹⁵ Amendment Filing, Attachment 1 at 4.

¹⁶ NERC Application, Attachment 2 at 11, as modified by Amendment Filing, Attachment 1 at 4.

¹⁷ *Id.* at 11, as modified by Amendment Filing at 7 and Attachment 1 at 4. NERC states its other funding sources are third-party funding for CRISP, revenue from services and software, testing and workshop fees, and interest and investment income.

¹⁸ *Id.*, Attachment 1 at 2.

¹⁹ *Id.*, Attachment 2 at 45, as modified by Amendment Filing Attachment 1 at 4. NERC notes that CRISP comprises 27.5% of the total E-ISAC budget.

reevaluation of the E-ISAC strategic plan and efforts to increase the quality and volume of information shared with E-ISAC.²⁰

16. NERC states that the proposed 2022 business plan and budget reflects a provision for working capital and operating reserve funding in the amount of \$8,690,932.²¹ Finally, NERC proposes a 2022 staffing level of 223.72 FTEs, an increase of 10.34 FTEs from the 2021 budget staffing levels.²²

17. NERC states that it did not collect any penalties between the July 1, 2020 to June 30, 2021 period and is not requesting to deposit any funds into the Assessment Stabilization Reserve.

Commission Determination

18. We accept NERC's 2022 business plan and budget, as amended. We find that NERC's 2022 budget is reasonable and that the associated costs of NERC's jurisdictional functions are equitably allocated among end users in the United States.

B. Regional Entity Business Plans and Budgets

19. The NERC Application includes the 2022 business plans and budgets of each Regional Entity. The proposed total assessment for the Regional Entities that is allocable to the United States is \$110,019,127, which represents a \$4,678,943 (4.4%) increase from 2021.²³ 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.²⁴

20. NERC also states that three Regional Entities – MRO, NPCC, and SERC – received penalty monies for the period of July 1, 2020 through June 30, 2021, and in accordance with the Commission's June 18, 2015 Order²⁵ and pursuant to section 1107.4 of the NERC Rules of Procedure, NERC and these three Regional Entities request an exception to section 1107.2 of the NERC Rules of Procedure to permit the Regional

²⁰ *Id.* at 47, 49.

²¹ Amendment Filing, Attachment 1 at 5.

²² NERC Application, Attachment 2 at 8; Amendment Filing, Attachment 1 at 3.

²³ *Id.*, Attachment 1 at 2.

²⁴ *Id.* at 28.

²⁵ *North American Electric Reliability Corp.*, 151 FERC ¶ 61,225 at P 19.

Entities to deposit the penalty monies into their assessment stabilization reserves, as outlined below.

Regional Entity	Penalty monies to be placed into the assessment stabilization Reserve	Amounts Requested to be used from the assessment stabilization reserve to offset 2022 assessments	Projected 2022 assessment stabilization reserve balance
MRO	\$458,250	(\$1,743,698)	\$863,786
NPCC	\$165,069	(\$201,132)	\$366,805
SERC	\$765,000	(\$1,200,000)	\$2,165,000

21. In addition, NERC explains that in December 2020, following review and approval by the WECC Board, WECC entered into an agreement with Peak in connection with Peak's termination of operations and its corporate dissolution, to receive a donation from Peak's remaining funds.²⁶ NERC states that, as a tax-exempt mutual benefit corporation under section 501(c)(4) of the Internal Revenue Code, Peak was required by Internal Revenue service rules (and by its own non-profit governance documents) to donate any funds remaining after discharging liabilities to another non-profit organization. Peak proposed to donate its remaining funds of \$4.1 million to WECC to support WECC's reliability and security mission, subject to a hold-back agreement.²⁷ NERC states that as provided in the Donation Holdback Agreement, WECC agreed to hold \$300,000 for a period of five years to pay any Peak bills that may be presented following Peak's formal dissolution on December 31, 2020. NERC states that this was recorded as a non-statutory liability in WECC's 2020 financial results. The remaining funds were put into a separate reserve called the Peak Reliability Donation Reserve.²⁸

22. NERC indicates that WECC has developed two reliability- and security-related projects to warrant inclusion in WECC's 2022 Business Plan and Budget, as projects to be funded from the Peak Reliability Donation Reserve: (1) the creation of a system planning data management system (included in WECC's 2022 IT budget); and

²⁶ Peak was the Reliability Coordinator for the Western Interconnection which ceased all Reliability Coordinator operations in December 2019 and dissolved as a corporate entity in December 2020.

²⁷ NERC Application at 37.

²⁸ *Id.* at 38.

(2) improvements to the Multi-Area Variable Resource Integration Convolution resource adequacy assessment tool or procurement of an off-the-shelf probabilistic resource adequacy tool.²⁹ For 2022, WECC proposes to use \$400,000 from the Peak Reliability Donation Reserve to fund the above-referenced projects. WECC evaluated the proposed projects (and will evaluate projects proposed in the future) to ensure they support WECC's broad reliability and security mission in the Western Interconnection.

23. NERC and WECC request Commission approval for WECC to: (1) record the \$3,827,000 Peak donation amount (net of the \$300,000 holdback amount for payment of post-termination bills) as a donation to be used for statutory purposes under section 215 of the FPA; (2) segregate the funds in a separate Peak Reliability Donation Reserve account in WECC's accounting system; and (3) release funds from this reserve account for specific projects and uses that support WECC's reliability and security mission in the Western Interconnection, with the projects and uses and funding to be described in either a WECC annual business plan and budget, a separate petition for approval with the Commission, or in WECC's annual comparison of actual to budgeted costs. NERC states that if the timing of the project is such that inclusion in the upcoming business plan and budget is not feasible and the proposed project or use to be funded from the Peak Reliability Donation Reserve exceeds \$500,000, NERC and WECC will file a separate petition to the Commission requesting approval to spend funds from the Reserve on the project. NERC states expenditures funded from the Peak Reliability Donation Reserve on projects less than \$500,000 are not significant in the context of WECC's overall statutory budget, and that all funding for and expenditures on projects funded from the Peak Reliability Donation Reserve will also be reflected in WECC's annual comparison of actual to budgeted costs.³⁰

Commission Determination

24. We find that each Regional Entity submission 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. Additionally, based on the details provided by NERC in its application, we grant NERC's request to allow for an exception under Section 1107 of the NERC Rules of Procedure and permit MRO, NPCC, and SERC to deposit the penalty monies received for the period of July 1, 2020 through June 30, 2021 into their assessment stabilization reserves. We note that our decision to allow for this exception is limited to this 2021 budget filing and the facts of this case. The Commission will address

²⁹ *Id.* at 39.

³⁰ *Id.* at 40.

any future requests for an exception to section 1107.2 of the NERC Rules of Procedure based on the facts at that time.

25. We also grant NERC and WECC's request for WECC to record the \$3,827,000 Peak donation amount as a donation to be used for statutory purposes, segregate the funds in a separate Peak Reliability Donation Reserve account in WECC's accounting system, and release funds from this reserve account for specific projects and uses that support WECC's reliability and security mission in the Western Interconnection. We also accept NERC's proposal for NERC and WECC to describe these projects and uses, as well as their funding, in either (1) a WECC annual business plan and budget or (2) WECC's annual comparison of actual to budgeted costs, unless the proposed project or use to be funded from the Peak Reliability Donation Reserve exceeds \$500,000, in which case NERC and WECC will submit a separate petition to the Commission for approval to spend funds from the Peak Reliability Donation Reserve on the project.

C. WIRAB

26. WIRAB proposes statutory expenses of \$918,900 in 2022, which is a \$286,900 (23.8%) decrease from its 2021 budget.³¹ To fund its operations in 2022, WIRAB proposes a statutory assessment of \$698,700, of which \$586,773 would be allocable to end users in the United States.³²

27. The NERC Application indicates that WIRAB's proposed key activities in 2022 include the following: (1) advise WECC to improve regional coordination and information sharing to mitigate risks associated with wildfires and the impacts on and from the bulk electric system in the Western Interconnection; (2) advise WECC to conduct a reliability assessment, identifying the services and capabilities that long-duration energy storage could provide to support ongoing system reliability in the Western Interconnection; (3) advise WECC to produce a preliminary summary of grid-forming inverter technology and its potential to support the stable operation of the Western Interconnection; and (4) advise WECC to continue to improve its "Western Assessment of Resource Adequacy" and to complement this planning work with additional education and outreach on how resource adequacy problems impact real-time

³¹ *Id.* at 42.

³²*Id.*; Attachment 1 at 2; Attachment 9 (Western Interconnection Regional Advisory Body Proposed 2021 Business Plan and Budget) at 3.

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operations.³³ WIRAB's budget includes 3.00 FTEs for 2022, which is 1.75 FTEs less than in its 2021 budget.³⁴

Commission Determination

28. Based on the information provided in the instant filing, we conclude that WIRAB's 2022 business plan and budget is reasonable and, accordingly, accept it.

The Commission orders:

- (A) NERC's 2022 business plan and budget is hereby accepted.
- (B) The Regional Entities' 2022 business plans and budgets are hereby accepted.
- (C) NERC's request for waiver to Section 1107 of its Rules of Procedure for MRO, NPCC, and SERC is hereby granted.
- (D) NERC's request for WECC's use of the Peak donation funds is hereby accepted.
- (E) WIRAB's 2022 business plan and budget is hereby accepted.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

³³ NERC Application, Attachment 9 at 9-16.

³⁴ *Id.* at 16.

Document Content(s)

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