

127 FERC ¶ 61,307
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

North American Electric Reliability Corporation

Docket No. RR07-16-005

ORDER CONDITIONALLY ACCEPTING COMPLIANCE FILING

(Issued June 29, 2009)

1. On April 1, 2009, the North American Electric Reliability Corporation (NERC) submitted a filing in compliance with the Commission's October 18, 2007 order on NERC's 2008 business plan and budget.¹ NERC's filing includes a true-up of actual 2008 costs incurred by NERC and each Regional Entity to their respective 2008 budgets.² The filing also includes responses to other compliance directives. In this order, the Commission conditionally accepts NERC's compliance filing and directs NERC to provide additional information in its 2010 business plan and budget, as discussed below.

I. Background

2. In the 2008 Budget Order, the Commission directed NERC to submit a true-up of its 2008 budget, as well as for the budgets of 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.³ Subsequently, in its June 19, 2008 order on compliance, the

¹ *N. Am. Elec. Reliability Corp.*, 121 FERC ¶ 61,057 (2007) (2008 Budget Order).

² The Regional Entities represented in this filing 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 (TRE), and Western Electricity Coordinating Council (WECC).

³ 2008 Budget Order, 121 FERC ¶ 61,057 at P 23; *see also id.* at Ordering Paragraph (G).

Commission provided further direction concerning the presentation of the annual filings.⁴ On April 1, 2009, NERC submitted the instant filing in compliance with the directives of the 2008 Budget Order and 2008 Compliance Orders.

II. Notice and Responsive Pleadings

3. Notice of the filing was published in the *Federal Register*, 74 Fed. Reg. 17,191 (2009), with interventions and protests due on or before April 22, 2009. American Municipal Power-Ohio, Inc. filed a timely motion to intervene.

III. Discussion

A. Procedural Matters

4. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the timely, unopposed motion to intervene serves to make the entity that filed it a party to this proceeding.

B. Comparisons of Budget to Actual Costs

5. In the June 19, 2008 compliance order, the Commission directed each Regional Entity to 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.⁵ The Commission also directed the Regional Entities to follow NERC's template for the presentation of budgeted costs and actual costs on a program-by-program and line-item basis and significant variances explained on a line-item basis, with enough particularized information to clearly support each such variance.

6. In the 2008 Budget Order, the Commission directed each Regional Entity to provide an explanation of the allocation methods 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.⁶ Finally, the Commission directed NERC and the Regional Entities to justify the use of cash reserves for variances in its April 1, 2009 true-up filing.⁷

⁴ *N. Am. Elec. Reliability Corp.*, 123 FERC ¶ 61,282 (2008) (June 19, 2008 Compliance Order).

⁵ *Id.* P 37.

⁶ 2008 Budget Order, 121 FERC ¶ 61,057 at P 69.

⁷ June 19, 2008 Compliance Order, 123 FERC ¶ 61,282 at P 38.

1. NERC Compliance Filing

7. NERC provided a comparison of the actual funding received and costs incurred by each Regional Entity for statutory and non-statutory activities for the year ending December 31, 2008. Each comparison contained a cover letter identifying overall actual cost-to-budget variances and reasons for major variances. NERC explained that each attachment presents actual-to-cost information in a consistent format and that the explanations of variances should enable the Commission to make comparisons as to the amount of variances experienced in individual program areas and individual line items. NERC and each Regional Entity submitted a detailed accounting of its financial activity for fiscal year 2008. The NERC filing contained balance sheets for all of the various program areas, as well as descriptions of significant events and variances. Additionally, NERC and the Regional Entities provided calculations and metrics, which were necessary to understand the financial events of 2008.

8. FRCC stated that it uses standard cost accounting procedures to allocate general expenses that cannot be directly assigned to a specific Statutory or Member Services function. Expenses are charged to a particular function, either by direct expense or by allocation from the results of the monthly time accounting summarization of FTE by function.

2. Commission Determination

9. Except as otherwise noted below, the Commission accepts the true-up statements submitted by the ERO and the Regional Entities. NERC and the Regional Entities have provided adequate support for variances between actual costs versus budgeted costs on a program-by-program and line-item basis. The Regional Entities also have provided an improved level of consistency in the presentation of their true-up statements, in accordance with the NERC statement of accounts template. The Commission is satisfied with the consistency in addressing major areas of actual cost-to-budget variances for each Regional Entity's statutory programs in the aggregate.

C. Metrics Concerning Administrative Costs

10. The Commission also directed NERC to develop additional metrics for analyzing administrative costs for use in NERC's true-up filings for its 2008 and 2009 budgets and for use in subsequent business plan and budget filings.⁸ The Commission explained that the new metrics were to identify, in a uniform manner, information detailing NERC's and

⁸ *Id.* P 39.

the Regional Entities' total expenses for administrative functions.⁹ Further, the new metrics were to 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.

1. NERC Compliance Filing

11. In response to the Commission's directive, NERC developed the following metrics: (1) statutory indirect expenses as a percent of total statutory expenses, and statutory direct expenses per dollar of statutory indirect expense; (2) statutory indirect full-time equivalent employees (FTE) as a percent of total statutory FTEs, and ratio of statutory direct FTEs to statutory indirect FTEs; and (3) total statutory expenses per total FTEs, statutory direct expenses per direct FTEs, statutory indirect expenses per indirect FTEs, and statutory indirect expenses per total FTEs. Further, NERC indicated that it is appropriate to analyze these indirect costs in the aggregate, as the Commission did in the June 19, 2008 Compliance Order, rather than by individual function, due to certain necessary inconsistencies among the Regional Entities in budgeting and recording these costs.

12. NERC presented comparisons of the 2008 budgets and actual costs for NERC and the Regional Entities, except FRCC, along with an analysis or explanation of the results derived from each metric. NERC's submission indicates that the 2008 actual comparisons do not show all of the percentages and ratios for FRCC, because FRCC does not record its indirect expenses in a manner that enabled it to break out actual direct and indirect expenses in the manner needed for these calculations.¹⁰

2. Commission Determination

13. The Commission acknowledges the efforts of NERC and the Regional Entities in developing the metrics for comparing statutory direct and indirect costs between NERC and the Regional Entities. We believe that, properly used, these metrics will provide the necessary information and transparency for comparing indirect or administrative expenses among the Regional Entities and between the Regional Entities and NERC.

⁹ NERC indicates that the administrative functions cited in the 2008 Compliance Order are functions that NERC and the Regional Entities refer to as "indirect" costs in their business plans and budgets and reports. The administrative functions include: Committees and Member Forums, General and Administration, Legal and Regulatory, Information Technology, Human Resources, and Accounting and Finance.

¹⁰ See NERC Filing, Attachment 2 (FRCC) at 4-6.

14. However, the Commission is concerned that FRCC was not included in the metrics analysis. The fact that FRCC uses a different method than NERC and the other Regional Entities for recording indirect costs does not obviate the need to establish procedures for capturing and presenting actual indirect costs for Commission review. Accordingly, we direct NERC and FRCC to develop procedures for capturing actual indirect costs and to provide details relating to these procedures in the true up filing to the 2010 NERC and Regional Entity business plan and budget.

D. Additional Compliance Item Concerning SPP Regional Entity

15. In the March 21, 2008 order on compliance,¹¹ the Commission directed that certain additional items of the information concerning SPP-RE's actual and budgeted costs were to be provided in future annual business plan and budget filings. The Commission required SPP-RE to include a detailed analysis of its actual costs specifically related to (a) information regarding the proposed hours shared employees will work on SPP-RE business, (b) its actual per hour rate for each indirect cost allocation for shared services, (c) detailed accounting of actual employee costs, (d) specific information regarding the actual hours shared employees work on SPP-RE business, (e) shared employees' actual per hour rate, and (f) documentation demonstrating that a Regional Entity employee approved the assignment of work to shared employees before it began and authorized the work before it was paid.

16. The Commission also directed SPP to submit a revised business plan and budget, to include the total cost for direct funding for each of the statutory functions in addition to the already existing dollar breakdown for the direct funding expense lines.¹²

1. NERC Compliance Filing

17. NERC states that it has reviewed drafts of SPP-RE's responses and believes SPP-RE has responded appropriately to each of the above items. Southwest Power Pool, Inc.'s (SPP) submission indicates that paragraph 14 of the March 21, 2008 Compliance Order inaccurately described the processes by which SPP's shared employee costs and SPP's indirect costs are charged to the SPP-RE's statutory activities.¹³ SPP states that the SPP-RE incurs two types of charges from SPP: (1) direct charges for SPP-RE and

¹¹ *N. Am. Elec. Reliability Corp.*, 122 FERC ¶ 61,246 at P 14 (March 21, 2008 Compliance Order).

¹² *Id.* P 7.

¹³ NERC Filing, Attachment 7 (SPP) at 2.

SPP shared staff hours worked on delegated functions and (2) indirect charges reflecting allocated overhead costs.¹⁴

18. SPP explains that direct charges for the SPP-RE and SPP shared staff hours are determined by the actual hours spent in support of the delegated function at each employee's actual compensation rate. These specific hours are recorded in a time tracking system, posted by the specific Regional Entity and shared staff, and reviewed and approved by their specific manager or supervisor. SPP states that as of March 16, 2009, the SPP-RE General Manager will review the approved hours submitted by shared staff. Further, SPP provides documentation of the direct charged hours by SPP-RE and shared staff for 2008.

19. SPP's submission indicates that the hourly indirect/overhead rate used by SPP-RE in preparing its 2008 budget was \$110. SPP-RE has recalculated, based on SPP's actual overhead costs for 2008, the indirect/overhead rate applied to statutory direct function hours as \$105 per man hour. The submission indicates that this new rate has been applied to all hours associated with budget year 2008 on an actual basis.

20. SPP explains that during the 2008 budgeting process, the overhead expenses of an additional employee added to the General and Administrative delegated function were inadvertently omitted. SPP's submission indicates that this resulted in a \$206,800 increase in statutory indirect costs in the 2008 SPP-RE General and Administrative budget.

21. Finally, SPP submitted a revised SPP 2008 business plan and budget, which includes the total cost for direct funding for each of the statutory functions in addition to the already existing dollar breakdown for the direct funding expense lines.

2. Commission Determination

22. The Commission is satisfied with SPP's explanation of the processes by which the shared employee costs and indirect costs are allocated to the SPP-RE statutory activities. The Commission is also satisfied with the SPP-RE General Manager approval process of the actual hours shared employees work on SPP-RE business. Accordingly, the Commission accepts the revised SPP 2008 business plan and budget, including total costs for direct funding for each of the statutory functions.

¹⁴ *Id.*

E. NERC Request to Change Filing Date for Annual Cost-to-Budget Comparisons

23. NERC requests that the Commission allow it to make a single annual actual cost-to-budget comparison filing, to be due on May 30 of the following year. Presently, NERC is required to file actual cost-to-budget comparisons for NERC and the Regional Entities by April 1, for the preceding year.¹⁵ NERC points out, however, that delegation agreements between NERC and the Regional Entities require the Regional Entities to provide their audited financial statements for the year to NERC within 150 days following the end of the year, i.e., by May 30 of the following year. Thus, NERC explains that the annual cost-to-budget comparisons filed on April 1 are based on unaudited financial statements. NERC states that the actual cost-to-budget comparisons filed on May 30 would be based on the audited financial reports for NERC and the Regional Entities.

24. Accordingly, the Commission grants NERC's request to convert the annual filing date for actual cost-to-budget comparisons from April 1 to May 30.

The Commission orders:

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

(B) NERC is hereby directed to provide certain information in the annual true up to its 2010 business plan and budget filing, as discussed in the body of this order.

(C) NERC's request to convert the annual filing date for actual cost-to-budget comparisons from April 1 to May 30 is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁵ 2008 Budget Order, 121 FERC ¶ 61,057 at P 23.