

148 FERC ¶ 61,252
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

North American Electric Reliability Corporation

Docket No. RR13-9-003

ORDER APPROVING SPECIAL ASSESSMENT
FOR PEAK RELIABILITY, INC.

(Issued September 30, 2014)

1. On July 23, 2014, North American Electric Reliability Corporation (NERC) filed a supplemental funding request seeking authority to collect a special assessment to fund the 2014 operations of Peak Reliability, Inc. (Peak Reliability). For the reasons discussed in the body of this order, we approve the special assessment requested by NERC. We also direct Peak Reliability to submit certain informational filings, as discussed below.

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.¹ In July 2006, the Commission certified NERC as the ERO.²

¹ 16 U.S.C. § 824o (2012).

² *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. FPA section 215(c)(2)(B) 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.”³

B. Peak Reliability 2014 Business Plan and Budget

4. On August 23, 2013, NERC filed the 2014 business plans and budgets for itself; each Regional Entity, including the Western Electricity Coordinating Council (WECC); Western Interconnection Regional Advisory Body; and Peak Reliability.⁴

5. On November 1, 2013, the Commission issued an order, *inter alia*, conditionally accepting the 2014 business plan and budget of Peak Reliability.⁵ In that order, the Commission did not authorize Peak Reliability to issue invoices to fund its 2014 operations pending resolution of the WECC bifurcation proceedings in Docket Nos. EL13-52-001, RR13-10-000, and RR13-12-000.⁶ On February 12, 2014, the Commission issued an order on compliance approving the bifurcation of WECC and Peak Reliability and authorizing Peak Reliability to issue billing invoices to fund its fiscal 2014 operations consistent with the 2014 Budget Order.⁷

II. Notice and Responsive Pleadings

6. Notice of NERC’s July 23, 2014 filing was published in the *Federal Register*, 79 Fed. Reg. 44,761 (2014), with interventions and protests due on or before August 22, 2014. On July 25, 2014, the Commission issued an errata notice shortening the comment due date to August 13, 2014. No comments or protests were received.

³ 16 U.S.C. § 824o(c)(2)(B).

⁴ At the time of that proceeding, Peak Reliability was referred to as the Reliability Coordination Company or RC Company.

⁵ *North American Electric Reliability Corp.*, 145 FERC ¶ 61,097, at PP 34-35 (2013) (2014 Budget Order).

⁶ *Id.*

⁷ *North American Electric Reliability Corp.*, 145 FERC ¶ 61,202 (2013), *order on compliance*, 146 FERC ¶ 61,092, at ordering para. (C), *reh’g denied*, 147 FERC ¶ 61,064 (2014).

III. Discussion

7. NERC requests authority to collect a special assessment of \$4,030,696 from load-serving entities and designees in the United States portion of the WECC region to fund the 2014 budget of Peak Reliability.⁸ NERC maintains that the special assessment is necessary because two Canadian entities, Alberta Electricity System Operator (AESO) and British Columbia Hydro & Power Authority (BC Hydro), have not paid their allocated assessments.⁹ NERC contends that the resulting shortfall in funding was unforeseen in 2013, when Peak Reliability's 2014 budget was being developed for submission to the Commission. NERC also contends that the special assessment is warranted to "allow Peak to collect its full approved 2014 assessment and ensure that Peak will have sufficient funding to carry out its [reliability coordinator] and [interchange authority] responsibilities within the Western Interconnection throughout 2014."¹⁰

8. NERC states that AESO advised Peak Reliability in August 2013 that AESO intended to provide its own reliability coordinator and interchange authority functions effective January 1, 2014.¹¹ NERC also states that BC Hydro advised Peak Reliability in June 2014 that BC Hydro was "willing to negotiate an agreement for Peak to continue to provide some [reliability coordinator] and [interchange authority] services for the BC Hydro footprint."¹² NERC maintains that, prior to filing this petition, NERC discussed

⁸ NERC's request is made pursuant to 18 C.F.R. § 39.4(d):

(d) On a demonstration of unforeseen and extraordinary circumstances requiring additional funds prior to the next [ERO] fiscal year, the [ERO] 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...

⁹ NERC states that the uncollected assessments from AESO and BC Hydro total \$4,094,340, which constitutes 13.8 percent of Peak Reliability's total 2014 assessment and 12.4 percent of Peak Reliability's total Commission-approved 2014 budget. NERC Petition at 1. NERC states that the difference between the uncollected assessments and the special assessment on load-serving entities in the United States (i.e., \$63,644) will be allocated to load-serving entities in the Mexico portion of the WECC region. *Id.* at 3.

¹⁰ *Id.* at 13.

¹¹ These services were formerly provided by WECC as the reliability coordinator, Peak Reliability's predecessor entity.

¹² NERC Petition at 2.

these issues with Peak Reliability, AESO, and BC Hydro. NERC states that it was advised that Peak Reliability has had ongoing discussions with 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.”¹³ NERC represents that no agreement was reached as of the filing date of this petition.

9. According to NERC, Peak Reliability states 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 [reliability coordinator] and [interchange authority] responsibilities for the AESO and BC Hydro footprints.”¹⁴ NERC concludes that “[b]ased on the information provided to NERC by Peak or otherwise available to NERC, it appears to NERC that, at this juncture, Peak’s 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.”¹⁵

10. While NERC contends that a special assessment to replace Peak Reliability’s 2014 funding shortfall is necessary, NERC proposes three Commission actions related to the funding request. First, NERC proposes that, by October 31, 2014, Peak Reliability should submit to the Commission a report that summarizes the progress of Peak Reliability’s discussions with AESO and BC Hydro and that presents Peak Reliability’s plan for reducing the scope of its operations and its costs going forward under the assumption that AESO and BC Hydro do not pay their assessments or pay less than the full amount. Second, NERC proposes that if Peak Reliability has not reached agreements with AESO and BC Hydro by October 31, 2014, Peak Reliability should submit quarterly status reports until agreements are reached. Third, NERC proposes that if Peak Reliability receives any compensation from AESO or BC Hydro for 2014, Peak Reliability should be required to use the amount received as a funding source to reduce its requested assessment in the next year for which it submits a budget.

¹³ *Id.* at 9.

¹⁴ *Id.* at 10.

¹⁵ *Id.* at 9-10. According to NERC, Peak Reliability represented that it would have to replace the uncollected assessment revenue “by about mid-November in order to have sufficient funds to continue its operations through the end of 2014.” *Id.* at 3.

Commission Determination

11. We approve NERC's request for authority to collect a \$4,030,696 special assessment from load-serving entities and designees in the United States portion of the WECC region to fund the 2014 budget of Peak Reliability. Based on the record before us, we find that NERC has demonstrated that Peak Reliability's inability to collect the budgeted assessments from AESO and BC Hydro and the resulting funding shortfall constitute "unforeseen and extraordinary circumstances requiring additional funds prior to the next [ERO] fiscal year."¹⁶

12. While we approve NERC's request for a special assessment to fund the 2014 operations of Peak Reliability, we also agree with and adopt NERC's proposals. To keep the Commission apprised of the ongoing negotiations between Peak Reliability, AESO, and BC Hydro, we direct Peak Reliability to submit an informational filing by October 31, 2014 that summarizes the progress of Peak Reliability's discussions with AESO and BC Hydro and explains Peak Reliability's plan for reducing the scope of its operations and its costs going forward under the assumption that AESO and BC Hydro do not pay their assessments or pay less than the full amount. If Peak Reliability does not reach agreements with AESO and BC Hydro by October 31, 2014, we direct Peak Reliability to submit informational quarterly status reports until agreements are reached.

13. We also direct that, if Peak Reliability receives any compensation from AESO or BC Hydro for 2014, Peak Reliability use the amount received as a funding source to reduce its requested assessment in the next year for which it submits a budget.¹⁷

The Commission orders:

(A) NERC's request for authority to collect a special assessment on load-serving entities in the United States portion of the WECC region to fund the 2014 operations of Peak Reliability is hereby approved, as discussed in the body of this order.

(B) Peak Reliability is directed to submit the informational filings, as discussed in the body of this order.

¹⁶ 18 C.F.R. § 39.4(d) (2014).

¹⁷ See NERC Petition at 4 and 15.

(C) Peak Reliability is directed to use any compensation received from AESO or BC Hydro as a funding source to reduce its requested assessment in the next year for which it submits a budget, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.