123 FERC ¶ 61,282
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

North American Electric Reliability Corporation Docket No. RR07-16-003

ORDER CONDITIONALLY ACCEPTING COMPLIANCE FILING

(Issued June 19, 2008)

1. On April 1, 2008, the North American Electric Reliability Corporation (NERC) submitted a filing in compliance with the Commission's order approving NERC's 2008 business plan and budget.[1] NERC's filing includes a true-up of actual 2007 costs incurred by NERC and each Regional Entity to their respective 2007 budgets, and responses to other compliance directives in the *2008 Budget Order*. In this order, the Commission conditionally accepts NERC's compliance filing and orders additional compliance filings, as discussed below.

I. Background

2. In the *2008 Budget Order*, the Commission conditionally accepted NERC's 2008 Business Plan and Budget as well as the 2008 business plans and budgets of each Regional Entity. The *2008 Budget Order* approved a total funding requirement for 2008 of $82,587,129, allocable to end users in the United States. This amount included $22,780,492 for NERC funding, $59,402,602 for Regional Entity funding and $404,035 in funding for the Western Interconnection Regional Advisory Body (WIRAB). The Commission also found that it would be valuable to receive actual Electric Reliability Organization (ERO) and Regional Entity prior-year costs before NERC files its budget for the following year. The Commission therefore directed NERC to submit a true-up of its budget, as well as for the Regional Entities, on or before April 1 of each year in sufficient detail and with sufficient explanations for the Commission to determine, by program area, the reasons for deviations from the budget and the impacts of those deviations.[2]

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[1] *North American Electric Reliability Corp.*, 121 FERC ¶ 61,057 (2007) (*2008 Budget Order*).

[2] *Id.* P 23.

3. The Commission also directed compliance with respect to NERC's system of accounts and record keeping requirements. The Commission directed NERC to make a filing detailing (1) the functional categories to be used by the Regional Entities for segregating non-statutory income, revenue and expenses and (2) instructions detailing the policies and procedures describing and providing guidance on the recording and summarizing of financial data and transactions, including an explanation of the interrelationship of the functional categories to its account listing.[3] The Commission also directed NERC to inform the Commission whether any funding identified as statutory was used to fund non-statutory activities and to document the funds that have been or will be reimbursed to the appropriate function.[4] Finally, the Commission directed NERC to amend its document retention policy so that all records on its proposed records retention schedule that have a retention period of less than five years, except routine vendor correspondence and employment applications, are retained for the longer of five years or until a final Commission order is issued regarding the Commission's periodic performance assessment of the ERO.[5]

4. In its April 1, 2008 compliance filing, NERC submits information as directed in the *2008 Budget Order*. NERC describes the functional categories it has established for the Regional Entities to use in segregating non-statutory income, revenue and expenses from statutory income, revenue and expenses, and related instructions, policies and procedures that have been established by Regional Entities concerning the recording and summarizing of financial data and transactions by the Regional Entities. NERC also describes its revised records retention policy and reports on adoption of the records retention policy by the Regional Entities. In addition to providing its actual costs for 2007, NERC offers a narrative describing the preparation of the reconciliations between the 2007 budgets and the actual 2007 results for NERC. Each of the eight Regional Entities provides similar information with varying levels of detail. Finally, NERC identifies the extent to which statutory funds were used for non-statutory activities by certain Regional Entities during 2007. Where such use of statutory funds has been identified, NERC describes the steps that the Regional Entity has taken to reimburse the statutory funds to the appropriate function.

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[3] *Id.* P 80.

[4] *Id.* P 66.

[5] *North American Electric Reliability Corp.*, 116 FERC ¶ 61,062, at P 715, *order on reh'g and compliance*, 117 FERC ¶ 61,126 (2006) (requiring the ERO to submit an assessment of its performance three years from the date of certification by the Commission, and every five years thereafter).

II. Procedural Matters

5. Notice of the filing was published in the *Federal Register*, 73 Fed. Reg. 19,498 (2008), with interventions and protests due on or before April 22, 2008. None were filed.

III. Discussion

A. Functional Categories

6. In the *2008 Budget Order*, the Commission directed NERC to provide, in a compliance filing, the functional categories and accounts used by the Regional Entities for segregating non-statutory income, revenue and expenses to make certain that such income, revenue and expenses are properly segregated and to ensure that funds are adequately controlled.[6] The Commission also required NERC to provide details of its accounting policies and procedures comparable to those included in the Commission's Uniform System of Accounts that describe and provide guidance on how to record and summarize financial data and transactions, including an explanation of the interrelationship of the functional categories to its account listing.

NERC Compliance Filing

7. In its compliance filing, NERC describes the format of its system of accounts and explains how the functional categories and the listing of accounts interrelate and how the income, revenue and expenses recorded in the accounts are reconciled with the functional categories. In attachments to NERC's filing, those Regional Entities with non-statutory activities describe the functional categories that they have established for segregating their non-statutory income, revenue and expenses from statutory income, revenue and expenses.[7] These Regional Entities also describe or provide instructions, policies and procedures that they have established for recording and summarizing their financial data and transactions.

8. The Florida Reliability Coordinating Council, Inc. (FRCC) includes its accounting policy manual which shows, among other things, that FRCC has adopted the NERC System of Accounts and has developed expense accounts for recording non-statutory expenses that mirror the expense accounts in the NERC System of Accounts. The Midwest Reliability Organization (MRO) includes its time and expense guidelines, which contain internal instructions for recording income and expense items. MRO also provides a reconciliation of its account numbers with the NERC System of Accounts.

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[6] *2008 Budget Order*, 121 FERC ¶ 61,057 at P 80.

[7] *See* NERC's April 1, 2008 Compliance Filing, Attachments 4, 5, 6, 9, 10 and 11.

The Northeast Power Coordinating Council, Inc. (NPCC) includes its expenditure classification methodology, which shows that NPCC's statutory division program codes conform to the functional categories in the NERC System of Accounts, and that NPCC has established additional non-statutory program codes to record time and expenses. The Texas Regional Entity (Texas RE) includes its time and expense guidelines that are used to ensure that statutory expenses are accounted for separately from non-statutory income, time and expense using the chart of accounts established by the Electric Reliability Council of Texas (ERCOT). Texas RE also explains how it reconciles or "maps" the ERCOT account numbers with the NERC System of Accounts.

9. Southwest Power Pool, Inc. (SPP) includes an overview of its accounting system and a description of SPP Regional Entity (SPP RE) accounting. SPP states that the financial statements associated with SPP RE statutory functions are prepared manually. SPP further states that although all costs associated with SPP RE reside on SPP's general ledger, they are not necessarily isolated by specific account numbers and departments. SPP states that its staff identifies all time and expenses related to SPP RE activities and that these costs are collected and reported to SPP management on a monthly basis and to NERC on a quarterly and annual basis in the NERC Treasurers Report in the appropriate expense category, such as salary, benefits, travel and meetings expense. SPP states that an allocation of its overhead costs is calculated and inserted into the Treasurers Report. SPP explains that this allocation is calculated using a standard rate $110/hour multiplied by the number of staff hours spent supporting SPP RE. SPP states that this method was explained in its December 14, 2007 compliance filing.

10. Finally, the Western Electricity Coordinating Council (WECC) offers its time and expense guidelines showing the account and department codes used for recording time and expenses. WECC states that its accounting system incorporates both department codes for recording costs to the appropriate WECC departments and WECC account codes for properly recording costs. WECC also explains how it reconciles the WECC Chart of Accounts to the NERC System of Accounts.

Commission Determination

11. NERC has adequately explained how the functional categories and the listing of accounts interrelate and how the income, revenue and expenses recorded in the accounts are reconciled with the functional categories. In general, the Commission is also satisfied with the information provided by the Regional Entities regarding their non-statutory activities, including their accounting policies and procedures for recording and summarizing financial data and transactions. However, there remain specific concerns which NERC and SPP must address in a compliance filing, as discussed below.

12. The Commission is uncertain from SPP's response whether it aggregates costs using the NERC System of Accounts or keeps a readily available reconciliation of its

accounts with the NERC accounts. SPP states that costs are not necessarily isolated by specific account numbers and departments in the SPP general ledger. As costs are identified, SPP states that they are inserted into the NERC Treasurers Report in the appropriate expense category. However, SPP does not mention whether it has reconciled its account numbers with the NERC System of Accounts. Section 8(e) of the *pro forma* Delegation Agreement requires Regional Entities to follow NERC's prescribed system of accounts. A reconciliation of SPP and NERC account numbers is essential to ensure that SPP's accounting has properly reported income, revenue and expenses according to the NERC System of Accounts. This is especially critical due to the sizeable non-statutory activities reported by SPP. Accordingly, the Commission directs NERC to submit, within 30 days from the date of this order, a statement from SPP explaining whether it reconciled its accounts and income, revenue and expenses with the NERC System of Accounts and, if so, how it performed such reconciliation.

B. Revised Records Retention Policies

13. In the *2008 Budget Order*, the Commission stated that, due to the periodic ERO performance assessment established by Order No. 672, there may be some records, such as general and subsidiary ledgers, that may be needed for historical or reference purposes during the preparation or during the review of the performance assessment.[8] Because these performance assessments will be performed every five years, the Commission directed NERC to revise its retention schedule so that all records on its proposed records retention schedule that have a retention period less than five years, except routine vendor correspondence and employment applications, are retained for the longer of five years or until a final Commission order is issued regarding the performance assessment. The Commission reasoned that this retention period will ensure that all necessary records are available to conduct the performance assessments.

NERC Compliance Filing

14. In response, NERC filed a revised records retention policy providing that NERC will retain financial and accounting records for seven years. NERC states that it will also retain all relevant records until entry of a final Commission order on the NERC performance assessment covering the year in which the record was generated. Only two categories of financial and accounting records have retention periods of less than seven years: correspondence – routine vendor (one year) and employment applications (two years).

15. NERC states that it provided its revised records retention policy to each of the Regional Entities and requested each Regional Entity to confirm to NERC in writing that

[8] *2008 Budget Order*, 121 FERC ¶ 61,057 at P 82.

the Regional Entity is adopting the revised records retention policy. Most Regional Entities confirmed that they have adopted NERC's revised records retention policy while others report varied compliance.[9] MRO states that it has adopted a document retention and destruction policy consistent with the Sarbanes-Oxley Act and that it will revise its policy to be consistent with Commission requirements. NPCC states that its treasurer is currently modifying the record retention policy to adopt NERC's revised policy. Texas RE states that it has adopted NERC's record retention policy effective April 1, 2008, except that it has chosen to retain employment applications for candidates not hired for only one year unlike NERC's policy, which retains such documents for two years.

Commission Determination

16. In compliance with the *2008 Budget Order*, NERC has extended its retention schedule to seven years and agreed to retain all relevant records until entry of a final Commission order on the NERC performance assessment covering the year in which the record was generated. NERC's revised retention policy is more stringent than the Commission's directive and we therefore accept it for filing.

17. With the exception of MRO and NPCC, the Commission accepts the retention policies of the Regional Entities. NERC indicates in its April 2008 compliance filing that NPCC is currently modifying its retention policy to conform with NERC's policy. MRO indicates that it will modify its retention policy to be consistent with Commission requirement. Accordingly, we direct NERC to submit the modified document retention policies of MRO and NPCC with the 2009 budget filing.

C. NERC and Regional Entity True-Ups of 2007 Actual Costs

18. In the *2008 Budget Order*, the Commission directed NERC to provide an accounting true-up for over- and under-collections for the 2007 budget of the ERO and Regional Entities on or before April 1, 2008.[10]

1. NERC

19. In response, NERC provides a true-up of its actual 2007 costs. NERC states that its major over-budget variance was in ERO assessments, due to the fact that NERC's 2007 budget did not include a line item for contribution to cash reserves. NERC states that the incremental ERO assessment proposed by NERC and authorized by the

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[9] *See* NERC Compliance Filing, Attachments 4 – 11.

[10] *2008 Budget Order*, 121 FERC ¶ 61,057 at P 23.

Commission to provide funds to build a cash reserve equal to 10 percent of the budgeted operating expenses appears in the reconciliation as an over-budget variance of $804,779.

20. With respect to its expenses, NERC reports an under-budget variance of $760,360 in personnel expenses, which NERC attributes primarily to the fact that new staff members were hired later in the year than assumed in the budget. NERC also posted over-budget variances totaling $532,362 in meeting and travel expenses. NERC explains that this is primarily due to greater than expected levels in the Reliability Standards, reliability assessment and performance analysis, situational awareness and infrastructure security programs, and in general and administrative costs.

2. Regional Entities

21. NERC also provided reconciliations of the actual costs incurred by each Regional Entity in 2007 to its approved 2007 budget. NERC explains that it prepared a template for the 2007 actual cost-to-budget reconciliations which it requested the Regional Entities use to prepare their reconciliations. According to NERC, the template organizes presentation of actual costs and budgeted costs on a program-by-program and line-item basis. NERC states that it asked the Regional Entities to provide a cover letter discussing major variances for all statutory programs. NERC states that it also asked the Regional Entities to provide comments explaining significant variances experienced in individual income or expense categories within each program area. Finally, NERC states that it asked each Regional Entity to provide an explanation of the allocation methods it used to allocate indirect costs to the direct statutory program or functional area.

22. NERC states that its accounting and finance staff reviewed the initial template submissions and variance explanations from the Regional Entities, discussed these submissions with Regional Entity accounting and finance personnel, and provided comments to the Regional Entities. In response, each Regional Entity submitted revised documents responding to NERC's suggestions and specific comments. These submissions are included in attachments 4 through 11 of NERC's compliance filing.

23. NERC offers several observations regarding the Regional Entity submissions. First, the Regional Entities' audited financial statements were not due until May 29, 2008. Thus, to meet the April 1, 2008 compliance filing, the reconciliations prepared by seven of the Regional Entities are based on unaudited financial results for 2007. Second, NERC states that six of the eight Regional Entities were under budget for statutory activities in 2007. Third, NERC notes that the Regional Entities' reconciliations reflect that, in budgeting and recording costs for 2007, the Regional Entities used a variety of methods for assigning or allocating direct costs to expense categories and assigning or allocating indirect costs to their statutory programs.

a. FRCC

24. With respect to its statutory funding, FRCC reports that it received roughly $72,000 in additional funding during the year. FRCC explains that it received nearly $11,000 in accrued interest on funds that was not budgeted and nearly $61,000 in workshops, which were also not budgeted due to this being a "pass-through self-funding" item. Including this additional funding, FRCC reports that it was $246,619 under budget for 2007. Under its statutory expenses, FRCC reports that its personnel expenses were $144,000 over budget at year end because it dedicated more time than expected to its statutory functions and because it spent $32,000 in statutory funding to buy out its sick pay benefit program. FRCC also reports that its meeting expenses were $72,000 over budget due to workshops. By contrast, FRCC reports that its operating expenses were $391,000 under budget, primarily due to the determination by the FRCC operating committee that certain budgeted items to be spent and funded from statutory funds, were, in fact, non-statutory member services items.

25. With respect to its non-statutory funding, FRCC reports that it was $402,000 over budget at the year end. FRCC explains that this is due to two special assessments: one for the connection fees to the new Florida Transaction Management System[11] and the other to pay for software fees incurred when changing vendors for the Florida OASIS system. FRCC reports that its non-statutory personnel expenses were $46,000 over budget at year end, due primarily to the buy out of its sick pay benefit. FRCC also reports that its non-statutory operating expenses were $496,000 over budget. FRCC states that the majority of this variance, $301,947, was due to the determination by the FRCC Operating Committee that certain items budgeted as statutory were, in fact, non-statutory. Among these costs, FRCC reports a $134,180 charge for a shared reliability database for the FRCC region.

26. Following NERC's template, FRCC offers a presentation of actual costs and budgeted costs on a program-by-program and line-item basis. Unlike NERC, however, FRCC summarizes variances by program area instead of providing a line-item explanation for each.

b. MRO

27. MRO reports that its statutory expenses were $277,231 under budget in 2007. Moreover, MRO reports that it received $389,217 in unbudgeted revenues, resulting from statutory services providing software application and professional services relating to the Compliance Data Manager System with NERC, SPP and others. MRO explains that

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[11] FRCC notes that the Florida Transaction Management System is a software tool that enables multiple concurrent users to obtain a variety of reliability related services.

these revenues relate to the development of the system consistent with administering the compliance monitoring and enforcement program. Accordingly, MRO reports a net positive change in assets of $666,448 for statutory activities.

28. Among its major variances, MRO reports that it was $805,788 under budget for statutory personnel expenses largely due to delayed hiring in 2007. Conversely, MRO states that its statutory operating expenses were $437,789 over budget, due to higher than budgeted consultant fees, office costs and costs for professional services.

c. NPCC

29. NPCC did not use the NERC template to present actual versus budgeted costs on a program-by-program and line-item basis. Instead, NPCC submitted a letter along with a summary statement of activities, a statement of statutory activities and a statement of non-statutory activities. NPCC reports that it was $260,117 under budget for statutory activities and $140,169 under budget for non-statutory activities. NPCC offers summary explanations for variances cited in its summary statement of activities. NPCC states that the variances are consistent in percentage terms for each program area because NPCC used consistent proportional percentages based on full time equivalents allocated for each program area for 2007.

d. RFC

30. Reliability*First* Corp. (RFC) states that it was $2,690,349 under budget in 2007. RFC explains that the 2007 budget was created assuming that the entity would be fully operational beginning January 1, 2007. However, it delayed filling many full-time positions. As a result, RFC reports that it under spent on salaries by $392,938. Similarly, RFC reports that it was $99,373 under budget with respect to savings and retirement. RFC also states that medical insurance rates in 2007 were considerably lower than its 2006 rates, which caused a $437,911 under budget variance with respect to benefits costs. RFC reports that meeting expenses were $882,037 under budget, due to lower than budgeted staffing levels and the use of telecommunication to mitigate meeting expenses and travel costs. Due to its delay of enforcement operations, RFC states that its contract and consultant expenses were $152,522 under budget while its professional services were $104,499 under budget.

e. SERC

31. SERC Reliability Corp. (SERC) states that it was $581,030 under budget in 2007. SERC explains that its budget assumed a full staff beginning January 1, 2007 but, instead, SERC hired employees throughout the year. SERC states that the savings related to delayed hiring was partially offset by higher than budgeted salaries. SERC states that the cost of benefits was $157,347 under budget because a significant portion of staff

chose to remain with the benefits plans at their prior employers. SERC reports $587,806 in consultant expenses without any budget for such expenses.

f. SPP

32. SPP reports that it exceeded its overall statutory budget by $452,075. In addition to its authorized funding, SPP received $13,321 in additional funding from interest accrued on accounts. SPP cites the delay in the Regional Entity startup and lower than expected compliance activities as the primary reasons it was $509,209 under budget for personnel expenses, $482,164 under budget for meeting expenses, and $474,967 under budget for consultants. SPP's largest reported variance is an unbudgeted $2,034,406 in indirect costs. SPP explains that its 2007 budget did not reflect the indirect allocation methodology adopted for recording of 2007 actual expenses. SPP states that the actual indirect expense amount consists of shared services activities (payroll, human resources, IT support, leases, and other overheads) which are charged at a rate of $110.02 per direct employee hour worked supporting its Regional Entity functions.

g. Texas RE

33. Texas RE reports that its statutory budget was $3,252,021 under budget in 2007. Texas RE explains that its personnel expenses were roughly $1 million under budget due to delayed in hiring of qualified technical staff. This amount includes $650,000 under budget for salaries, $66,000 under budget for payroll taxes, $218,000 under budget for employee benefits, and $117,000 under budget for savings and retirement funds. Texas RE's consultant costs were also $102,000 under budget. Texas RE's largest under budget variance was for computer purchase and maintenance, which was $1.7 million under budget for 2007. Texas RE explains that this is due to the delay or cancelling of some budgeted software development projects.

h. WECC

34. WECC states that it exceeded its budget by $884,705. WECC reports that payroll expenses were over budget by $692,000 caused by hiring compliance staff to meet increased auditing requirements and reliability coordination staff to accommodate the acceleration of its reliability center initiative for a December 31, 2008 completion date.[12] By contrast, WECC reports that it under spent its budget for payroll benefits by $293,000 due to budgeting new employee training at a significantly greater level than occurred

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[12] The goal of WECC's Reliability Center Strategic Initiative is to consolidate WECC's three existing reliability centers, which have been hosted by balancing authorities in the WECC region, into two new reliability centers to be operated by WECC beginning January 1, 2009.

during the year, and budgeting for medical insurance at a higher level than actually occurred. WECC states that it exceeded its budget for meeting expenses by $280,000 as a result of seven unbudgeted meetings held to educate members with regard to its new compliance responsibilities and travel for compliance audits. WECC states that statutory contract activities were $683,000 over budget due to projects that were not completed in 2007 and a $365,000 charge that was originally budgeted by the reliability centers in contracts. According to WECC, this charge contributed to its over budget variance for consultant expenses of $868,000.

Commission Determination

35. The Commission accepts the true-up statement submitted by the ERO. Further, the Commission accepts the true-up statements of the Regional Entities, subject to NERC submitting a compliance filing to address specific concerns identified below.

36. In reviewing the true-up statements, the Commission has found that NERC and the Regional Entities have generally provided reasonable support for variances between their budgeted and actual costs. We applaud NERC's efforts to promote consistency by creating a template to be used by all Regional Entities for presentation of actual costs and budgeted costs on a program-by-program and line-item basis. NERC's efforts have resulted in a significant level of uniformity among the true-up statements of the ERO and Regional Entities. However, there remain inconsistencies among the Regional Entities' presentations, which need to be addressed. Some inconsistencies are in format alone and can be resolved by our identification of required practices for use in future true-up statements. Others will require a compliance filing, as discussed below.

Practices for Use in Future True-Up Statements

37. To promote consistency and transparency, the Commission directs the use of certain practices and formats in future true-up filings. In particular, Regional Entities must provide a cover letter discussing major areas of actual cost-to-budget variances for all of the Regional Entity's statutory programs in the aggregate. Regional Entities should also follow NERC's template for the presentation of actual costs and budgeted costs on a program-by-program and line-item basis. Significant variances must be explained on a line-item basis with enough particularized information to clearly support each such variance. Regional Entities should refrain from using generic, program area summaries to support significant variances. The cause for each such variance should therefore be clear on its face. Further, each Regional Entity must provide an explanation of the allocation methods it used to allocate indirect costs to the direct statutory program or functional areas, as well as any allocation between any statutory and non-statutory activities.

38. Cash reserves are meant to handle expenses which exceed the amount budgeted, as well as unforeseen events that could occur at any time. However, in the future, the

Commission expects NERC and the Regional Entities to justify the use of cash reserves as variances in the April true-up. Cash reserves should not become a means to fund expected projects outside of the budget approval process. The Commission expects that as NERC and the Regional Entities develop experience in planning and functioning under their budgets the amounts and number of variance will decrease. In addition, the Commission expects that with experience, the explanations for the variances will improve.

39. Our analysis of the Regional Entities' true-up statements indicates that many Regional Entities spent a significant percentage of their 2007 budgets on various administrative functions to support their statutory functions.[13] The amounts spent on administrative functions vary widely among the Regional Entities. For example, FRCC spent less than 2 percent of its budget on administrative expenses while SPP spent roughly 78 percent of its budget for such expenses. We recognize that 2007 is the first year that these Regional Entities have prepared a budget for statutory functions and that there are some startup costs that will be unique to 2007. The Commission anticipates, however, that such effects will diminish as NERC and the Regional Entities gain experience preparing their budgets. To promote better transparency, the Commission directs NERC to develop additional metrics to identify, in a uniform manner, information detailing its total expenses for administrative functions as well as the expenses for administrative functions for each Regional Entity. For example, one of the matrices should be the percentage spent by the Regional Entity on administrative functions as a portion of its total approved budgeted funding similar to the information provided in the table attached to this order. These new metrics should be designed to enhance the Commission's ability to compare information provided by the Regional Entities on administrative costs and to understand the reasons for any significant differences in amounts budgeted by different Regional Entities for the same function. The Commission therefore directs NERC to develop these additional metrics for use in the true-up filings for NERC's 2008 and 2009 budgets and for use in NERC's subsequent business plans and budgets beginning with NERC's 2010 Business Plan and Budget.

40. We direct NERC and the Regional Entities to file as part of their annual budget filing an exhibit showing and supporting any change from the April true-up filing due to audited numbers. Section 8(i) of the *pro forma* delegation agreement between NERC and

[13] The Commission considered the amount each Regional Entity spent on administrative functions as a percentage of its total budgeted funding. The administrative functions included in staff's analysis are: Committees and Member Forums, General and Administration, Legal and Regulatory, Information Technology, Human Resources, and Accounting and Finance. A table of administrative expenses spent by each Regional Entity as a percentage of its budgeted funding is included as Attachment A to this order.

the Regional Entities requires Regional Entities to submit audited financial results to NERC no later than 150 days following the end of the fiscal year. The Regional Entities' fiscal year ends December 31, which means that this year's audited financial statements were not due to NERC until May 29, 2008. Thus, in order to meet the April 1, 2008 compliance filing deadline, the reconciliations prepared by seven of the Regional Entities were based on unaudited financial results for 2007.

Specific Regional Entity Variances

41. Considering that 2007 was the first year that NERC and the Regional Entities enforced mandatory Reliability Standards, and that the effective date of the initial Reliability Standards was June 18, 2007, the Commission understands the existence of numerous variances between budgeted and actual costs. Some variances, however, require further explanation and support, as discussed below.

42. NPCC's true-up statement provides explanations for summary items without distinguishing between statutory and non-statutory expenses. NPCC states that its statutory and non-statutory costs for professional services exceeded its budget by $344,175, of which $260,265, or 75 percent, was charged to statutory activities. NPCC states that this over-budget variance is due to its reorganization activities. It is not clear why NPCC charged such a large portion of its reorganization costs to its statutory activities. The Commission therefore directs NERC to file a statement from NPCC, within 30 days from the date of this order, supporting NPCC's allocation of reorganization costs to statutory activities.

43. FRCC reports that its statutory personnel expenses were over budget by $144,000 at year end. FRCC states that this variance was due in part to its decision to buy out sick pay benefits from its employees. However, FRCC has not identified the amount paid for this buy out or the time period during which these benefits were earned. The Commission therefore directs NERC to file additional information from FRCC, within 30 days from the date of this order, identifying the amount paid and the time period in which the benefits were earned. Based on the submission, the Commission believes that to the extent any of these benefits were earned prior to FRCC becoming a Regional Entity, FRCC must reimburse those statutory funds used to buy out the benefits.

44. RFC reports that general and administrative salaries are $98,601 over budget due to an error of not accounting for multiple years of long-term incentives. RFC's reference to multiple years of long-term incentive indicates that this expense pre-dates RFC's role as a Regional Entity. It appears that only the portion of the error that is attributable to 2007 pay roll should be deemed statutory. However, RFC's explanation for this variance lacked sufficient detail to properly evaluate this variance. We therefore direct NERC to file additional information from RFC, within 30 days from the date of this order, providing further details on this error by year. Based on the information provided to date, we believe that to the extent any of these payments are the result of errors that pre-date

RFC's function as a Reliability Entity, RFC must refund those amounts to its statutory funding for 2007.

45. SPP Regional Entity (SPP RE) reports unbudgeted indirect costs totaling $2,034,406. SPP RE states that its indirect costs reflect the staffing costs of employees of the SPP regional transmission organization who dedicated time to the efforts of the Regional Entity. SPP states that it translated these indirect costs into an hourly format and expensed against the SPP RE budget as time was reported. SPP then determined an indirect rate of $110 per hour, based upon costs contained in the 2007 SPP RE budget. In March 2008, the Commission approved SPP's use of the $110 per hour rate for shared employees in SPP RE's 2008 budget, subject to NERC submitting a detailed analysis of SPP RE's actual costs in its April 2009 true-up filing.[14] SPP RE did not have any similar direction for indirect costs incurred in 2007 for shared employees. However, the Commission understands that SPP RE has made a diligent effort to allocate costs appropriately. The Commission therefore accepts SPP RE's proposed treatment of indirect costs for 2007.

46. Unlike other Regional Entities, NPCC chose not to follow NERC's template for presenting actual costs and budgeted costs on a program-by-program and line-item basis. NPCC explains that during 2007, NPCC, Inc. merged with NPCC Cross Border Regional Entity. In addition, NPCC states that for 2007, it allocated all costs to the statutory program areas based on full-time equivalent staff allocated to each program for 2007, rather than charging actual expenditures directly to the individual program areas. Although the Commission typically advocates for consistency among regional entities, we recognize the particular concerns of NPCC and will accept NPCC's true-up statement as presented. We make this exception based, in part, upon the complications associated with NPCC's merger. We do expect, however, that NPCC will follow the NERC template for future true-up statements.

47. Under its general and administrative function, WECC reports that it spent $37,221 on consultants for a database project, which it budgeted in 2006 and completed in 2007. WECC reports that it did not budget for this cost in 2007. However, WECC has not provided enough information to demonstrate that this database is an appropriate statutory activity meriting use of statutory funds. The Commission, therefore, directs NERC to file additional information from WECC, within 30 days from the date of this order, explaining and supporting this expenditure. To the extent that this database does not serve an approved statutory function, WECC must reimburse the statutory funding used to cover its costs.

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[14] *North American Electric Reliability Corp.*, 122 FERC ¶ 61,246, at P 14 (2008).

48. With respect to any surplus funding for 2007, the Commission has already approved using these funds to offset 2008 compliance expenses.[15] We direct NERC to file a report to the Commission, within 30 days from the date of this order, listing the amount NERC and each Regional Entity had in their cash reserves prior to the commencement of 2007 activities, and the amount remaining at the end of the year. To the extent any Regional Entity has spent in excess of its reserve, NERC must explain how the Regional Entity funded those excess costs.

D. <u>Use of Statutory Funding for Non-Statutory Costs</u>

49. In compliance with the *2008 Budget Order*, NERC and the Regional Entities reported whether any budgeted funding identified as statutory was actually spent to fund non-statutory activities. NERC, SERC and RFC report that they had no non-statutory activities in 2007. FRCC and NPCC report that they did not use any statutory funds for non-statutory activities. NERC reports that SPP also did not use any statutory funds for non-statutory activities. The remaining three Regional Entities identified instances of the use of statutory funding to fund non-statutory activities during 2007.

50. MRO reports that its only non-statutory business activity is a service agreement with MAPPCOR.[16] MRO explains that, prior to MRO becoming a stand alone organization with its own employees, it contracted with MAPPCOR for regional reliability services. On January 1, 2007, MRO purchased MAPPCOR's assets related to Regional Entity functions and assumed some of MAPPCOR's employees. Until the asset sale, MRO states that the employees and functions of MRO under the contract with MAPPCOR were segregated. As part of the asset purchase agreement, MRO agreed to

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[15] *2008 Budget Order*, 121 FERC ¶ 61,057 at P 18, 24. In its proposed 2008 Business Plan and Budget, NERC requested the Commission's approval for NERC and the Regional Entities to retain any year-end budget surpluses that may exist at the end of 2007 for use in 2008 if the compliance and enforcement workload should turn out to be greater than anticipated. NERC argued that given the uncertainties associated with the first full year of operations in enforcing mandatory Reliability Standards, it recommended this one-time suspension of the normal policy in order to make additional resources available to the compliance and enforcement program should the need arise. The Commission responded in the *2008 Budget Order* stating that "Because 2008 is the first complete year in which NERC (and the Regional Entities) will be enforcing the Reliability Standards, the Commission finds that NERC's proposal to suspend the normal policy and use any year-end budget surpluses for compliance and enforcement programs is reasonable."

[16] MAPPCOR is a division of the Mid-Continent Area Power Pool (MAPP) that provides transmission and reliability services to MAPP members.

provide services to MAPPCOR to assure operational continuity but that these services may be terminated at the end of 2008. MRO states that expenses under the service agreement were originally charged as statutory items but were fully reimbursed by collection of a quarterly fee from MAPPCOR.

51. Texas RE reports that it mistakenly used $83,000 in statutory funding to fund a non-statutory professional services project. Texas RE states that this project was meant to facilitate an analysis by Texas RE and ERCOT, after low frequency events, of the performance of qualified scheduling entities, resources, and loads acting as resources. Texas RE states that once it determined that this was a non-statutory protocol project, it immediately reclassified the expense to the appropriate account cost and returned funds back to the statutory funding pool.

52. WECC states that during the startup activities for the Western Renewable Energy Information System (WREGIS) program, expenses totaling $15,000 were deemed non-reimbursable by WREGIS' funding entity, the California Energy Commission. WECC states that it paid these funds on behalf of WREGIS and that these funds will be repaid to WECC by WREGIS when funds are generated.

Commission Determination

53. With one exception, the Commission accepts the statements provided by NERC and the Regional Entities regarding their use of statutory funding for non-statutory costs and appreciates the diligence demonstrated by the corrective actions. As the Commission stated in the 2008 Budget Order, statutory funding must be used for statutory purposes only.[17] If statutory funding is used for non-statutory purposes, it must be promptly reimbursed.

54. The Commission is concerned regarding one instance in which it appears that a Regional Entity used statutory funding for non-statutory costs. The true-up filing indicates that WECC failed to reimburse funds related to the WREGIS start up activities to its statutory accounts. Moreover, WECC has not provided sufficient detail on the time and manner of the reimbursement expected from WREGIS. Accordingly, we direct NERC to file with the Commission, within 30 days of the date of this order, either a statement from WECC that WREGIS has reimbursed these funds to WECC or a detailed plan on how and when WREGIS will reimburse these funds to WECC.

[17] *2008 Budget Order*, 121 FERC ¶ 61,057 at P 66.

The Commission orders:

(A) NERC's compliance filing here is hereby conditionally accepted, as discussed in the body of this order.

(B) NERC is hereby directed to submit an additional compliance filing within 30 days of the date of this order, as discussed in the body of this order.

(C) NERC is hereby directed to submit modified document retention policies of MRO and NPCC with the 2009 NERC budget filing, as discussed in the body of this order.

(D) NERC is hereby directed to develop additional metrics regarding administrative costs for use in NERC's 2008 and 2009 true-up filings and all subsequent business plans and budgets beginning with NERC's 2010 Business Plan and Budget, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Attachment A

Docket No. RR07-16-003

	Total Administrative Expense	Total Statutory Budgeted Funding	Percentage of Total Budgeted Funding
FRCC	$48,612	$2,450,294	1.98 %
MRO	$1,769,944	$5,021,588	35.25 %
NPCC	Unavailable	$5,214,361	unavailable
RFC	$2,522,443	$9,443,972	26.71%
SERC	$2,469525	$5,702,055	43.31 %
SPP	$2,488,870	$3,181,026	78.24%
Texas RE	$464,707	$4,870,755	9.54%
WECC	$6,390,254	$17,832,369	35.84%