

July 23, 2014

VIA ELECTRONIC FILING

Ms. Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

**Re: North American Electric Reliability Corporation
Docket No. RR13-9-000
Petition for Approval of A Special Assessment to Fund the 2014 Budget
of Peak Reliability, Inc.**

Dear Ms. Bose:

The North American Electric Reliability Corporation (NERC) hereby submits the “Petition of the North American Electric Reliability Corporation for Approval of a Supplemental Assessment to Fund the 2014 Budget of Peak Reliability, Inc.” (“Petition”) in Docket No. RR13-9-000. NERC’s filing consists of: (1) this transmittal letter and (2) the Petition, including Attachments 1 through 5 thereto, all of which are being transmitted in a single pdf file.

Please note that, as stated and explained on pages 4 and 16 of the Petition, NERC is respectfully requesting the issuance of an order by the Commission in this matter by on or about October 1, 2014, to address the revenue shortfall faced by Peak Reliability, Inc. as detailed in the Petition.

Please contact the undersigned if you have any questions concerning this filing.

Respectfully submitted,

/s/ Owen E. MacBride
Owen E. MacBride

Attorney for North American Electric
Reliability Corporation

UNITED STATES OF AMERICA
Before the
FEDERAL ENERGY REGULATORY COMMISSION

NORTH AMERICAN ELECTRIC)
RELIABILITY CORPORATION) **Docket No. RR13-9-000**
)

PETITION OF THE
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION
FOR APPROVAL OF A SUPPLEMENTAL ASSESSMENT
TO FUND THE 2014 BUDGET OF PEAK RELIABILITY, INC.

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ATTACHMENTS:

Attachment 1: Letter from Peak Reliability, Inc. to NERC requesting special assessment filing

Attachment 2: Calculation and Allocation of Proposed Special Assessment Amounts by Load-Serving Entity

Attachment 3: Alberta Electric System Operator Letter to Western Electricity Coordinating Council, September 25, 2013

Attachment 4: Table B-1 from the Reliability Coordination Company’s 2014 Business Plan and Budget

Attachment 5: Revised Total Resources Table from the Reliability Coordination Company’s 2014 Business Plan and Budget

I. INTRODUCTION

The North American Electric Reliability Corporation (“NERC”), pursuant to the Commission’s regulations at 18 C.F.R. §39.4(d), requests authority for a special assessment in the aggregate amount of \$4,030,696 to be collected from load-serving entities and designees (collectively, “LSEs”) in the United States portion of the Western Electricity Coordinating Council (“WECC”) region to fund the approved 2014 budget of Peak Reliability, Inc. (“Peak”).¹ The need for the special assessment arises because Peak has not received payment of the 2014 assessments that were allocated and billed to the two Canadian entities in the WECC region, the Alberta Electricity System Operator (“AESO”) and the British Columbia Hydro & Power Authority (“BC Hydro”). These assessments total \$4,094,340 and represent 13.8% of Peak’s total 2014 assessment and 12.4% of Peak’s total Commission-approved 2014 budget.

The facts stated in this Petition are based on information provided or represented to NERC by Peak (or with respect to some information, by the AESO, BC Hydro, or WECC), unless a separate source is indicated. **Attachment 1** to this Petition is a letter from Gary Stephenson, President and Chief Executive Officer of Peak, to Gerry Cauley, President and Chief Executive Officer of NERC, requesting that NERC file this petition with the Commission seeking authority for the special assessment and setting forth Peak’s reasons for requesting the special assessment.

AESO has advised Peak that it intends to make arrangements to self-provide, within its footprint, all or substantially all of the Reliability Coordinator (“RC”) and Interchange Authority (“IA”) functions that Peak is providing in the WECC region effective January 1, 2014.² Peak and AESO have not reached agreement on the terms (including compensation) for any services and tools Peak is currently providing or for any tools and services Peak may provide

¹ The \$4,030,696 amount is the U.S.-allocated portion of a total special assessment of \$4,094,340; the balance of \$63,644 will be assessed to the LSE in the Mexico portion of the WECC region.

² See **Attachment 3**.

prospectively for the AESO footprint. NERC is also informed that in June 2014, BC Hydro advised Peak that BC Hydro is willing to negotiate an agreement for Peak to continue to provide some RC and IA services for the BC Hydro footprint. However, Peak and BC Hydro have not yet arrived at an agreement or the related compensation terms. Pending a resolution, in the short term, Peak states that it is continuing to provide RC functions for the AESO and BC Hydro footprints necessary for the reliability of the bulk power system (“BPS”) in the Western Interconnection, and that it has not been able to identify any material reductions in the costs that were budgeted for 2014 to carry out its operations.³ Peak states that with the non-receipt of the assessments allocated to AESO and BC Hydro, it faces a serious shortfall in revenues and that its ability to fund its operations as the RC and IA for the Western Interconnection through the end of 2014 is in question.

NERC’s overriding concern is to maintain the reliability of the BPS in the Western Interconnection. NERC has reached out individually to Peak, AESO and BC Hydro to discuss the current situation and finds no reason to believe the parties are not acting in good faith and seeking to achieve a resolution and establish permanent arrangements going forward between Peak and AESO and Peak and BC Hydro. NERC has been assured by the parties that information related to maintaining the reliability of the BPS continues to be a priority of each of them throughout this transition. Nonetheless, based on the information provided by Peak, the AESO and BC Hydro, these entities have been unable to reach agreement as to the functions Peak will perform and the compensation it will receive; since January 1, 2014, Peak has continued to perform RC and IA functions for the entire Western Interconnection; Peak has not received payment of the assessments that were allocated to the AESO and BC Hydro, or any other compensation from these entities; and Peak has not been able to identify or implement any

³ The AESO has advised NERC that it does not believe Peak is providing any RC services to the AESO. NERC does not have a basis to resolve these competing contentions, but for purposes of this Petition is focused on Peak’s imminent funding shortfall, as described herein.

cost savings that could reduce the amount of the funding needed to sustain continued operations.

Peak represents that it is necessary to replace the assessment revenue that was allocated to the AESO and BC Hydro by about mid-November 2014 in order to have sufficient funds to continue its operations through the end of 2014. As noted above, Peak has represented that it is unable to effect any significant reduction in its operating costs to offset the shortfall in assessment funding. Peak has further represented that, for the longer term, even if the AESO and BC Hydro were to develop and implement their own RC and IA capabilities, Peak would not be able to significantly reduce the scope of its operations or its costs without material modifications to Peak's business model. While NERC has not performed an analysis of Peak's costs and operations, NERC does not necessarily accept these premises from a long-term perspective. However, based on the information available to NERC, it appears that in the short-term, Peak does not have sufficient operating reserves or cost reduction options to offset the approximately \$4.1 million shortfall in assessments. This is due in significant part to the fact that in the 2014 Business Plan and Budget that WECC prepared and submitted for Peak, WECC designated that \$3,234,617 of the reserve balance that WECC transferred to Peak was to be used to reduce Peak's 2014 assessment amount below the level required to fund its 2014 budget, leaving Peak with only about \$2.6 million in available reserves.

Therefore, NERC is requesting that, as a necessary short-term solution, the Commission authorize the collection of a special assessment from U.S. LSEs in the WECC region in the amount of the U.S.-allocated portion of the \$4,094,340 that has not been paid by AESO and BC Hydro. The amount of the special assessment to U.S. LSEs in the WECC region is \$4,030,696; the remaining \$63,644 will be allocated to the LSE in the Mexico portion of the WECC region.⁴

⁴ The special assessment will be allocated to the LSEs in the U.S. and Mexico portions of the WECC region on the basis of the 2012 Net Energy for Load ("NEL") of each such LSE to the total 2012 NEL of LSEs in the U.S. and Mexico portions of the WECC region.

NERC also proposes that the Commission, in connection with authorizing the special assessment, use its authority to require Peak to do the following:

- Peak should be required to file with the Commission, by on or before October 31, 2014, a report that (i) summarizes the progress and status of Peak's negotiations with AESO and BC Hydro (including reporting any agreements or other resolutions that have been reached with either entity), and (ii) presents Peak's plan (to the extent it can be articulated at that point in time) for reducing the scope of its operations and its costs going forward under the assumption that the AESO and/or BC Hydro, as applicable, does not pay its assessment (or, if agreement has been reached with either entity, pays a reduced level of assessment or other compensation to Peak).
- If agreements with both the AESO and BC Hydro have not been reached and reported in the initial report due by October 31, 2014, Peak should be required to file with the Commission quarterly status reports, due on or before the end of each succeeding calendar quarter, updating the progress of discussions with the AESO and BC Hydro, until agreement is reached with both entities or the Commission terminates the reporting requirement (either on its own motion or in response to a request by Peak).
- If Peak receives any compensation from the AESO or BC Hydro for 2014 (whether as a full or partial payment of the original assessment to the entity, or payment of other agreed-to compensation), Peak shall use the amount received as a funding source to reduce its requested assessment in the next year for which it submits a budget. (The Commission may also wish to consider requiring that any such compensation received by Peak be segregated from other funds and separately accounted for.)

These proposed requirements are intended to provide transparency and to allow the Commission to exert more direct control over the resolution of the underlying situation.

Peak projects that its available funding (from paid assessments, reserves, and its other 2014 funding sources (which are relatively insignificant)) will be exhausted at some point during November 2014. Based on the information available to NERC, this is a credible projection. Based on this projection, NERC respectfully asks the Commission to issue an order authorizing the requested special assessment by on or about October 1, 2014. Receipt of an order authorizing the special assessment by October 1 will allow WECC to issue invoices to the LSEs in the U.S. and Mexico portions of the WECC region, with the normal 45-day payment due date for assessments, so that revenues from the special assessment can be collected in mid to late November 2014.

This petition includes the following attachments:

- **Attachment 1** is a letter from Gary Stephenson, President and CEO of Peak, to Gerry Cauley, President and CEO of NERC, requesting that NERC file this petition with the Commission seeking authority for the special assessment and setting forth Peak's reasons for requesting the special assessment.
- **Attachment 2** is a schedule showing the calculations of (i) the original 2014 Peak assessments to LSEs in the WECC region, (ii) revised 2014 Peak assessments assuming no assessments are allocated to AESO and BC Hydro, and (iii) the resulting proposed special assessment (*i.e.*, (ii) minus (i)) to each LSE in the U.S. and Mexico portions of WECC.
- **Attachment 3** is a copy of the AESO's September 25, 2013 letter to WECC advising that AESO intends to self-provide the RC function in its footprint.
- **Attachment 4** is a copy of Table B-1, Working Capital Reserve Analysis, from Peak's 2014 Business Plan and Budget previously filed in this docket.
- **Attachment 5** is a revised Total Resources statement for Peak for 2014, reflecting that with the requested special assessment, Peak's total assessment funding would come from LSEs in the U.S. and Mexico portions of the WECC Region. This revised Total Resources statement replaces the Total Resources statement on page 3 of Peak's approved 2014 Business Plan and Budget.

II. NOTICES AND COMMUNICATIONS

Notices and communications concerning this filing should be directed to:⁵

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⁵ Persons to be included on the Commission's service list are identified by an asterisk.

III. DISCUSSION

A. Peak's 2014 Assessments as the RC and IA for the Western Interconnection

Effective January 1, 2014, pursuant to the Commission's approval, Peak assumed the performance of the RC and IA functions in the WECC region that were formerly performed by WECC. The Commission has recognized the performance of the RC and IA functions in the WECC region as statutory functions that are eligible to be funded pursuant to §215 of the Federal Power Act.⁶ The Commission has also recognized Peak's assumption of the RC and IA functions in the WECC Region as a sub-delegation of these statutory functions by WECC to Peak, and that as sub-delegated statutory functions, the RC and IA functions continue to be eligible for funding under §215. Further, in its November 1, 2013 order on the 2014 Business Plans and Budgets of NERC and the Regional Entities, the Commission conditionally approved Peak's proposed 2014 Business Plan and Budget and the related assessments.⁷ In that order, however, the Commission expressly "[did] not authorize the issuance of billing invoices to fund the fiscal 2014 operations of [Peak] until the Commission issues an order" in certain related, then-pending dockets. Subsequently, in a February 12, 2014 order, the Commission authorized the issuance of billing invoices to fund Peak's 2014 operations. Additionally, in the February 12, 2014 order, the Commission approved an amended version of Exhibit E to the Delegation Agreement between NERC and WECC that (i) continues to delegate the RC and IA functions to WECC (so that the RC and IA functions can be sub-delegated by WECC to the RCC), (ii) specifies that costs for functions sub-delegated to the RCC will not be included in WECC's budget but rather will be included in the budget of the RCC, and (iii) contemplates that WECC

⁶ 16 U.S.C. 824o.

⁷ Peak's 2014 Business Plan and Budget was filed as Attachment 11 to NERC's 2014 Business Plan and Budget filing in this docket (filed August 23, 2013). In that filing, Peak was identified as the "Reliability Coordination Company" ("RCC" or "RC Company"). As the Commission pointed out in its order on the 2014 Business Plans and Budgets, at P 27, NERC stated in its filing that: "NERC did not participate in the development of RC Company's budget or substantively review and approve its budget in the same manner that NERC does for Regional Entity business plans and budgets."

will issue invoices to LSEs for the approved RCC assessments, collect payments on the invoices, and remit the collections to the RCC.⁸

As noted, in the 2014 Budget Order, the Commission conditionally approved Peak's 2014 Business Plan and Budget and the proposed assessments to LSEs in the WECC region to fund Peak's approved 2014 budget. The approved total statutory budget for Peak for 2014 is \$32,958,648, the approved total statutory funding requirement is \$29,794,031, and the total approved statutory assessment to LSEs in the U.S., Canada and Mexico within the WECC region is \$29,568,031.⁹ Peak's total statutory funding requirement for 2014 is lower than its total statutory budget because Peak is using \$3,234,617 of its initial working capital reserves (which were transferred to Peak by WECC) to fund Peak's 2014 operations and thereby to reduce the amount of the 2014 assessment for Peak that otherwise would be necessary.¹⁰ Peak's total 2014 assessment amount is slightly less than its total 2014 statutory funding requirement due to a small amount of funding from other sources, primarily \$156,000 of budgeted interest income.¹¹

Columns 5 through 13 in **Attachment 2** to this Petition show the calculation of the allocation of the original RCC 2014 statutory assessment to each LSE in the WECC region, as previously approved in this Docket.¹² The total original RCC statutory assessment was allocated

⁸ The Commission orders referred to in the preceding paragraph are: *Western Electricity Coordinating Council*, 143 FERC ¶ 61,239, *reh'g denied*, 145 FERC ¶ 61,202 (2013), *appeal docketed sub nom. Edison Electric Institute v. FERC*, No. 14-1012 (D.C. Cir. Jan. 27, 2014); *North American Electric Reliability Council, Order on 2014 Business Plan and Budget of the North American Electric Reliability Corporation and Ordering Compliance Filing*, 145 FERC ¶ 61,097 (2013) ("2014 Budget Order"); *Western Electricity Coordinating Council, Order Denying Rehearing*, 145 FERC ¶61,202 (2013) ("December 2013 Rehearing Order"); *North American Electric Reliability Corporation and Western Electricity Coordinating Council, Order on Compliance*, 146 FERC ¶ 61,092 (2014) ("February 2014 Order on Compliance").

⁹ See the 2014 Business Plan and Budget of the Reliability Coordination Company, Attachment 11 to NERC's August 23, 2013 filing in this Docket, at 3 and 7.

¹⁰ The use of \$3,234,617 of reserves to reduce Peak's 2014 assessment amount is shown on **Attachment 4**, which is Table B-1 from Peak's 2014 Business Plan and Budget previously filed in this docket.

¹¹ See NERC's Business Plan and Budget filing in this Docket at 97-100, where the RCC's proposed 2014 budget, funding sources and assessment are described.

¹² The information on **Attachment 2** reflects NERC's December 3, 2013 filing of a corrected Appendix 2 to its 2014 Business Plan and Budget (that filing was assigned Docket No. RR13-9-002). Appendix 2 to

to the LSEs in the WECC region on the basis of 2012 NEL.¹³ The allocated assessments included assessments of \$2,020,960 to the AESO (which represents 6.835% of total 2012 NEL in WECC) and \$2,073,380 to BC Hydro (which represents 7.012% of total 2012 NEL in WECC).

Pursuant to and shortly after the Commission's February 12, 2014 order, WECC, as billing agent for Peak, issued invoices to the LSEs in the WECC region, including the AESO and BC Hydro, for Peak's approved assessments for 2014.¹⁴ As is the normal practice for assessment invoices, the invoices carried a 45-day payment due date.

B. Negotiations Between Peak and AESO and Between Peak and BC Hydro

In August, 2013, the AESO advised WECC that the AESO intended to seek approval of its Board to terminate the use of RC services, beginning January 1, 2014, from WECC or the entity that would be performing the RC function following the WECC bifurcation, and to thereafter self-provide those services.¹⁵ On September 25, 2013, the AESO advised WECC that the AESO Board had approved AESO management's proposal to assume all responsibilities relating to the functions of a RC for the Alberta Interconnected Electric System effective January 1, 2014.¹⁶ Peak and BC Hydro have advised NERC that (1) in early 2014, BC Hydro advised

the NERC Business Plan and Budget shows the calculation and amounts of the assessments to all LSEs, by Regional Entity, to collect the approved NERC, Regional Entity, Western Interconnection Regional Advisory Board ("WIRAB"), and RCC funding requirements. The originally-filed Appendix 2 had inadvertently hidden a number of rows on the spreadsheet so that the assessment amounts for a total of 14 LSEs in the WECC region were not visible. The corrected Appendix 2 filed on December 3, 2013 corrected this deficiency so that all rows are visible. The Commission accepted the filing of corrected Appendix 2 in a letter order dated January 3, 2014.

¹³ In calculating the allocation of assessments to individual LSEs and designees, NERC has consistently used actual NEL data from the second calendar year preceding the budget year (in this case, 2012 NEL data to allocate the 2014 assessments). The NEL data for the second year preceding the budget year is the most recent available calendar year data at the time the budgets and assessments are approved by the NERC Board and filed with the Commission in August of the year preceding the budget year.

¹⁴ As provided for in Exhibit E to the NERC-WECC Delegation Agreement, WECC, as billing and collection agent, issues one invoice to LSEs and designees in the WECC region for the entire annual assessment amount for each of NERC, WECC, WIRAB and now Peak. The other Regional Entities issue invoices to LSEs for the assessments, and collect payments, in four quarterly installments.

¹⁵ See NERC's 2014 Business Plan and Budget Filing in this docket at 101.

¹⁶ See **Attachment 3** to this Petition.

Peak that BC Hydro intended to self-provide RC and IA services in its footprint; but that (2) subsequently, in June 2014, BC Hydro advised Peak that BC Hydro is interested in negotiating an agreement pursuant to which Peak will continue to perform some or all of the RC and IA functions in the BC Hydro footprint.

Prior to filing this Petition, NERC discussed the situation involving Peak, AESO and BC Hydro individually with each of these entities. NERC is advised that Peak has been engaged in ongoing discussions with the AESO and BC Hydro to attempt to reach agreements with each of these entities as to what services and tools, if any, Peak will provide to the AESO and to BC Hydro and what payments the AESO and BC Hydro will make to Peak. NERC has strongly encouraged the parties to continue these discussions and to reach agreements that establish permanent relationships and compensation arrangements going forward. NERC is informed, however, that as of the date of this Petition, Peak has not reached agreement with either the AESO or BC Hydro on payments to be received by Peak, and Peak has not received any assessment payments or other payments from either entity for 2014.¹⁷

C. The Need for a Special Assessment to Enable Peak to Continue to Perform its RC and IA Responsibilities Through the End of 2014

Ideally, Peak, AESO and BC Hydro would be left to continue their discussions, with the objective of ultimately reaching agreement on the scope of services, if any, to be provided by Peak for each entity and the compensation to be paid. However, NERC's overriding concern is the reliability of the BPS in the Western Interconnection. Based on the information provided to NERC by Peak or otherwise available to NERC, it appears to NERC that, at this juncture, Peak's

¹⁷ Although WECC issued invoices to the AESO and BC Hydro for their allocated portions of the 2014 Peak assessment, Peak has called to NERC's attention the following provision (§13.2) of Peak's By-laws, which the Commission conditionally approved in the December 2013 Rehearing Order: "International Funding: In the event that an International Entity seeks Membership in Peak Reliability, the International Entity and Peak Reliability shall negotiate an agreement that provides the terms upon which that Entity will become a Member and, among other things, participate in and fund Peak Reliability. Until such time as the International Entity and Peak Reliability come to such agreement, the International Entity shall not be a Member and shall not have an obligation to fund activities undertaken by Peak Reliability." At this time, Peak has not entered into such an agreement with either the AESO or BC Hydro.

ability to sustain its operations through the end of 2014 without an infusion of funding to substantially replace the assessments that have not been collected is in question. Further, Peak represents that it is not able to effectuate any material reductions in its budgeted 2014 costs in the short term, particularly given the ongoing negotiations and the unknown scope of Peak's ultimate RC and IA responsibilities for the AESO and BC Hydro footprints. Mathematically, without receipt of the AESO and BC Hydro assessments, there is a shortfall of \$4,094,340 in Peak's 2014 funding. This shortfall is equal to 13.8% of Peak's total approved 2014 statutory funding requirement and to approximately 12.4% of Peak's approved 2014 budget.

Although approximately \$5.8 million of reserves were transferred from WECC to Peak in connection with the formation of the RCC, Peak's 2014 Business Plan and Budget indicates that Peak does not have sufficient working capital reserves to cover the approximately \$4.1 million funding shortfall. As shown on Table B-1 on page 35 of Peak's 2014 Business Plan and Budget (**Attachment 4** to this Petition is a copy of Table B-1),¹⁸ reserves totaling \$5,811,568 were transferred from WECC to Peak effective January 1, 2014; however, the Business Plan and Budget provided for \$3,234,617 of these reserves to be used to reduce Peak's required assessments to LSEs for 2014. As a result, as also shown on Table B-1 of Peak's 2014 Business Plan and Budget, Peak was effectively provided with only \$2,576,951 of reserves as it began operations. Thus, Table B-1 indicates that Peak does not have sufficient reserves to withstand an approximate \$4.1 million shortfall in its anticipated 2014 funding and still be able to cover its budgeted 2014 expenditures.¹⁹

Peak projects, based on its operating experience and expenditures to date and its financial projections for the remainder of 2014, that without the unpaid \$4.1 million of assessment funding, it will exhaust its available funding at some time during November 2014. NERC has

¹⁸ As noted earlier, Peak's 2014 Business Plan and Budget was previously filed in this Docket as Attachment 11 to NERC's August 23, 2013 filing.

¹⁹ As described below, Peak states that its 2014 expenditures have been impacted by a lower-than-budgeted personnel attrition rate, which has also impacted WECC's available reserves.

not performed any further analysis of Peak's expenditures or operations to date in 2014. However, the likelihood of Peak exhausting its available funding before year-end 2014 can be tested in a simplified manner, using the assumption that Peak's budgeted 2014 expenditures of \$32,958,648 occur on approximately a straight-line basis throughout the year. As shown on **Attachment 4**, Peak's 2014 budget provided for available working capital reserves of approximately \$2.6 million; and, absent the unpaid assessments, Peak expects to receive approximately \$25.5 million in assessments, plus \$150,000 of other funding, resulting in total available funding of \$28.2 million.²⁰ The \$28.2 million of available funding is equal to approximately 86% of Peak's budgeted 2014 expenditures, which indicates (again, assuming that the budget is expended on approximately a straight-line basis throughout 2014) that Peak will exhaust its available funding in about mid-November (*i.e.*, 12 months X 0.86 = 10.3 months).

Peak represents that it has endeavored to identify ways in which it could reduce its budgeted 2014 staffing and/or other expenditures if Peak were not performing the RC and IA functions for the BC Hydro and AESO footprints. Peak states, however, that because it is currently continuing to provide the full RC function for the BC Hydro footprint and only a slightly modified RC function for the AESO footprint, in order to continue to ensure the reliability of the BPS in the Western Interconnection, Peak has not been able to identify any material, achievable near-term cost reductions.²¹ Moreover, Peak represents that in light of the interconnected nature of the BPS in the Western Interconnection, and absent an agreement as to the ultimate allocation of responsibilities between Peak and the AESO and between Peak and BC Hydro, Peak cannot readily (or at least not in the short term) isolate its RC and IA operations in the U.S. portion of the Interconnection from the Canadian portion of the Interconnection. NERC also notes that the revised Western Interconnection Reliability Coordinator and Interchange

²⁰ WECC advises that a total of approximately \$402,000 of assessments billed to LSEs in the U.S. portion of the WECC region has not been collected, but that there are no indications that these LSEs do not intend to pay.

²¹ See footnote 3 above.

Authority Agreement Between Western Electricity Coordinating Council and Peak Reliability, Inc., which the Commission conditionally approved in the December 2013 Rehearing Order and finally approved (as revised) in the February 2014 Order on Compliance, imposes the following obligation on Peak:

1.2 Scope of Functions. Peak shall perform the RC and IA functions in accordance with the applicable reliability criteria, policies, standards, rules, regulations and other requirements of NERC (collectively, the “NERC Standards”), **to maintain or restore the reliability of the Western Interconnection’s Bulk Electric System** for the duration of the Term in accordance with WECC’s RDA and the terms and conditions of this Agreement. In accordance with its obligations under this Section 1.1, **Peak shall direct and coordinate timely and appropriate actions within the Western Interconnection**, including but not limited to directing the curtailment of transmission service or energy schedules, directing the re-dispatching of generation and directing the shedding of load, in each case, **to avoid adverse effects on the Western Interconnection Bulk Electric System**. (Emphasis added.)

NERC notes that while the largest component (approximately 59%) of Peak’s budgeted 2014 expenditures is personnel costs, a significant portion of its budgeted expenditures are fixed costs such as leasing, owning and operating costs of buildings and other facilities, costs of computer hardware and software and other infrastructure facilities, and other costs, which Peak represents cannot be reduced in the short term and may not be materially scalable based on a reduction in the geographic scope of Peak’s RC and IA responsibilities. Peak points out that its 2014 budget was developed by WECC based on the resources required to perform the RC and IA functions for the entire Western Interconnection.²² NERC notes that the assessments amounts

²² With respect to personnel costs, in the preparation of Peak’s 2014 budget, the budgeted personnel costs (salaries, payroll taxes, medical benefits and retirement plan contributions) for Peak’s full planned staffing were reduced by 15 percent to reflect attrition during the course of the year and delays in hiring to fill new or vacated positions. See page 12 of the RCC’s 2014 Business Plan and Budget filed as Attachment 11 to NERC’s August 23, 2013 filing in this Docket. This type of generic “labor float” adjustment has been used by NERC and the Regional Entities in preparing their business plans and budgets, and was a reasonable assumption for Peak given Peak’s plans to hire a number of new employees to fill new positions and the potential attrition from employees who decided not to transfer from WECC to Peak. In fact, however, Peak reports that its labor attrition rate in 2014 has been much lower than 15 percent. While this outcome is good from the perspective of retention and maintenance of experienced staff and continuity of Peak’s operations, it means that Peak’s actual 2014 personnel expenses have been higher than budgeted.

for the AESO and BC Hydro are based on the percentage of 2012 NEL in each of those areas to the total 2012 WECC region NEL, which the Commission has accepted as an equitable method to allocate the costs of the Electric Reliability Organization among regions and LSEs; the assessments are not based on a calculation of Peak's specific costs to perform the RC and IA functions in the AESO and BC Hydro footprints.

It is reasonable to expect that, given a longer time horizon and finalization of arrangements with the AESO and BC Hydro, Peak should be able to reduce its costs somewhat from the current budgeted level. However, despite the parties' mutual efforts, agreements have not been reached, and NERC has concluded that for the near term – specifically, the remainder of 2014 – it is necessary to request authority for a supplemental assessment to replace Peak's 2014 funding shortfall.

The Commission's regulations at 18 C.F.R. §39.4(d) state:

On a demonstration of unforeseen and extraordinary circumstances requiring additional funds prior to the next Electric Reliability Organization fiscal year, the Electric Reliability Organization may file with the Commission for authorization to collect a special assessment. Such filing shall include supporting materials explaining the proposed collection in sufficient detail to justify the requested funding, including any departure from the approved funding formula or method. After notice and an opportunity for hearing, the Commission will approve, disapprove, remand or modify such request.

Based on the facts and circumstances recited above in this Petition, the Commission can conclude that the situation confronting Peak presents extraordinary circumstances that warrant authorization of a special assessment pursuant to §39.4(d), to allow Peak to collect its full approved 2014 assessment and ensure that Peak will have sufficient funding to carry out its RC and IA responsibilities in the Western Interconnection throughout 2014. Further, the Commission can conclude that from the perspective of the time period in 2013 in which the RCC's 2014 budget was being developed for submission to the Commission, it was unforeseen that Peak would experience such a significant shortfall in funding.

As reported earlier in this Petition, in August 2013, AESO management indicated to

WECC that, subject to approval of the AESO Board, the AESO did not intend to obtain RC services for the Province of Alberta from the RCC, and that in September 2013, the AESO notified WECC that the AESO Board had approved the self-provision of the RC function (**Attachment 3**). Similarly, as reported above, BC Hydro previously advised Peak that BC Hydro planned to self-provide RC and IA services, but has subsequently advised Peak that BC Hydro is willing to negotiate an agreement by which Peak will continue to provide RC and IA functions for the BC Hydro footprint. As described above, Peak has engaged in considerable discussions and other efforts with the AESO and BC Hydro to attempt to reach agreements with these entities as to services and tools that Peak will provide and the compensation that Peak will receive. Unfortunately, as described above, these efforts have not yet been successful, and given the press of time and Peak's funding picture, NERC has concluded that it is now necessary to request authorization for a special assessment.

D. Calculation of the Proposed Special Assessment and Allocation to LSEs

Columns 14 to 22 of **Attachment 2** to this Petition show the calculation of the allocation of the special assessment amount to each LSE in the portions of the WECC region in the U.S. and Mexico. The total special assessment amount of \$4,094,340 has been allocated to the LSEs in the portion of the WECC region in the U.S. and Mexico on the basis of 2012 NEL. Column 14 shows each LSE's percentage of the total 2012 NEL in the portions of the WECC region in the U.S. and Mexico (*i.e.*, excluding the NEL of the Canadian portion of the WECC region). Column 15 shows the re-allocated assessment amount to each LSE based on application of the LSE's revised 2012 NEL percentage (Column 14) to the total assessment amount of \$29,568,031. Column 19, in the section of the spreadsheet captioned "Change by LSE," shows the proposed special assessment amount for each LSE in the portions of the WECC region in the U.S. and Mexico. The proposed special assessment amount for each LSE in Column 19 is calculated as the difference between the LSE's original assessment amount (in Column 10) and

the LSE's revised assessment amount (in Column 15).²³ Of the total special assessment amount of \$4,094,360, a total of \$4,030,696 is allocated to LSEs in the U.S. portion of WECC and \$63,644 is allocated to the Comision Federal de Electricidad ("CFE").²⁴ NERC requests authorization for the special assessment amounts shown in Column 19 of **Attachment 2** to be billed to each LSE in the U.S. portion of WECC.

E. Proposed Reporting Requirements for Peak

In order to enable the Commission and interested stakeholders to follow the progress of Peak's efforts to achieve ultimate resolution with the AESO and BC Hydro, with greater transparency, NERC proposes that the Commission direct Peak to file the following reports with the Commission:

1. Peak should be required to file with the Commission, by on or before October 31, 2014, a report that (i) summarizes the progress and status of Peak's negotiations with the AESO and BC Hydro (including reporting any agreements or other resolutions that have been reached with either entity), and (ii) presents Peak's plan (to the extent it can be articulated at that point in time) for reducing the scope of its operations and its costs going forward under the assumption that the AESO and/or BC Hydro, as applicable, does not pay its assessments (or, if agreement has been reached with either entity, pays a reduced level of assessment or other compensation to Peak).
2. If agreements with both the AESO and BC Hydro have not been reached and reported in the initial report due by October 31, 2014, Peak should be required to file with the Commission quarterly status reports, due on or before the end of each succeeding calendar quarter, updating the progress of discussions with the AESO and BC Hydro, until agreement is reached with both entities or the Commission terminates the reporting requirement (either on its own motion or on request by Peak).

In addition, NERC recommends that the Commission's order specify that if Peak receives any compensation from the AESO or BC Hydro for 2014 (whether as a full or partial payment of the original assessments to the AESO and/or BC Hydro, or as payment of other agreed-to compensation), Peak shall use the amount(s) of 2014 assessments or compensation received from these entities as a funding source to reduce its requested assessment in the next year for which it

²³ The amounts of all special assessments will be rounded to the nearest whole dollar amount.

²⁴ As the result of the special assessment, the total Peak 2014 assessment amounts by country are \$29,108,411 to U.S. LSEs in the WECC region and \$459,620, to the CFE, as shown on **Attachment 5**.

submits its budget to the Commission for approval. (The Commission may also wish to consider requiring that any such compensation received by Peak be segregated from other funds and separately accounted for.) This requirement will provide some return to the LSEs in the U.S. and Mexico portion of the WECC region for having provided supplemental funding to Peak to enable it to continue to perform its RC and IA responsibilities for the entirety of 2014.

F. Request for Expedited Treatment

As discussed earlier in this Petition, Peak projects that in light of the funding shortfall, it will exhaust its available funding in mid-November 2014. Accordingly, NERC respectfully requests that the Commission issue an order authorizing the special assessment proposed herein by no later than on or about October 1, 2014. Receipt of an order authorizing the supplemental assessment by on or about October 1, 2014 will enable WECC to promptly issue invoices for the special assessment to LSEs, with the normal 45-day payment due date, so that the supplemental revenues can begin to be received by the mid-November 2014.

IV. CONCLUSION

For the reasons set forth in this Petition, the North American Electric Reliability Corporation respectfully requests that the Commission issue an order by on or about October 1, 2014, (i) authorizing the proposed special assessment of \$4,030,696 (U.S. portion of the total special assessment of \$4,094,340) to fund Peak's approved 2014 statutory budget, (ii) authorizing WECC to bill the LSEs and designees in the U.S. portion of the WECC region the special assessment amounts shown for each LSE or designee in Column 19 of **Attachment 2** to this filing, and (iii) directing Peak to comply with the reporting and other requirements recommended in §III.E of this Petition.

Respectfully submitted,

Gerald W. Cauley
President and Chief Executive Officer
Michael Walker
Senior Vice President and Chief
Financial and Administrative Officer
North American Electric Reliability
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3353 Peachtree Road NE
Suite 600, North Tower
Atlanta, GA 30326
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/s/ Owen E. MacBride
Owen E. MacBride
Schiff Hardin LLP
233 South Wacker Drive, Suite 6600
Chicago IL 60606
(312) 258-5680
(312) 258-5700 – facsimile
omacbride@schiffhardin.com

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 Chicago, Illinois, this 23rd day of July, 2014.

/s/ Owen E. MacBride
Owen E. MacBride

Attorney for North American
Electric Reliability Corporation

ATTACHMENT 1

**LETTER FROM PEAK RELIABILITY, INC. TO NERC
REQUESTING SPECIAL ASSESSMENT FILING**



Mr. G. Cauley
President and CEO
North American Electric Reliability Corporation
3353 Peachtree Road, NE
Suite 600, North Tower
Atlanta, GA 30326

July 16, 2014

Dear Gerry,

Peak Reliability ("Peak") requests that NERC, on Peak's behalf, file a petition with FERC seeking authority for a special assessment to be billed to load-serving entities in the U.S. portion of the Western Interconnection to fund a shortfall in Peak's 2014 funding.

REASON FOR REQUEST

On January 1, 2009, Western Electricity Coordinating Council ("WECC") began providing Reliability Coordinator (RC) services for the entire Western Interconnection including the Alberta Electric System Operator's ("AESO") and British Columbia Hydro and Power Authority's ("BC Hydro") Balancing Authority (BA) Areas as that term is defined in the NERC Glossary of Terms. The original rationale being to reduce fragmentation by consolidating RC services for more than 35 BAs (now 38) and monitoring and coordinating the reliable operation of the Interconnection.

In September 2013, AESO notified Peak's predecessor, WECC that it intended to self-provide RC services effective January 1, 2014 and as a result would not pay for RC services from Peak. This withdrawal has created a deficit in Peak's 2014 budget of approximately \$2M.

In October 2013, BC Hydro verbally notified WECC that it desired to modify its relationship including paying a substantially discounted amount compared with its existing Net Energy for Load calculated assessment. Although there is no agreement in place, and BC Hydro has not paid for RC services received in 2014, Peak is currently providing the same RC services that it has always provided. BC Hydro's decision creates an additional deficit of \$2.1M in 2014.

In each case WECC, and subsequently Peak, sought to enter into agreements that specifically memorialize the relationship between our respective entities and ensure that the reliability of the Western Interconnection remains unimpaired.

Since January 1, 2014 neither AESO nor BC Hydro have provided any of the funding to Peak that was anticipated when WECC filed its 2014 Business Plan and Budget request with NERC in July 2013 for what was then known as the Reliability Coordination Company. As a consequence, Peak forecasts that without the special assessment it will consume its cash on hand to fund its operations by mid-November 2014.

The potential for filing a special assessment has been socialized with our stakeholders during open meetings of the Peak Board and Member Advisory Committee meetings. Furthermore, I can attest that in my conversations with industry leaders throughout the West, the majority articulated their support for a filing that ensures the financial viability of Peak because of its role in maintaining the reliability of the Bulk Electric System (BES). While we all recognize that an intra-year special assessment is not optimal, this filing is absolutely necessary to ensure that Peak has sufficient funding to fulfill its reliability mission through December 2014.

AESO

AESO's action has created a degree of operational and compliance uncertainty for Peak. AESO's Notice Letter to WECC included with this filing appears somewhat ambiguous as to AESO's intentions. The letter states that AESO plans to "assume all responsibilities that relate to the functions of a RC, effective January 1, 2014." However, AESO has explained that provincial law does not require AESO to register as an RC, and as a result, AESO has not registered as an RC either with the Alberta Utility Commission ("AUC") or any other governmental authority. Indeed, many if not most of the operational standards applicable to an RC have not been enacted by the AUC, and there is no clear date as to when they will be enacted. As a result, there is no regulatory framework to assure that the RC function is being adequately performed and monitored in Alberta. Moreover, there is no indication that AESO has had or will have an RC as intended in the NERC Functional Model and established in the rest of the Western Interconnection.

Due to the interconnected nature of AESO and Peak's systems, this uncertainty surrounding AESO's performance of RC services as envisioned in the NERC Functional Model is reflected in its relationship with Peak. While Peak can commit to not declaring Energy Emergency Alerts for or issuing Directives to AESO, Peak is unclear what other aspects of its interaction with AESO can be reduced. Peak has had to continue to monitor AESO's operational data to ensure that Peak reacts appropriately to circumstances that may arise (e.g. ensuring an AESO outage does not cascade beyond AESO). More pointedly, because there are no approved reliability standards against which AESO's self-provision of services will be judged, Peak does not have clarity on the responsibilities of AESO in terms of maintaining reliability in an interconnected system and coordination with a neighboring RC. As a result, Peak has very little ability to alter its operations and its interaction with AESO and still ensure reliability.

This issue is further exacerbated by AESO's continued reliance on Peak to provide services to support reliable operations when AESO encounters operational issues such as a lack of data or software tool unavailability. During the course of 2014, Peak has logged several instances where AESO has requested that Peak provide information or studies that an RC that operates consistent with the NERC Functional Model and applicable standards should be able to access directly or perform. Furthermore, there have been occasions where AESO has encountered a software problem and has asked Peak to provide study results unavailable to AESO as a result of that problem.

As a result of continuing these activities, Peak has not seen a significant reduction in workload and subsequent cost reductions as a result of AESO's withdrawal.

REVIEW OF POTENTIAL COST REDUCTIONS

Peak is focused on cost-effective, efficient operations reflecting our commitment to providing value to our stakeholders and demonstrating fiscal prudence. Consequently, we have undertaken an internal review of cost reductions that may be associated with AESO's withdrawal and BC Hydro's redefined relationship. This review has determined that Peak's scope and costs have not been materially reduced as a result of these specific events and are not materially scalable based on the inclusion or exclusion of one or two BAs and their associated Transmission Operators. Since Peak did not dedicate resources to AESO and BC Hydro exclusively, the reduction of its RC Area by one or two of 38 BAs and their associated Transmission Operators, does not result in a material change in Peak's workload – and therefore does not present material cost reduction opportunities. For example, it is not practical to presume that Peak could reduce the number of system operators, engineers, or Information Technology staff in response to what is, so far, only a slightly changed relationship with AESO and a yet to be determined relationship with BC Hydro.

A reduction in staffing (Peak's primary cost driver) would be inconsistent with the recommendations from the April 2012 FERC/NERC Joint Report "Arizona – Southern California Outages September 8, 2011 – Causes and Recommendations" which recommended that the WECC RC increase staffing to meet its obligations to maintain grid reliability. Additionally, a separate analysis by WECC's RC Task Force (RCTF) was undertaken at the direction of the WECC Finance and Audit Committee between June and December of 2012. The RCTF which was partially comprised of industry experts, concluded that WECC needed to add additional staff to its RC function to reach levels appropriate to perform its function for its area and to be consistent with the staffing level of other RCs in the United States.

Nevertheless, Peak will continue to search for efficiencies although Peak notes that until it has agreements with AESO and BC Hydro in place, reporting on possible cost reductions by October 31, 2014 seems premature

CURRENT STATUS – AGREEMENTS WITH AESO AND BC HYDRO

AESO – Peak is working to establish an Operations Coordination Agreement with AESO. It is Peak's objective to also establish a Tools and Data Access Agreement wherein AESO will pay for certain services. At the time of writing, neither of these two agreements are in place.

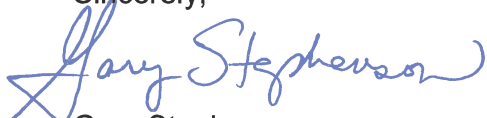
BC Hydro – Pursuant to the notice from BC Hydro in June 2014, Peak is actively discussing a Membership Agreement with BC Hydro and are looking forward to concluding those discussions expeditiously.

In addition, BC Hydro has indicated its intention to pay Peak for RC and Interchange Authority services provided by Peak during 2014. Exact details – including the level of 2014 funding – will be determined by both parties during the on-going discussions. BC Hydro also took the opportunity to express to me its continued strong support for effective Interconnection reliability coordination both financially and operationally.

CONCLUSION

Peak supports NERC's filing of the petition for a special assessment with FERC to ensure that Peak has the funds to allow it to perform its statutory duties as the RC. Peak is committed to the reliability of the BES in the Western Interconnection which is the primary driver for this filing. In addition, Peak is doing its utmost to prevent RC fragmentation from eroding its ability to deliver its mission and would welcome the opportunity to discuss our concerns about RC fragmentation in further detail with NERC.

Sincerely,



Gary Stephenson

President and Chief Executive Officer

¹ As NERC states in its filing: "If Peak receives any compensation from the AESO or BC Hydro for 2014 (whether as a full or partial payment of the original assessment to the entity, or payment of other agreed-to compensation), Peak shall use the amount received as a funding source to reduce its requested assessment in the next year for which it submits a budget."

ATTACHMENT 2

**CALCULATION AND ALLOCATION
OF PROPOSED SPECIAL ASSESSMENT AMOUNTS
BY LOAD-SERVING ENTITY**

ATTACHMENT 3

ALBERTA ELECTRIC SYSTEM OPERATOR

LETTER TO

WESTERN ELECTRICITY COORDINATING COUNCIL

September 25, 2013

Mark Maher
Chief Executive Officer
Western Electricity Coordinating Council
155 North 400 West, Suite 200
Salt Lake City, UT 84103

Dear Mark:

Re: **Notification of AESO Board Approval re AESO's Assumption of All Reliability Coordinator-Related Functions**

This letter confirms to the Western Electricity Coordinating Council (WECC) that on September 11, 2013, the AESO Board approved AESO Management's proposal to assume all responsibilities that relate to the functions of a Reliability Coordinator (RC), effective January 1, 2014. The effective date aligns with the bifurcation efforts of the WECC that will see it retain its function as a Regional Entity and no longer provide RC-type services in the Western Interconnection. Over the next several months, the AESO will integrate all RC-related requirements into AESO normal operations as it relates to the Alberta Interconnected Electric System.

As you are aware, the AESO has been an active member of the WECC, and will continue to support the WECC to ensure a reliable interconnected electric system in the west. We look forward to being able to participate in the newly-created Member Advisory Committee such that international perspectives can be identified to the WECC, and other member forums as may be required.

Our current agreements with the WECC require review in alignment with the bifurcation date, and we look forward to working with you on amendments required to the WECC AESO Membership and Operating Agreement. Among other matters, this agreement confirms AESO's commitment to provide funding to the WECC's operations, which we intend to continue to provide as laid out in the agreement. Additionally, we would work with you to terminate the Security Coordination Agreement that sets out the current RC-services provided by the WECC.

As the WECC strategic direction is implemented, we look forward to our continuing partnership.

Please contact me at diana.pommen@aeso.ca or 403-539-2510 if you have questions or require additional information.

Sincerely,

Original signed by

Diana Pommen
Director, Interjurisdictional Affairs and Compliance

c.c. Mike Law, Vice President Operations

Larry Kram, General Counsel

ATTACHMENT 4

**TABLE B-1 FROM
THE RELIABILITY COORDINATION COMPANY'S
2014 BUSINESS PLAN AND BUDGET**

Section B — Supplemental Financial Information

Reserve Balance

Table B-1

Working Capital Reserve Analysis 2012-2013	
STATUTORY	
Beginning Working Capital Reserve (Deficit), December 31, 2012	0
Plus: 2013 RCCo Funding (from Load Serving Entities (LSE) or designees)	0
Plus: 2013 Other funding sources	0
Less: 2013 Projected expenses & capital expenditures	0
Projected Working Capital Reserve (Deficit), December 31, 2013	<u>0</u>
Desired Working Capital Reserve, December 31, 2014	1 2,576,951
Less: Projected Working Capital Reserve, December 31, 2013	0
Less: Transfer of Reserves from WECC, January 1, 2014	(5,811,568)
Increase(decrease) in assessments to achieve desired Working Capital Reserve	<u>(3,234,617)</u>
2014 Expenses and Capital Expenditures	32,958,648
Less: Other Funding Sources	(156,000)
Adjustment to achieve desired Working Capital Reserve	(3,234,617)
2014 RCCo Assessment	<u>29,568,031</u>

1 – On June 28, 2013, the WECC Board of Directors approved this reserve level.

As a result of the creation of the RCCo, WECC's working capital reserves were split between WECC and the RCCo to provide reserves for both entities. The same population of entities provides funding for both companies and WECC management as well as WECC's Finance and Audit Committee believe reserves should be split equitably as a result. The calculation used to split the reserves was based on each entity's percent-to-total ratio of operating expenses. The RCCo's anticipated portion is \$5.8 million. The WECC Board expects that both entities will use reserves in 2014 to mitigate the impact of the RCTF recommendations and the creation of the new entity on annual Assessments.

ATTACHMENT 5

REVISED TOTAL RESOURCES TABLE

FROM

THE RELIABILITY COORDINATION COMPANY'S

2014 BUSINESS PLAN AND BUDGET

TOTAL RESOURCES (in whole dollars)				
	2014 Budget	U.S.	Canada	Mexico
Statutory FTEs [*]	149.1			
Non-statutory FTEs	-			
Total FTEs	149.1			
Statutory Expenses	\$ 34,371,648			
Non-Statutory Expenses	\$ -			
Total Expenses	\$ 34,371,648			
Statutory Inc(Dec) in Fixed Assets	\$ (1,413,000)			
Non-Statutory Inc(Dec) in Fixed Assets	\$ -			
Total Inc(Dec) in Fixed Assets	\$ (1,413,000)			
Statutory Working Capital Requirement**	2,576,951			
Non-Statutory Working Capital Requirement	0			
Total Working Capital Requirement	2,576,951			
Total Statutory Funding Requirement	\$ 29,724,031			
Total Non-Statutory Funding Requirement	\$ -			
Total Funding Requirement	\$ 29,724,031			
Statutory Funding Assessments	\$ 29,568,031	\$ 29,108,411	\$ -	\$ 459,620
Non-Statutory Fees	\$ -	\$ -	\$ -	\$ -
NEL ****	746,689,670	735,082,752	-	11,606,918
NEL%	100.00%	98.45%	0.00%	1.55%