

137 FERC ¶ 61,071
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

North American Electric Reliability Corporation

Docket No. RR11-7-000

ORDER ACCEPTING 2012 BUSINESS PLAN AND BUDGET OF THE NORTH
AMERICAN ELECTRIC RELIABILITY CORPORATION

(Issued October 20, 2011)

1. On August 24, 2011, the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization (ERO),¹ filed its 2012 business plan and budget, as well as the 2012 business plans and budgets of each Regional Entity and of the Western Interconnection Regional Advisory Body (WIRAB).² As discussed below, the Commission accepts the business plan and budget of NERC and the business plans and budgets of the Regional Entities and WIRAB, as well as the associated attachments and updates. NERC is authorized to issue billing invoices to fund the fiscal year 2012 operations of the Regional Entities, WIRAB, and itself.

I. Background

A. Regulatory History

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

¹ *North American Electric Reliability Corp.*, 116 FERC ¶ 61,062, *order on reh'g and compliance*, 117 FERC ¶ 61,126 (2006), *aff'd 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 (RFC); SERC Reliability Corporation (SERC); Southwest Power Pool Regional Entity (SPP RE); Texas Reliability Entity (Texas RE); and Western Electricity Coordinating Council (WECC).

review and approval.³ Specifically, 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

3. 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.

4. In an October 2006 order, the Commission conditionally accepted NERC’s 2007 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, 2009, 2010, and 2011 business plans and budgets.⁹

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) (2011).

⁸ *North American Electric Reliability Corp.*, 117 FERC ¶ 61,091 (2006), *order on reh’g*, 119 FERC ¶ 61,059 (2007).

⁹ *North American Electric Reliability Corp.*, 121 FERC ¶ 61,057 (2007); *North American Electric Reliability Corp.*, 125 FERC ¶ 61,056 (2008) (2009 Budget Order), *order granting clarification*, 126 FERC ¶ 61,021 (2009) (2009 Budget Clarification

B. NERC's 2012 ERO Business Plan and Budget Application

5. NERC's Application contains its proposed business plan and budget for the year ending December 31, 2012, 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, 2012.

6. The proposed assessment for statutory activities for 2012 in the United States, Canada, and Mexico is \$160,942,119, which includes \$50,661,272 for NERC funding; \$110,037,998 for Regional Entity funding; and \$242,849 for WIRAB funding. NERC states that the portion allocable for the United States statutory activities of NERC, the Regional Entities and WIRAB is \$144,102,400.

7. 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) from 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 Further, NERC 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. In addition to the NERC and Regional Entity business plans and budgets, NERC has included various attachments in this filing, including: "Discussion of Comments Received During Development of NERC's 2012 Business Plan and Budget" (Attachment 12), "Calculation of Adjustments to the Alberta Electric System Operator 2012 NERC Assessment, the Ontario Independent Electric System Operator 2012 NERC Assessment, the New Brunswick System Operator 2012 Assessment and the Québec 2012 NERC Assessment" (Attachment 13), "Status Report on the Achievement of NERC's 2011 Goals" (Attachment 14), "Metrics Comparing Regional Entity Operations Based on the 2011 Projections and 2012 Budgets" (Attachment 15), "Metrics on NERC and Regional

Order), *order on compliance*, 128 FERC ¶ 61,025 (2009) (2009 Budget Compliance Order); *North American Electric Reliability Corp.*, 129 FERC ¶ 61,040 (2009) (2010 Budget Order); *North American Electric Reliability Corp.*, 133 FERC ¶ 61,062 (2010) (2011 Budget Order).

¹⁰ NERC Application at 21, n.35; *see also id.*, Attachment 2 (NERC Business Plan and Budget), Appendix 2C.

¹¹ *Id.* at 21, n.35.

Entity Administrative (Indirect) Costs Based on the 2012 Budgets” (Attachment 16), and “Status Report on Progress in Processing Violations of Reliability Standards” (Attachment 17).

C. Financial Performance Audit of NERC

9. On August 22, 2011, the Commission’s Division of Audits in the Office of Enforcement informed NERC by letter that it was commencing an audit of NERC pursuant to section 215 of the FPA.¹² The audit letter stated that the financial performance audit will evaluate “NERC’s budget formulation, administration, and execution . . . will focus on the costs and resources used to achieve program objectives . . . [and] will cover the period from August 23, 2006 to the present.”¹³

II. Notice and Responsive Pleadings

10. Notice of NERC’s August 24, 2011 Filing was published in the *Federal Register*, 76 Fed. Reg. 54,755 (2011), with interventions and protests due on or before September 14, 2011. A motion to intervene was timely filed by American Municipal Power, Inc. Motions to intervene and comments were timely filed by American Public Power Association (APPA) and Edison Electric Institute (EEI). Both APPA’s and EEI’s comments support Commission approval of NERC’s 2012 business plan and budget.

III. Discussion

A. Preliminary Matters

11. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), 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

12. NERC states that its 2012 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 goals in 2012 include: (1) developing

¹² 16 U.S.C. § 824o (2006); 18 C.F.R. § 39.2(d) (2011).

¹³ The August 22, 2011 Audit Letter to NERC is available on the Commission’s eLibrary document retrieval system in Docket No. FA11-21-000.

clear, results-based reliability standards; (2) promoting a culture of industry learning and reliability excellence; (3) providing effective measures of reliability and risk performance; (4) facilitating effective management of critical infrastructure tasks; (5) ensuring effective and timely compliance and mitigation; (6) providing an effective and efficient ERO enterprise; and (7) instilling a high degree of trust and confidence in the ERO.¹⁴

13. NERC's 2012 business plan and budget are based on the following statutory program areas: (1) Reliability Standards; (2) Compliance Enforcement and Organization Registration and Certification; (3) Reliability Assessment and Performance Analysis; (4) Training, Education and Personnel Certification; and (5) Situational Awareness and Infrastructure Security.¹⁵ For NERC's five statutory 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 2012. NERC also provides 2011 approved budget data and 2012 projected data for comparison.

14. NERC's proposed total budget for 2012 is \$53,112,272, a decrease of \$614,193 or 1.1 percent over the 2011 budget requirement of \$53,726,465. NERC's proposed 2012 net funding requirement is \$50,661,272 (i.e., total budget less funding from other sources), of which \$46,132,189 is allocated to the United States.¹⁶ The net funding requirement allocated to the United States is an increase of \$12,874,197, or 38.7 percent, over the 2011 budget proposal.¹⁷ NERC states that its proposed total U.S. net funding requirement is equivalent to \$0.0000115 per kWh, based on the aggregate NEL of the United States in 2010.¹⁸

15. In contrast to the 2011 budget proposal, NERC does not propose to set aside funds for its Working Capital Reserve in the 2012 budget proposal. NERC projects a Working

¹⁴ NERC Application at 6.

¹⁵ *Id.* at 19; *see also* Attachment 1.

¹⁶ NERC Application at 19.

¹⁷ The substantial increase in the net funding requirement allocated to the United States is explained in large part by the fact that the 2012 budget proposal does not rely on penalty payments to otherwise reduce the net funding requirement because it received no penalty payment during the period July 1, 2010 through June 30, 2011. By contrast, the 2011 budget proposal included \$10,175,000 in penalty payments received from registered entities during the period July 1, 2009 through June 30, 2010, thus reducing the net funding requirement for that period. NERC Application at 18.

¹⁸ *Id.* at 19.

Capital Reserve of \$1,798,578 at December 31, 2011.¹⁹ Moreover, NERC states that under the terms of the lease for its new Atlanta headquarters, rent is abated for a significant portion of 2012 and that it maintains a \$4,000,000 line of credit with a major financial institution.²⁰

16. As shown in the table below, NERC proposes a 2012 staffing level of 176.75 FTEs, which is an increase of 26 FTEs over the 2011 budget staff level of 150.75 FTEs.

NERC Program	2012 Budget²¹	Direct FTEs²²	Change in FTEs from 2011 Budget
Reliability Standards	\$9,156,601	24.92	4.84
Compliance Monitoring and Enforcement and Organization Registration and Certification	\$19,514,535	55.66	8.58
Reliability Assessment and Performance Analysis	\$6,968,860	16.5	2.75
Training, Education and Operator Certification	\$3,098,129	6.75	.5
Situational Awareness and Infrastructure Security	\$14,374,147	25.17	-0.66
Administrative Services ²³		47.75	10

¹⁹ *Id.* at 53-54.

²⁰ *Id.*

²¹ The amounts projected for each program area are the total direct funding for Canada, Mexico, and United States. NERC Application, Attachment 2 at 6 (Table 1).

²² NERC Application, Attachment 2 at 24.

²³ The budgeted amount for each program includes the total cost for administrative services (\$19,922,828), which is allocated to each program based on the number of FTEs budgeted for that program. NERC Application at 19.

Contribution to Working Capital Reserve	\$0		
Total Budget	\$53,112,272	176.75	26
Less other funding sources	(\$2,451,000)		
Net Funding Requirement	\$50,661,272		

b. Commission Determination

17. The Commission accepts NERC's business plan and budget. We find that NERC's budget is reasonable and the associated costs of NERC's jurisdictional functions are equitably allocated among end users.²⁴

2. Regional Entity Business Plans and Budgets

18. NERC's Application includes the 2012 Business and Budget Plan of each Regional Entity. NERC states that it reviewed the Regional Entity business plans and budgets and concludes that each Regional Entity proposes necessary and adequate resources to carry out its delegated functions.²⁵ The Commission has reviewed each Regional Entity budget, and has determined that each submission reasonably supports the level of expenditures identified in the budget.

19. 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 accepts the Regional Entity business plans and budgets.

3. WIRAB Budget

20. WIRAB's total budget for 2012 is \$614,677, which is a \$1,793 decrease over its 2011 budget. WIRAB proposes to fund its 2012 budget through its Working Capital Reserve and interest income and, therefore, its statutory funding for 2012 will be \$242,849 for 2012 (of which \$205,937 will be allocable to the United States). WIRAB states that it will employ 2.75 FTEs for 2012, an increase of .25 FTEs over 2011.

²⁴ 16 U.S.C. § 824o(c)(1)(B) (2006). The Commission is currently undertaking an audit of NERC's financial performance. Any issues discovered in the course of the audit will be addressed with NERC as part of that process.

²⁵ NERC Application at 23-24.

21. Based on the information provided by WIRAB, the Commission concludes that WIRAB's 2012 budget is reasonable and, accordingly, the Commission accepts the WIRAB 2012 budget.

4. Other Matters

a. Background

22. In the 2011 Budget Order, the Commission directed NERC to make additions to Attachments 15 and 16 regarding metrics used to analyze the Regional Entities operations in future business plan and budget filings.²⁶ Specifically, the Commission directed NERC to include an analysis of the current fiscal year in addition to the "Metrics for Budget Submission" for the next budget year, specifically a "projected" versus "budgeted" amount.²⁷

b. NERC Application

23. As in past budget proposals, NERC provides two sets of metrics in Attachments 15 and 16. NERC states that Attachment 15 "depict[s] and compare[s] the Regional Entities' total statutory budgets and staffing, [Compliance Monitoring and Enforcement Program (CMEP)] budgets and staffing, total statutory budget and CMEP budget dollars per registered entity and per registered function, registered entities and registered functions per statutory FTE and per CMEP FTE, numbers of 'small,' 'medium' and 'large' non-CIP compliance audits and 'small' and 'large' CIP compliance audits, and cost per compliance audit by type and size of audit."²⁸ Further, NERC states that the metrics in Attachment 16 "focus[] on the NERC and Regional Entity administrative (indirect) costs and staffing relative to total and direct program costs and staffing."²⁹ In response to the Commission's directive regarding additional metrics in the 2011 Budget Order, NERC states that Attachment 15 now "has been expanded to include metrics based on the NERC and Regional Entity 2011 projections included in their respective 2012 Business Plans and Budgets."³⁰

24. For future budget proposals, NERC asks the Commission to discontinue the requirement directed in the 2011 Budget Order that NERC and the Regional Entities

²⁶ 2011 Budget Order, 133 FERC ¶ 61,062 at P 38.

²⁷ *Id.*

²⁸ NERC Application at 79.

²⁹ *Id.*

³⁰ *Id.* at 80.

present metrics based on current year financial projections. NERC states that although NERC and the Regional Entities present current year “projections” in their business plans and budgets, these “projections” are not prepared with the level of consistency used to prepare the entities’ annual budgets and therefore, make the usefulness of any comparison using this information questionable. NERC states that it has not developed a set of guidelines and criteria with the Regional Entities for making such decisions and, as a result, the comparison of those metrics to the metrics based on the budgets for the upcoming year does not provide meaningful comparative information. Further, the comparison could be misleading because the two sets of underlying numbers are not necessarily prepared with the same levels of consistency. In addition, NERC states that it already prepares and files a detailed report with the Commission comparing their final, actual, audited statutory costs to their budgeted costs for the preceding year, with explanations of significant variances on a total entity basis and on a line item basis by program, and includes metrics based on both budgeted costs and actual costs for the preceding year.

c. Commission Determination

25. The Commission agrees that the additional metrics developed in response to the 2011 Budget Order, i.e., the “Metric Based on 2011 Regional Entity Projections” presented in Attachment 15 of NERC’s Application, are of limited value and should be discontinued in future business plan and budget filings.³¹ NERC should continue to provide the metrics on Regional Entity operations in Attachments 15 and 16 that it has historically provided.

26. In reaching this determination, the Commission considered the following arguments raised in NERC’s Application: (1) NERC and the Regional Entities have not developed a set of guidelines and criteria to ensure that the information contained in the projection figures are consistent from Regional Entity to Regional Entity; (2) the “projected” figures contained in the 2012 business plan and budget filing as well as the “projected” figures contained in earlier business plan and budget filings were likely not developed or reported consistently among the Regional Entities; and (3) utilizing four or five months worth of reportable data from the first two quarters of the year and extrapolating from that information for the full year is difficult and could result in a flawed analysis due to the cyclical nature of certain activities.³² The Commission agrees that these factors diminish the value of NERC’s comparative analysis with respect to the

³¹ We refer specifically to the metrics and analyses that discuss comparisons between the current year projections of Regional Entity Operations to the upcoming year’s Regional Entity Budgets. NERC Application, Attachment 15 at 24-25.

³² NERC Application at 81-83.

directive in the 2011 Budget Order, thus rendering it an unnecessary step for NERC in developing and analyzing the Regional Entities' business plans and budgets in the future.

27. In light of the foregoing discussion, the Commission finds it appropriate to discontinue the requirement (directed in the 2011 Budget Order) that NERC provide comparative metrics based on Regional Entity projections. As it has historically done, NERC should continue to file metrics in Attachments 15 and 16 of its business plan and budget as they relate to current year budget information.

The Commission orders:

(A) NERC's 2012 business plan and budget is hereby accepted, as discussed in the body of this order.

(B) The Regional Entity 2012 business plans and budgets are hereby 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.

By the Commission. Chairman Wellinghoff concurring with a separate statement attached.

Commissioner Spitzer is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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WELLINGHOFF, Chairman, *concurring*:

As we note in the order, the Commission is currently undertaking, for the first time, a financial audit of NERC. The audit includes, among other things, a comprehensive and detailed analysis of the data and information underlying NERC's 2012 budget and business plan. In my view, there is no legal barrier to the Commission's ability to revisit NERC's 2012 budget and business plan in light of the results of the audit.

For this reason, I concur with this order.

Jon Wellinghoff
Chairman