

129 FERC ¶ 61,040
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, and Philip D. Moeller.

North American Electric Reliability Corporation Docket Nos. RR09-9-000
RR08-6-004
RR07-14-004

ORDER CONDITIONALLY ACCEPTING 2010 BUSINESS PLAN AND BUDGET
OF THE NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION AND
ORDERING COMPLIANCE FILINGS

(Issued October 15, 2009)

1. On August 24, 2009, as supplemented on September 14, 2009, and as amended on September 18, 2009, the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization (ERO),¹ filed its 2010 business plan and budget, as well as the 2010 business plans and budgets of each Regional Entity and of the Western Interconnection Regional Advisory Body (WIRAB).² As discussed below, the Commission conditionally accepts the business plans and budgets of NERC, the Regional Entities, and WIRAB. NERC is authorized to issue billing invoices to fund the fiscal year 2010 operations of the Regional Entities, WIRAB, and itself.

¹ See *N. Am. Elec. Reliability Corp.*, 116 FERC ¶ 61,062, *order on reh'g and compliance*, 117 FERC ¶ 61,126 (2006), *affirmed sub nom. Alcoa Inc. v. FERC*, 564 F.3d 1342 (D.C. Cir. 2009).

² NERC's business plan and budget combined with the Regional Entities' business plans and budgets are collectively referred to herein as NERC's "Application." The eight Regional Entities include: Florida Reliability Coordinating Council (FRCC); Midwest Reliability Organization (MRO); Northeast Power Coordinating Council, Inc. (NPCC); ReliabilityFirst Corporation (ReliabilityFirst); SERC Reliability Corporation (SERC); Southwest Power Pool Regional Entity (SPP RE); Texas Regional Entity (Texas RE), a Division of Electric Reliability Council of Texas Inc. (ERCOT); and Western Electricity Coordinating Council (WECC).

2. In addition, the Commission accepts NERC's status update on the remaining unprocessed alleged violations as well as NERC's reliability enhancement programs compliance filings.

I. Background

A. Regulatory History

3. Section 215 of the Federal Power Act (FPA) requires the Commission-certified ERO to develop mandatory and enforceable Reliability Standards, subject to Commission review and approval.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

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, i.e., those functions carried out pursuant to section 215 of the FPA.⁵ Among other things, Order No. 672 sets forth requirements for funding the ERO and the 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 its 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 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.

5. In an October 2006 order, the Commission conditionally accepted NERC's 2007

³ 16 U.S.C. § 824o (2006).

⁴ *Id.* § 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, FERC Stats. & Regs. ¶ 31,204 (2006), *order on reh'g*, Order No. 672-A, FERC Stats. & Regs. ¶ 31,212 (2006).

⁶ Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 197.

⁷ 18 C.F.R. § 39.4(b) (2009).

business plan and budget for its first year of operation as the ERO and provided NERC guidance on future business plan and budget submissions.⁸ Subsequently, the Commission provided additional guidance on future business plan and budget submissions when it conditionally accepted NERC's 2008 and 2009 business plans and budgets.⁹

B. NERC's 2010 ERO Business Plan and Budget Application

6. NERC's Application contains its proposed business plan and budget for the year ending December 31, 2010, as well as the proposed business plans and budgets of WIRAB and each of NERC's eight Regional Entities for the year ending December 31, 2010.

7. The total funding requirement for 2010 for reliability activities in the United States, Canada, and Mexico is \$138,169,468, which includes \$37,063,569 for NERC funding; \$100,667,519 for Regional Entity funding; and \$438,381 for WIRAB funding. NERC states that the portion of the total funding for United States statutory activities of NERC, the Regional Entities and WIRAB is \$122,447,930.

8. NERC's Application indicates that it will continue to allocate costs to end users in the United States based on Net Energy for Load (NEL) in 2010. NERC states that it will calculate and bill the assessments to certain entities, referred to as "designees," based on NEL values that include the NEL for other load-serving entities served by the designee or for which the "designee" has otherwise agreed to accept responsibility for assessments.¹⁰ NERC also states that the calculation and billing of assessments to "designees" is not a departure from the principle that the ERO funding requirement should be recovered from load-serving entities based on NEL, but rather is a matter of administrative convenience and efficiency.¹¹

⁸ *N. Am. Elec. Reliability Corp.*, 117 FERC ¶ 61,091 (2006), *order on reh'g*, 119 FERC ¶ 61,059 (2007).

⁹ *N. Am. Elec. Reliability Corp.*, 121 FERC ¶ 61,057 (2007); *N. Am. Elec. Reliability Corp.*, 125 FERC ¶ 61,056 (2008) (2009 Budget Order), *order granting clarification*, 126 FERC ¶ 61,021 (2009) (2009 Budget Clarification Order), *order on compliance*, 128 FERC ¶ 61,025 (2009) (2009 Budget Compliance Order).

¹⁰ NERC Application at 17 n.36; *see also id.*, Attachment 2 (NERC Business Plan and Budget), Appendix 2C.

¹¹ NERC Application at 17 n.36.

9. In addition to the NERC and Regional Entity business plans and budgets, NERC has included the various attachments in this filing, including: “Comments on Budget Drafts” (Attachment 12), “Calculation of 2010 IESO and Quebec Assessment Adjustments” (Attachment 13), “Update on NERC 2009 Goals and Objectives” (Attachment 14), “Regional Entity Metrics” (Attachment 15), “Administrative (Indirect) Costs” (Attachment 16), and “NERC and Regional Entity 2008 Audited Financial Statements” (Attachment 17).

C. Status Report on Unprocessed Violations (Docket No. RR08-6-004)

10. In a December 15, 2008 compliance filing in Docket No. RR08-6-002, NERC and the Regional Entities reported to the Commission on the status of alleged violations of Reliability Standards that had not yet been processed to completion. The Commission reviewed this report, which included plans for processing the violations, and issued an order directing NERC to include an additional report on the status of unprocessed violations in its 2010 business plan and budget filing.¹² In Attachment 19 of its Application, NERC includes this status report, as directed.

D. Reliability Enhancement Filing (Docket No. RR07-14-004)

11. In response to an earlier Commission directive,¹³ NERC’s Application includes a “Report on Progress of Enhancing NERC’s Data Collection and Verification Process for Reliability Assessments.”¹⁴ NERC describes its Data Validation and Checking Program, which uses “validation rules” to check for correctness, meaningfulness and security of data used in reliability assessments. NERC also describes external sources used for data validation, such as U.S. Department of Energy – Energy Information Administration and the International Energy Agency. NERC also references its *Three-Year Performance Assessment Report*, which describes additional actions NERC has taken to improve data validation.¹⁵

II. Notice and Responsive Pleadings

12. Notice of NERC’s August 24, 2009 filing was published in the *Federal Register*,

¹² 2009 Budget Compliance Order, 128 FERC ¶ 61,025 at P 18.

¹³ 2009 Budget Order, 125 FERC ¶ 61,056 at P 71.

¹⁴ See NERC Application at 73-77 and Attachment 20.

¹⁵ NERC, *Three-Year Performance Assessment Report*, Docket No. RR09-7-000, Attachment 1 at 93-94 (July 20, 2009).

74 Fed. Reg. 45,631 (2009), with interventions and protests due on or before September 14, 2009. Notice of NERC's September 14, 2009 supplemental filing was published in the *Federal Register*, 74 Fed. Reg. 48,253-54 (2009), with interventions and protests due on or before September 21, 2009. American Municipal Power, Inc., Texas RE, ISO New England Inc., MRO, ReliabilityFirst, Exelon Corporation, Edison Electric Institute, and PJM Interconnection, L.L.C. filed timely motions to intervene. FRCC and WECC filed timely motions to intervene and comments.

13. FRCC and WECC support NERC's proposed 2010 business plans and budgets as they relate to FRCC and WECC, respectively.

14. Subsequently, on September 18, 2009, NERC submitted an errata notice making two minor numerical corrections to its August 24, 2009 filing.

III. Discussion

A. Preliminary Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Substantive Issues

1. NERC Business Plan and Budget

a. NERC Application

16. NERC states that its 2010 business plan and budget was developed under a rigorous process that provided ample opportunity for review by the Finance and Audit Committee of the NERC Board of Trustees and allowed for stakeholder comment during the process. NERC explains that its principal activities in 2010 will include a focus on improved operational efficiency; keeping pace with processing current violations and reducing compliance backlogs; providing better education opportunities for stakeholders and guidance on compliance with NERC Reliability Standards; coordinating efforts to protect the Bulk-Power System from cyber threats and vulnerabilities; and continually developing technically excellent and applicable standards. NERC's 2010 business plan and budget are based on the following major program elements: (1) Reliability Standards development; (2) compliance enforcement and organization registration; (3) training, education, and personnel certification; (4) reliability assessment and performance analysis; (5) situational awareness and infrastructure security; and (6) Transmission

Owners and Operators Forum.¹⁶ For each of NERC's six program areas, NERC describes the program, identifies the program's goals and objectives, and provides the number of full-time equivalent employees (FTE), as well as the amount budgeted for 2010. NERC also provides 2009 approved budget data and 2009 projected data for comparison.

17. NERC's proposed total budget for 2010 is \$40,557,408, an increase of \$6,109,787 or 15.1 percent over the 2009 budget proposal. NERC's proposed 2010 net funding requirement is \$37,063,569 (i.e., total budget less funding from other sources), of which \$33,257,992 is allocated to the United States. NERC states that its proposed total U.S. net funding requirement is equivalent to \$0.0000084 per kWh, based on the aggregate Net Energy for Load of the United States in 2008.¹⁷

18. In 2010, NERC has proposed not to fund its working capital reserve requirement, in light of the need to increase funding in other areas.¹⁸ NERC states that it intends to rely on a \$4,000,000 line of revolving credit to fund temporary cash flow shortfalls in 2010.

¹⁶ NERC Application at 15.

¹⁷*Id.*

¹⁸ *Id.* at 9 n.17.

19. NERC proposes a 2010 staffing level of 131.5 FTEs, which is an increase of 25 FTEs over the 2009 budget staff level of 106.5 FTEs.

Program	2010 Budget¹⁹	Direct FTEs
Reliability Standards	\$6,248,620	17.5
Compliance Enforcement and Organization Registration and Certification	\$14,717,513	45.75
Reliability Readiness Evaluation and Improvement	\$0	0
Training, Education and Operator Certification	\$2,713,631	6.75
Reliability Assessment and Performance Analysis	\$6,631,858	16
Situation Awareness and Infrastructure Security	\$8,148,935	9.75
Unallocated Administrative Services Costs	\$1,627,808	35.75 ²⁰
Plus: Provision for Reserves	\$469,043 ²¹	
Total Budget	\$40,557,408	131.5
Less other funding sources	(\$3,493,839)	
Net Funding Requirement	\$37,063,569	

¹⁹ The amounts projected for each program area are the total direct funding for Canada, Mexico, and United States. *See* NERC Application, Attachment 1, Table 1. In addition, the budgeted amount for each program includes the cost for administrative services, which is allocated to each program based on the number of FTEs budgeted for that program.

²⁰ Includes total number of FTEs for NERC's Administrative Services area.

²¹ NERC explains that by December 31, 2009, it is projecting a working capital reserve deficit of \$469,043. Accordingly, NERC requests this amount to bring the total working capital reserve to zero.

20. NERC and the Regional Entities propose modifications to the presentation of certain financial information to the Commission in this proceeding and future filings. Among others, NERC proposes the following modifications: (1) ERO assessment and penalty sanctions are only allocated across delegated functions, except that assessments needed for working capital reserves are reflected in the general and administrative program; (2) all personnel and meeting expenses are accounted for within their associated department's budget; (3) operating expenses are accounted for within their related department's budget; and (4) the increase or decrease in assessments to achieve the desired working capital reserve balance is reflected as the total change in assets.²²

21. In addition, NERC explains that capital expenditures have been broken out as fixed assets at the end of each statement of activities rather than being included in the statement of operating expenses for 2010.²³ Finally, NERC explains that depreciation was incorporated into the NERC and Regional Entity business plans and budgets as an expense to bring NERC accounting practices into line with the Generally Accepted

Accounting Practices (i.e., GAAP); however, NERC further explains that depreciation has not been included as a funding requirement for capital expenditures.

b. Commission Determination

22. The Commission conditionally accepts the NERC business plan and budget and directs NERC to make compliance filings. We find that NERC's 2010 business plan provides sufficient detail for us to determine whether NERC has appropriately funded each statutory activity. Further, we find that NERC's budget is reasonable and the associated costs of NERC's jurisdictional functions are equitably allocated among end users.²⁴ Below, we discuss specific concerns regarding NERC's 2010 business plan and budget and require NERC to submit a compliance filing and status updates. We accept NERC's 2010 business plan and budget with regard to all other matters that are not discussed below.

23. **Presentation of Financial Data.** The Commission accepts NERC's proposal to modify the presentation of certain financial information within its business plan and budget filings. The Commission commends NERC's ongoing efforts to standardize the

²² NERC Application, Attachment 2 (NERC Business Plan and Budget), § A, at 14.

²³ *Id.*

²⁴ *See* 16 U.S.C. § 824o(c)(1)(B) (2006).

NERC and Regional Entity accounting methodologies so as to accurately present their financial position to the Commission and stakeholders. With respect to the addition of depreciation expense as a line item expense, NERC and the Regional Entities must maintain an accurate record of depreciation expense. In the event that NERC and the Regional Entities attempt to recoup depreciation expense with assessment funding, the Commission may request NERC and the Regional Entities to provide depreciation tables in support of this budgeted line item.

24. **Working Capital Reserves.** Working capital reserves provide readily available funds, which are available without a charge for or restriction on their use, to meet unforeseen expenditures. The Commission is concerned about the risks and costs associated with NERC's relying solely on a line of credit and not having available working capital reserves. Nevertheless, the Commission accepts NERC's proposal not to fund its working capital reserves for the 2010 budget year and instead to rely on a \$4,000,000 line of credit for unbudgeted items during the 2010 budget year, but expects that in next year's budget submittal NERC will evaluate the consequences and costs, and more generally the reasonableness, of its decision to not fund its working capital reserves for the 2010 budget year and to rely entirely on a line of credit instead.

25. With respect to the line of credit, NERC does not indicate whether there are restrictions or conditions placed on this line of credit agreement and under what circumstances funds from the line of credit may not be available for NERC to draw on. To better understand NERC's proposal, the Commission directs NERC to submit a compliance filing within 60 days of the issuance of this order, identifying applicable restrictions or conditions placed on the revolving line of credit. Further, we note that a draft of the NERC 2010 budget included funding for a working capital reserve but that such funding was later deleted.²⁵ NERC should explain the rationale for removing working capital reserves from its 2010 budget and business plan.

26. **Reliability Standards Development.** In the 2009 Budget Order, the Commission affirmed that the ERO has responsibility for the content as well as the process for proposing Reliability Standards for Commission approval.²⁶ Subsequently, the Commission reminded NERC of its obligation to provide the Board of Trustees with

²⁵ NERC Application, Attachment 2 (NERC Business Plan and Budget) at 78 n.2; NERC Finance and Audit Committee, *Overview of the 2010 Preliminary Business Plan and Budget* at 6, 12 (May 5, 2009), available at http://www.nerc.com/docs/bot/finance/2010_BPB_Draft1.pdf.

²⁶ 2009 Budget Order, 125 FERC ¶ 61,056 at P 24.

appropriate advice to make such judgments.²⁷ The Commission reaffirms that, as the ERO, NERC remains responsible for the technical quality and content of proposed Reliability Standards that it submits to the Commission for approval.²⁸ We expect NERC to maintain independent expertise with which to make relevant judgments including advice to the Board of Trustees regarding proposed Reliability Standards developed by its stakeholder process.

27. In its Application, NERC proposes to increase the Reliability Standards Program staff by three FTEs and to increase spending on subject matter experts by \$100,000 over its 2009 budget proposal. The Commission supports NERC's proposed increase of three FTEs during 2010 but questions whether this addition will provide adequate additional staff resources to manage NERC's Reliability Standard-related workload and to maintain the quality of content as well as the process used to develop high quality Reliability Standards.²⁹ In particular, with an estimated 65 to 100 total projects underway in 2010, we encourage NERC to expand the ranks of its technically qualified staff that will oversee development of Reliability Standards.

28. Additionally, the Commission notes that NERC's proposal includes an increase in its budget for subject matter expert consultants by \$100,000. We concur that NERC requires greater subject matter expertise to support standards development activities. At a minimum, NERC should have access to experts familiar with each of the 14 categories of Reliability Standards that it develops and enforces. Such technical expertise is necessary in order for NERC to ensure that its Board of Trustees has adequate

²⁷ See 2009 Budget Clarification Order, 126 FERC ¶ 61,021 at P 12; *see also* 2009 Budget Compliance Order, 128 FERC ¶ 61,025 at P 17.

²⁸ Section 215(c)(1) provides that the ERO must have the ability to develop and enforce Reliability Standards that provide for an adequate level of reliability of the bulk-power system.

²⁹ In its December 15, 2008 compliance filing, NERC asserted that a Standards Development Coordinator can generally manage four ongoing standards projects on a non-accelerated schedule. *N. Am. Elec. Reliability Corp.*, Compliance Filing, Docket Nos. RR08-6-000 and RR07-14-001, at 8 (Dec. 15, 2008) (December 15, 2008 Compliance Filing). The Commission's observations indicate that this workload may be excessive if a high degree of attention and technical depth is to be devoted to each project. With an estimated 65 to 100 total projects underway in 2010, the Commission would expect NERC to have between 17 and 25 Standards Development Coordinators. Accordingly, we encourage NERC to consider expanding the ranks of its technically qualified coordinators.

independent technical advice and support when voting on the final draft of a proposed Reliability Standard.

29. **Compliance Monitoring and Enforcement.** In its business plan and budget, NERC proposes to add 10.25 FTEs to the compliance and enforcement functions, for a total of 45.75 FTEs. NERC states that its investigation teams have reached their limit for investigations at the current staffing levels and that NERC must rely on the Regional Entities to augment staffing for key investigations. For this reason, NERC is allocating two of the additional 10.25 FTEs to expedite compliance violation investigations.

30. NERC's Application appears to contain certain discrepancies with respect to the number of new expected compliance violation investigations and compliance inquiries in 2010. NERC's Business Plan states that "NERC will continue to lead approximately 10 Compliance Violation Investigations and 40 Compliance Inquiries" in 2010.³⁰ Elsewhere, the Application indicates that NERC assumes for budget development that NERC will conduct 12 compliance violation investigations and 24 new compliance inquiries in 2010.³¹ The Commission is concerned that NERC may not have sufficient staff to complete 10 new compliance violation investigations and 40 new compliance inquiries in a timely manner.³² Accordingly, the Commission directs NERC to clarify these figures in a compliance filing within 60 days and discuss whether it has adequate funding to conduct the anticipated number of compliance violation investigations and compliance inquiries.

31. In addition, NERC assumes that "Regional Entities will collectively review approximately 50-60 events of interest and 12-15 compliance violation investigations," and "the number of reviews and [compliance violation investigations] will vary by region and each region will have a unique set of assumptions that collectively will approximate these gross estimates."³³ However, it is not apparent whether the Regional Entities

³⁰ NERC Application, Attachment 2 (NERC Business Plan and Budget) at 23.

³¹ *Id.*, Appendix 1, at 1.

³² In Order No. 672, the Commission expressed its expectation that the ERO would have a compliance program that incorporates proactive enforcement audits and investigations of alleged violations. Such a program would provide "rigorous" audits of compliance with the Reliability Standards. *See* Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 45, P 463 (citing 18 C.F.R. § 39.7(a)).

³³ NERC Application, Attachment 2 (NERC Business Plan and Budget), Appendix 1, at 2.

provide funding based on this assumption in their budget proposals. The Commission directs NERC and the Regional Entities to address in a compliance filing within 60 days how each Regional Entity utilized this assumption in developing its budget and whether each Regional Entity has adequate funding to support the anticipated number of event reviews and compliance violation investigations.

32. NERC has budgeted \$500,000 for “software development in support of implementing the Compliance Reporting, Analysis, and Tracking System”; however, NERC’s Application fails to provide a timeline for development of this project or any additional details. Accordingly, the Commission directs NERC to provide in its compliance filing a timeline on the development of the Compliance Reporting, Analysis, and Tracking System.

33. Finally, NERC provides metrics listing the number of budgeted Critical Infrastructure Protection (CIP) audits for each Regional Entity in Attachment 15 of its Application. The Commission notes that the Regional Entities Texas RE and SERC have planned to conduct cyber security audits on less than three percent of the Registered Entities within their respective footprints, while the other Regional Entities have elected to audit substantially more, with an average of 12 percent coverage.³⁴ We are concerned by the low level of budgeted compliance activity relating to cyber security within Texas RE and SERC. Therefore, we direct NERC, in its compliance filing, to discuss the adequacy of the CIP audit levels planned by Texas RE and SERC and whether additional auditing, and 2010 funding for such auditing, is appropriate.

34. **Technical Feasibility Exceptions.** In Order No. 706, the Commission approved eight CIP Reliability Standards that pertain to cyber security.³⁵ Among other things, the Commission indicated that more accountability was needed when a responsible entity

³⁴ *See id.*, Attachment 15 at 3. FRCC will conduct 8 CIP audits for 70 entities resulting in 11.4% coverage; MRO will conduct 20 CIP audits for 116 entities resulting in 17.2% coverage; NPCC will conduct 24 CIP audits for 268 entities resulting in 9.0% coverage; ReliabilityFirst will conduct 31 CIP audits for 358 entities resulting in 8.7% coverage; SPP RE will conduct 10 CIP audits for 115 entities resulting in 8.7% coverage; SERC will conduct 6 CIP audits for 226 entities resulting in 2.7% coverage; Texas RE will conduct one CIP audit for 216 entities resulting in 0.5% coverage; and WECC will conduct 131 CIP audits for 470 entities resulting in 27.9% coverage.

³⁵ *Mandatory Reliability Standards for Critical Infrastructure Protection*, Order No. 706, 122 FERC ¶ 61,040, at P 157 (2008), *order on clarification*, Order No. 706-A, 123 FERC ¶ 61,174 (2008), *order on clarification*, 126 FERC ¶ 61,229 (2009).

seeks to rely on the technical feasibility exception provisions of the CIP Reliability Standards, and directed NERC to develop requirements that a responsible entity must have mitigation and remediation plans when invoking the exception.³⁶ Further, the Commission concluded that technical feasibility exceptions must be reported and justified and subject to approval by the ERO or the relevant Regional Entity.³⁷

35. In its Budget Application, NERC states that it is currently working with the Regional Entities and industry stakeholders to develop uniform procedures for processing “technical feasibility exceptions.” NERC indicates that the uniform procedures will have the Regional Entities process technical feasibility exceptions, with NERC providing oversight and guidance. In its Budget Application, NERC states that it does not plan to hire additional staff or consultants to provide such oversight, but notes that four of the Regional Entities—MRO, ReliabilityFirst, SPP RE, and Texas RE—have incorporated this expense into their 2010 budget proposals. Other Regional Entities have not budgeted funds or FTEs for this particular task. They indicate that they may seek supplemental funding during the year if necessary to support this program.³⁸ Other Regional Entities indicate that they can implement the program with current budget and staff levels.³⁹

36. As indicated in the proposed business plans and budgets, the details of how Regional Entities plan to process technical feasibility exceptions continue to evolve. We are concerned that, once the ERO develops the procedure and the Regional Entities implement the process of reviewing technical feasibility exceptions, Regional Entities may not have budgeted adequate funding of this potential labor-intensive activity. It is premature for the Commission to rule on the adequacy of the ERO and Regional Entity funding of this activity at this time. The Commission, however, directs the ERO to provide status reports, every three months from the date of this order, regarding the development of uniform procedures for processing technical feasibility exceptions; and, within 90 days after implementation of the activity by the Regional Entities, an evaluation of the adequacy of ERO and Regional Entity resources for implementing this activity.

³⁶ *Id.* P 192.

³⁷ *Id.* P 209.

³⁸ NERC Application, Attachment 5 (NPCC Business Plan and Budget) at 23; *id.*, Attachment 7 (SERC Business Plan and Budget) at 15.

³⁹ *Id.*, Attachment 3 (FRCC Business Plan and Budget) at 14-15; *id.*, Attachment 10 (WECC Business Plan and Budget) at 16.

2. Regional Entity Business Plans and Budgets

37. NERC's Application includes the 2010 Business and Budget Plan of each Regional Entity. NERC states that it reviewed the Regional Entity business plans and budgets, and NERC concludes that each Regional Entity proposes necessary and adequate resources to carry out its delegated functions.⁴⁰ In reviewing each Regional Entity budget, the Commission determined that each submission reasonably supports the level of expenditures identified in the budget.

38. Except for the specific concerns discussed in this order, we are satisfied that the Regional Entities have focused on adequately staffing and funding all of their program areas to perform the delegated, statutory functions. Accordingly, the Commission conditionally accepts the Regional Entity business plans and budgets. In order to address our remaining concerns about the Regional Entity business plans and budgets, the Commission directs NERC and the Regional Entities to submit a compliance filing, as discussed below.

a. Elimination of Operator Training Programs

39. **MRO.** MRO proposes to end its existing in-house operator training program for 2010.⁴¹ The MRO budget for this program area reflects a decrease in expenses of \$177,675. MRO explains that it will utilize a third party to accomplish the NERC training objectives for Registered Entities in the MRO region.

40. Due to the critical role that Regional Entity training programs fill in assuring safe and effective systems operations, the Commission is concerned that MRO's proposed level of funding and activities for 2010 may be inadequate. The Commission directs NERC and MRO to provide additional information on the measures MRO has taken to utilize a third party for certifying operators. NERC and MRO should also address how MRO will maintain NERC's "CEH training requirements" for recertification of current Bulk-Power System operators, which had required (1) 32 hours of emergency operations training annually; (2) 30 hours of NERC Reliability Standards training every three years; and (3) 30 hours of other training, including the use of a simulator every three years as indicated in the 2009 MRO business plan and budget.

⁴⁰ *Id.* at 13.

⁴¹ *Id.*, Attachment 4 (MRO Business Plan and Budget) at 13.

41. **SPP RE.** Likewise, SPP RE proposes to end its existing in-house operator training program for 2010.⁴² SPP RE proposes a total 2010 budget of \$30,180 for its Training, Education, and Operator Certification Program, compared to \$1,115,812 budgeted for 2009, which reflects a decrease in expenses of \$1,085,632. SPP RE states that it will conduct two general compliance workshops for Registered Entities and one CIP workshop for Registered Entities during 2010 under its existing program. We note that SPP RE includes certification with its Compliance Enforcement Program for 2010, although no information is provided regarding this change.

42. The Commission notes that SPP RE's 2009 Budget filing included a training program overview consisting of: two system operations conferences; two regional restoration drills; eight sub-regional restoration drills; 24 regional emergency operations net conferences; and three train-the-trainer sessions. With the elimination of these program elements, the Commission is concerned whether operator competency and performance will be maintained and measured on an ongoing basis within SPP RE's footprint. The Commission directs NERC and SPP RE to provide a further explanation on the de-funding of its Training, Education, and Operator Certification Program, explaining why the program was de-funded and how comparable training services are provided in the SPP region in absence of training programs and drills provided by the Regional Entity.

b. Discrepancies in FTE and Budget Amounts

43. **SPP RE.** In its explanations of variances, SPP RE describes an increase in operating expenses of \$24,000 under "Consultants and Contracts," driven by studies to be performed in support of regional standard development.⁴³ Elsewhere in its filing, however, SPP RE describes the variance of \$24,000 in contractor costs due to a Reliability Standards voting tool software.⁴⁴ The Commission directs SPP RE to submit a clarification on whether the \$24,000 is for a software system or performance of studies.

44. **Texas RE.** Texas RE identifies an increase of 7.59 total FTEs for its Compliance Monitoring and Enforcement and Organization Registration and Certification Program.⁴⁵ However, elsewhere Texas RE states regarding this same program, "[p]ersonnel costs

⁴² *Id.*, Attachment 8 (SPP RE Business Plan and Budget) at 21.

⁴³ *Id.*, Attachment 8 (SPP RE Business Plan and Budget) at 10.

⁴⁴ *Id.*, Attachment 8 (SPP RE Business Plan and Budget), Table B-4.

⁴⁵ *Id.*, Attachment 9 (Texas RE Business Plan and Budget) at 13.

are increasing \$1,155K for 2010 due to increasing staff by 6.00 (5.55 FTEs Statutory, .45 FTEs Non-statutory) in this area to enhance functional performance.”⁴⁶ The Commission directs NERC and Texas RE to submit a clarification of this discrepancy in the proposed increase of FTEs in the Compliance Monitoring and Enforcement and Organization Registration and Certification Program.

45. **WECC.** Regarding its Compliance Monitoring and Enforcement and Organization Registration and Certification Program, WECC states that salary expenses will increase by \$1.79 million, primarily due to the addition of 20 FTEs.⁴⁷ Elsewhere, WECC states that travel expenses will increase by \$73,000 due to the addition of 21 FTEs. Accordingly, NERC and WECC must identify in the compliance filing the correct increase of FTEs in the Compliance Monitoring and Enforcement and Organization Registration and Certification Program.

46. **MRO.** MRO indicates an increase of 3.6 FTEs in its Compliance Monitoring and Enforcement and Organization Registration and Certification Program.⁴⁸ However, elsewhere MRO states “[t]he overall FTE count for compliance and enforcement does not increase from 2009 to 2010.”⁴⁹ NERC and MRO must explain this apparent discrepancy in the compliance filing.

c. SPP Regional Entity Line of Credit

47. In its proposed 2010 business plan and budget, SPP RE proposes to eliminate its working capital reserve, stating that it intends to rely on operating cash balances and access to Southwest Power Pool, Inc.’s (SPP Inc.) line of credit to fund any potential shortfalls throughout the year.⁵⁰

48. Similar to our discussion above with regard to the ERO’s reliance on a line of credit, we emphasize the importance of maintaining a working capital reserve as an appropriate method to plan for unforeseen, significant capital expenditures. Further, with

⁴⁶ *Id.* at 24.

⁴⁷ *Id.*, Attachment 10 (WECC Business Plan and Budget) at 21.

⁴⁸ *Id.*, Attachment 4 (MRO Business Plan and Budget) at 21.

⁴⁹ *Id.* at 29.

⁵⁰ The Commission authorized SPP, Inc.’s issuance of unsecured promissory notes in an aggregate amount not to exceed \$50 million. *Sw. Power Pool, Inc.*, 120 FERC ¶ 61,160, at P 2 (2007).

regard to SPP RE as a “hybrid” Regional Entity, we have the additional concern that reliance on the line of credit established by SPP, Inc. may compromise the independence of SPP RE. NERC and SPP RE do not indicate whether SPP Inc. places any restrictions or conditions on SPP RE’s ability to draw on this line of credit agreement, and under what circumstances funds from the line of credit may not be available.⁵¹ For example, it is not clear whether SPP RE is limited in the amount of funds it may use under this line of credit and under what terms. In order to adequately evaluate this proposal, the Commission directs NERC and SPP RE to submit a compliance filing within 60 days of the issuance of this order, identifying applicable restrictions or conditions placed on SPP RE’s access to the revolving line of credit.

d. NPCC Cost Allocation Methodology

49. NERC and NPCC state that, for purposes of determining the assessment to recover NPCC’s statutory funding requirement, costs are allocated among the balancing authority areas within NPCC: New York, New England, Ontario, Québec, New Brunswick and Nova Scotia. In accordance with NPCC’s cost allocation method, 55 percent of all costs for NPCC’s Compliance Monitoring and Enforcement and Organization Registration and Certification Program (Compliance Program) are allocated between the balancing authority areas in the United States and Canada on a net energy for load basis. NPCC states that it allocates the remaining 45 percent of the Compliance Program costs using an audit-based methodology. According to NERC and NPCC, the portion of costs allocated to the U.S. using the audit-based methodology is then allocated between the New York and New England balancing authority areas based on net energy for load.⁵²

50. Table 6 of NPCC’s 2010 business plan and budget provides detailed information regarding cost allocation for the NPCC Compliance Program. It is unclear from this table that, for the “remaining” 45 percent of the Compliance Program (as described above),

⁵¹ We note that SPP Inc. must ensure that SPP RE has the resources SPP RE determines to be needed to accomplish the Regional Entity functions. *N. Am. Elec. Reliability Corp.*, 128 FERC ¶ 61,244, at P 11 (2009); *see also Sw. Power Pool, Inc.*, 120 FERC ¶ 61,045, at 61,369 (2008) (Attachment A; Audit Report) (stating “the involvement of RTO management in [Regional Entity] budgeting and spending decisions undermines the independence of the [Regional Entity] and its ability to fulfill its functions”).

⁵² As NERC and NPCC note, the Commission required NPCC to allocate all costs within the U.S. portion of NPCC based on net energy for load. NERC Application, Transmittal Letter, at 59 (citing *N. Am. Elec. Reliability Corp.*, 127 FERC ¶ 61,307 (2009)).

NPCC used the net energy for load methodology to allocate compliance costs in the U.S. portion of the region. In particular, Column D-2 of Table 6 suggests that NPCC applied an audit-based allocation methodology throughout the entire NPCC region. Accordingly, the Commission directs NERC and NPCC to submit in the compliance filing an explanation of Table 6 and the application of net energy for load in allocating Compliance Program costs within the U.S. portion of the NPCC region. Specifically, the explanation should include the 2010 net energy for load calculations and allocations to load serving entities (or designees) for the Compliance Program assessments.⁵³

3. Other Matters

a. Determination of Critical Assets

i. Background

51. As mentioned above, in Order No. 706 the Commission approved eight CIP Reliability Standards that require certain users, owners, and operators of the Bulk-Power System to comply with specific requirements to safeguard critical cyber assets. In addition, pursuant to section 215(d)(5) of the FPA,⁵⁴ the Commission directed the ERO to develop modifications to the CIP Reliability Standards to address specific concerns identified by the Commission.⁵⁵ Among other things, the Commission directed the ERO to (1) provide additional guidance on the development of a risk-based assessment methodology for identifying critical assets pursuant to Reliability Standard CIP-002-1, (2) identify the scope of critical assets and critical cyber assets, (3) require internal management approval of the risk-based assessment, (4) develop a process of external review of the critical asset identifications, and (5) undertake an interdependency analysis.⁵⁶

⁵³ The Commission recommends a table similar to Appendix 2-A and Appendix 2-B of Attachment 2 (NERC Business Plan and Budget) of the NERC Application.

⁵⁴ 16 U.S.C. § 824o(d)(5) (2006).

⁵⁵ Order No. 706, 122 FERC ¶ 61,040 at P 236.

⁵⁶ *Id.* P 236, 253, 272, 294, 322; *but see id.* P 341 (stating that Commission will revisit issue of interdependency analysis in future proceedings).

ii. **Commission Determination**

52. With most entities becoming auditably compliant under Reliability Standard CIP-002-1 at the end of the second quarter of 2010 or the end of the fourth quarter of 2010,⁵⁷ the Commission is concerned about the lack of information provided in NERC's business plan and budget regarding critical asset identification. The Regional Entity review of responsible entities' determination of critical assets will likely be a resource intensive part of each Regional Entity's compliance program. The 2010 business plans and budgets, however, do not provide any indication regarding the dedication of resources for this new activity. Accordingly, the Commission directs the ERO to include in its compliance filing a discussion of the plans and resources being allocated to ensure that adequate resources are available for the ERO and Regional Entities to review critical asset determinations.

b. **WIRAB Budget**

53. WIRAB's total budget for 2010 is \$616,810, a \$21,000 increase over its 2009 budget. According to WIRAB, the increase is due to anticipated higher travel and meeting costs. WIRAB projects a carry-over of \$174,862 at the end of 2009 and, therefore, statutory funding for 2010 will be \$438,381 for 2010 (of which \$371,992 will be allocable to the United States). WIRAB states that it will employ 2.75 FTEs for 2010, the same as 2009.

54. Based on the information provided by WIRAB, the Commission concludes that WIRAB's 2010 budget is reasonable and, accordingly, the Commission approves the WIRAB 2010 budget.

c. **Status Report on Remaining Unprocessed Violations
(Docket No. RR08-6-002)**

i. **Background**

55. In a December 15, 2008 compliance filing, NERC and the Regional Entities reported to the Commission on the status of alleged violations of Reliability Standards that had not yet been processed to completion. The report included plans for processing these matters to completion. The Commission subsequently issued an order, directing

⁵⁷ *Mandatory Reliability Standards for Critical Infrastructure Protection*, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,620, at P 42 (2007); *see also* NERC Filing, Exhibit B (Implementation Plan for Cyber Security Standards), Docket No. RM06-22-000 (Aug. 28, 2006).

NERC to include an additional report on the status of unprocessed violations in the 2010 ERO business plan and budget filing.⁵⁸

ii. NERC Filing

56. In response, NERC has included an update on the status of unprocessed alleged violations in Attachment 19 to its Application. NERC indicates the current inflow of alleged violations is still resulting in a significant backlog of compliance violations. As a result, NERC is proposing to include a minimum of four additional mid-level FTEs in the Compliance Monitoring and Enforcement Program to help address the current violation processing backlog and execute changes designed to improve the efficiency of violation processing on an ongoing basis. In Attachment 19 to its Application, NERC acknowledges that the backlog of alleged Reliability Standard violations to be processed remains problematic and outlines several initiatives to address this issue. NERC states that its primary initiative will be to bundle alleged violations that pose low risk to Bulk-Power System reliability into an “omnibus filing” for collective action. NERC believes that the resolution of these matters will reduce the burden on the Regional Entities.

57. NERC states that other initiatives to process the backlog of violations include the following: (1) utilization of the internal ERO management tools; (2) increased staffing; and (3) the creation of a *pro forma* settlement option to standardize forms and penalties for specific violations.⁵⁹

58. NERC states that its goal for 2010 is to reach a steady state of processing violations and to maintain reasonable queue management and a minimal backlog of alleged violations. NERC includes information tables that show the backlog as of December 31, 2008, and June 30, 2009, in order to demonstrate the increased number of matters that have moved from assessment and validation to settlement or which have been completed, closed, or dismissed during that six-month period. This information indicates that, in the aggregate, 83 more alleged violations needed processing in June 2009 than in December 2008.

⁵⁸ 2009 Budget Compliance Order, 128 FERC ¶ 61,025 at P 18.

⁵⁹ NERC Application, Attachment 19 at 3 (citing NERC Compliance Process Bulletin #2009-003 v.2, dated June 29, 2009, *available at* http://www.nerc.com/files/2009-003_Public%20Notice_V2.pdf).

iii. Commission Determination

59. The Commission acknowledges the progress that NERC and the Regional Entities have made to address the existing backlog of alleged violations. The Commission notes that NERC's three-year performance assessment report, filed on July 20, 2009, in Docket No. RR09-7-000, also addresses the backlog and NERC's plans to prevent a backlog from occurring in the future. Accordingly, the Commission will address in that proceeding what, if any, further status reports regarding the backlog may be necessary.

d. Status Report on Reliability Enhancement Programs (Docket No RR07-14-001)**i. Background**

60. Order No. 672 directed the ERO to make a compliance filing no later than one year from the date of its certification in which it would propose reliability enhancement programs that would improve Bulk-Power System reliability, along with a program implementation schedule.⁶⁰ In a number of filings, NERC stated that, given the start-up and transition of becoming the ERO, it was not in a position to propose the design and implementation of a full array of specific reliability enhancement programs. In the 2009 Budget Order, the Commission again directed NERC to submit a status report of its reliability enhancement programs as part of its 2010 business plan and budget.⁶¹ The Commission specifically directed NERC to demonstrate more thoroughly-developed reliability enhancement programs and sufficient funding to support such programs, and to include a schedule or action plan showing the staged development of the enhancement programs with specific, measurable timing and goals.

ii. NERC Filing

61. In its business plan and budget, NERC states that it intends to use the framework established in its three-year performance assessment to guide its reliability enhancement initiative efforts, and NERC provides a list of its initiatives with a brief summary of its plans and efforts for each. The initiatives include alerts and lessons learned from event analyses, improved benchmarking and reliability metrics development, North American Synchro-Phasor Initiative, System Protection Initiative, assessments and analysis of cyber- and security-related risk, System Modeling Improvements Initiative, Frequency

⁶⁰ Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 468.

⁶¹ 2009 Budget Order, 125 FERC ¶ 61,056 at P 71.

Performance Initiative, demand response availability and performance, Transmission Availability Data System, and reliability impacts of new and emerging technologies.⁶²

iii. Commission Determination

62. NERC also submitted the reliability enhancements proposed in its business plan and budget in its three-year performance assessment. The Commission intends to address the proposed enhancements in its order addressing NERC's performance assessment, submitted in Docket No. RR09-7-000. Therefore, the Commission will not rule on the adequacy of NERC's submission in this instant budget proceeding.

e. Situational Awareness Project

63. In its Application, NERC indicates that the initial phase of the "Situational Awareness for FERC, NERC and Regions" (SAFNR) project was implemented and operational as of June 2009.⁶³ The SAFNR project was initiated by NERC in February 2009, and responds to recommendations from the United States-Canada Power System Outage Task Force, which concluded that the August 14, 2003 blackout was caused by a lack of situational awareness that was, in turn, the result of inadequate reliability tools and back-up capabilities.⁶⁴ The SAFNR project is intended to display to the Commission, NERC, and the regions, through a secure internet access system, the conditions of all of the reliability coordinators within the United States.⁶⁵ The SAFNR project permits the viewer to view the reliability coordinators' core data on a geospatial platform. The displays include Bulk-Power System data, such as critical interface flows and limits, voltages at key system locations, forecasted and actual system loads, and forecasted reserve levels. Access to this data allows observation and a greater understanding of near real-time conditions within each Interconnection, thereby providing the viewer "the means to monitor the reliability status of the nation's electric power system."⁶⁶ NERC's rules of procedure require NERC, through the use of

⁶² NERC Application, Attachment 1 (NERC Business Plan and Budget) at 9-11.

⁶³ NERC Application, Attachment 14 at 28.

⁶⁴ U.S.-Canada Power System Outage Task Force, *Final Report on the August 14, 2003 Blackout in the United States and Canada: Causes and Recommendations*, at 206 (April 2004), available at <https://reports.energy.gov>.

⁶⁵ NERC, SAFNR Scope Document, at 4 (March 2009), http://www.nerc.com/docs/oc/ors/ORS_Agenda_2Apr09.pdf (SAFNR Scope Document).

⁶⁶ SAFNR Scope Document at 9.

reliability coordinators and available tools, to monitor present conditions on the Bulk-Power System and to provide leadership coordination, technical expertise, and assistance to the industry in responding to events as necessary.⁶⁷

64. NERC states that, in 2010, it will continue to pursue the SAFNR project. NERC, however, does not list specific implementation plans.⁶⁸ Due to the potential of this project to enhance NERC's and the regions' situational awareness capabilities, NERC and the Regional Entities are directed to provide an informational report to be submitted on or before November 20, 2009. The informational report should include a discussion about the ongoing and future plans to develop the SAFNR project and identify the resources that will be required to meet NERC and regional objectives.

⁶⁷ NERC Rules of Procedure § 1000, *available at* http://www.nerc.com/files/NERC_Rules_of_Procedure_EFFECTIVE_20090616.pdf; *see also* SAFNR Scope Document at 6.

⁶⁸ NERC Application at 45. The Regional Entities provided the following information regarding the SAFNR project: FRCC states that it will continue its support for development and maintenance of the SAFNR project during 2010 and anticipates that it will incur minor development costs as well as ongoing operating and maintenance costs of \$10,000. NERC Application, Attachment 3 (FRCC Business Plan and Budget) at 29-30. NPCC states that it is actively participating in the SAFNR project. For 2010, NPCC states that it is implementing a geographically based visualization of selected reliability indicators to expand the operational awareness of reliability coordinators of NPCC. NERC Application, Attachment 5 (NPCC Business Plan and Budget) at 47. SERC acknowledges that in 2010 the SAFNR project will continue to be developed to meet regulatory, NERC, Regional Entity, and stakeholder needs. NERC Application, Attachment 7 (SERC Business Plan and Budget) at 31. Texas RE states that it will continue to participate in the SAFNR project during 2010. Based on supporting the SAFNR project and the regular communication of event details to others, Texas RE has added 1.0 additional staff member. NERC Application, Attachment 9 (Texas RE Business Plan and Budget) at 33-34. WECC states that in 2010 it will work to expand the situational awareness displays available to the Commission, NERC, and the WECC membership through the expansion of the SAFNR project. NERC Application, Attachment 10 (WECC Business Plan and Budget) at 37.

The Commission orders:

(A) NERC's 2010 business plan and budget is hereby conditionally accepted as discussed in the body of this order.

(B) The Regional Entity 2010 business plans and budgets are hereby conditionally accepted as discussed in the body of this order.

(C) The WIRAB Budget is hereby approved for funding, as discussed in the body of this order.

(D) NERC and the Regional Entities are hereby directed to submit a compliance filing within 60 days of the date of this order, as discussed in the body of this order.

(E) NERC is hereby directed to submit status reports, including the evaluation status report regarding the development of uniform procedures for processing technical feasibility exceptions, as discussed in the body of this order.

By the Commission. Commissioner Kelly is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Document Content(s)

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