

185 FERC ¶ 61,047
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Willie L. Phillips, Acting Chairman;
James P. Danly, Allison Clements,
and Mark C. Christie.

North American Electric Reliability Corporation

Docket No. RR23-3-000

ORDER ACCEPTING 2024 BUSINESS PLANS AND BUDGETS

(Issued October 19, 2023)

1. On August 24, 2023, the North American Electric Reliability Corporation (NERC) filed the 2024 business plans and budgets for NERC, each Regional Entity,¹ and the Western Interconnection Regional Advisory Body (WIRAB) (collectively, NERC Application). For the reasons discussed below, we accept the NERC Application, as well as the associated attachments and updates, and authorize issuance of billing invoices to fund the fiscal year 2024 operations of NERC, the Regional Entities, and WIRAB.

I. Background

A. Regulatory History

2. Section 215 of the Federal Power Act (FPA) provides that the Commission may certify an Electric Reliability Organization (ERO), the purpose of which is to develop mandatory and enforceable Reliability Standards, subject to Commission review and approval.² Reliability Standards may be enforced by the ERO, subject to Commission oversight, or by the Commission independently.³ Pursuant to section 215 of the FPA,

¹ The six Regional Entities are: Midwest Reliability Organization (MRO); Northeast Power Coordinating Council, Inc. (NPCC); ReliabilityFirst Corporation; SERC Reliability Corporation (SERC); Texas Reliability Entity; and Western Electricity Coordinating Council (WECC).

² 16 U.S.C. § 824o(c).

³ *Id.* § 824o(e).

the Commission established a process to select and certify an ERO,⁴ and subsequently certified NERC.⁵

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.”⁶ In Order No. 672, the Commission implemented the requirements of section 215 of the FPA, which generally provides for Commission authorization of funding for “statutory” functions conducted by the ERO and the Regional Entities (i.e., those functions carried out pursuant to section 215 of the FPA).⁷ Among other things, Order No. 672 established requirements for funding the ERO and approval of an ERO business plan and budget.⁸ 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 the ERO’s fiscal year.⁹ The ERO’s filing must contain the annual budgets of the ERO and 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 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. Order No. 672 deferred consideration of ratepayer funding for a Regional Advisory Body until such an entity was established, finding that it was not necessary to provide for funding in its regulations.¹⁰ In July 2006, the Commission approved the establishment of a Regional Advisory Body for the Western Interconnection (i.e., WIRAB) and granted the request that WIRAB receive funding for the reasonable costs

⁴ *Rules Concerning Certification of the Elec. Reliability Org.; & Procs. for the Establishment, Approval, & Enf’t of Elec. Reliability Standards*, Order No. 672, 114 FERC ¶ 61,104, *order on reh’g*, Order No. 672-A, 114 FERC ¶ 61,328 (2006).

⁵ *N. Am. Elec. Reliability Corp.*, 116 FERC ¶ 61,062, *order on reh’g and compliance*, 117 FERC ¶ 61,126 (2006), *order on compliance*, 118 FERC ¶ 61,030, *order on clarification and reh’g*, 119 FERC ¶ 61,046 (2007), *aff’d sub nom. Alcoa Inc. v. FERC*, 564 F.3d 1342 (D.C. Cir. 2009).

⁶ 16 U.S.C. § 824o(c)(2)(B).

⁷ Order No. 672, 114 FERC ¶ 61,104 at P 186.

⁸ *Id.* P 197.

⁹ 18 C.F.R. § 39.4(b) (2022).

¹⁰ Order No. 672, 114 FERC ¶ 61,104 at P 248.

of its FPA section 215(j) activities.¹¹ Further, the Commission directed WIRAB to develop a budget and related information for review through the ERO budget approval process.¹²

B. NERC Application

5. The NERC Application contains NERC's proposed business plan and budget for the year ending December 31, 2024, as well as the proposed business plans and budgets of each of the six Regional Entities and WIRAB for the year ending December 31, 2024.

6. NERC states that it prepared its 2024 business plan and budget, and worked with the Regional Entities in developing their business plans and budgets, through a rigorous process providing opportunity for review and input by the NERC Board of Trustees Finance and Audit Committee and stakeholders. According to NERC, successive versions of the 2024 business plans and budgets were discussed by the Finance and Audit Committee, as well as the full NERC Board of Trustees, in meetings and conference calls, with each event providing opportunities for stakeholders to comment.¹³

7. NERC states that the proposed assessment for the NERC, Regional Entities, and WIRAB budgets for 2024 allocable to the United States is \$216,043,567, which includes \$87,154,927 for NERC funding, \$128,308,223 for Regional Entity funding, and \$580,417 for WIRAB funding.¹⁴ NERC explains that it will continue to allocate costs to end users in the United States based on net energy for load. NERC maintains that its proposed total United States net funding requirement for NERC, the Regional Entities, and WIRAB is equivalent to \$0.0000522 per kWh, based on the aggregate net energy for load of the United States in 2022.¹⁵

8. In addition to the NERC, Regional Entity, and WIRAB business plans and budgets (NERC Application Attachments 1-9), the NERC Application contains various attachments including: NERC Management's Responses to Stakeholder Comments Submitted on Posted Draft of NERC's 2024 Business Plan and Budget (Attachment 10);

¹¹ *Governors of Ariz.*, 116 FERC ¶ 61,061, at PP 30, 33 (2006) (establishing WIRAB as a Regional Advisory Body pursuant to section 215(j) of the FPA).

¹² *Id.* PP 34-35.

¹³ NERC Application at 3-5.

¹⁴ *Id.*, attach. 1 at 2 (Summary Tables for NERC and Regional Entity Proposed 2024 Budgets and Assessments).

¹⁵ *Id.* at 15.

Calculation of Adjustments for the Alberta Electric System Operator, Ontario Independent Electric System Operator, New Brunswick, and Québec 2024 NERC Assessments (Attachment 11); Memorandum for NERC Board of Trustees Describing NERC's Participation in Preparation of and Review of Regional Entity 2024 Business Plans and Budgets (Attachment 12); Metrics Comparing Regional Entity Operations Based on the 2024 Budgets (Attachment 13); and Metrics on NERC and Regional Entity Administrative (Indirect) Costs Based on the 2023 and 2024 Budgets (Attachment 14).

II. Notice and Responsive Pleading

9. Notice of NERC's August 24, 2023, filing was published in the *Federal Register*, 88 Fed. Reg. 60,200 (Aug. 31, 2023), with interventions and protests due on or before September 14, 2023. No interventions or protests were filed.

10. On September 14, 2023, WIRAB filed advice pursuant to section 215(j) of the FPA stating it reviewed WECC's 2024 business plan and budget and supports all the proposed activities, finds the proposed activities to be eligible and appropriate for funding under section 215 of the FPA, and advises the Commission to approve WECC's 2024 statutory budget and proposed assessment as presented.¹⁶

III. Discussion

A. Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2022), WIRAB's timely, unopposed advice serves to make WIRAB a party to this proceeding.

B. Substantive Issues

1. NERC Business Plan and Budget

a. Proposal

12. NERC states that its 2024 business plan and budget is based on the following program areas: (1) Reliability Standards and Power Risk Issues and Strategic Management; (2) Compliance Assurance, Organization Registration and Certification, and Compliance Enforcement; (3) Reliability Assessments and Performance Analysis (RAPA); (4) Situation

¹⁶ WIRAB Advice 2-5; *see also* 16 U.S.C. § 824o(j) (providing that regional advisory bodies may provide advice to the Commission on, among other things, "whether fees proposed to be assessed within the region are just, reasonable, not unduly discriminatory or preferential, and in the public interest").

Awareness; (5) Event Analysis; (6) Electricity Information Sharing and Analysis Center (E-ISAC), including the Cyber Risk Information Sharing Program (CRISP); (7) Personnel Certification and Credential Maintenance; and (8) Training and Education. NERC explains that these statutory, or “direct,” program areas are supported by its Corporate Services, or “indirect,” programs: (1) General & Administrative; (2) Legal and Regulatory; (3) Business Technology; (4) Human Resources & Administration; and (5) Finance and Accounting.¹⁷ For these statutory program areas, NERC describes each program, identifies the program’s goals and objectives, and provides the current number of full-time equivalent employees (FTEs), as well as the FTEs budgeted for 2024. NERC also provides 2023 accepted budget data and 2023 year-end projected data for comparison to the 2024 proposed budget data.

13. NERC’s proposed total budget requirement for 2024 is \$113,620,945, which is an increase of \$12,619,332 (12.5%) over NERC’s 2023 total budget requirement of 101,001,613.¹⁸ NERC’s 2024 budget excluding E-ISAC costs of \$72,567,370 is 15.2% higher than its 2023 budget excluding E-ISAC costs.¹⁹ NERC’s total funding requirement encompassing U.S., Canadian, and Mexican activities is \$111,716,829.²⁰ NERC’s proposed 2024 net funding requirement from assessments is \$96,997,362²¹ (i.e., the total funding requirement less \$16,623,583 in funding from other sources),²² of which \$87,154,927 is allocated to the United States.²³

14. NERC shows that the 2024 budget for E-ISAC, including funding for CRISP, is

¹⁷ NERC Application at 6.

¹⁸ *Id.*, attach. 2 at 10.

¹⁹ *Id.*

²⁰ NERC Application at 9. *See also id.*, attach. 2 at 13.

²¹ *Id.*, attach. 2 at 4.

²² NERC Application at 9. NERC states its other funding sources are third-party funding for CRISP; revenue from services and software, testing and workshop fees (including from the Vendor Affiliate Program conducted by the E-ISAC and the System Operator Certification Program), and interest and investment income; and proposed release of penalty collections from NERC’s Assessment Stabilization Reserve.

²³ *Id.*, attach. 1 at 2.

8% higher than its 2023 budget.²⁴ NERC explains that the E-ISAC budget reflects the additional contractor and consultant costs and increased physical and Operational Technology security analysis projects.²⁵

15. NERC states that the proposed 2024 business plan and budget reflects a provision for working capital and operating reserve funding in the amount of \$18,700,716.²⁶ NERC also proposes \$2,854,000 in 2024 for computer and software capital expenditures.²⁷ NERC states that these expenses will be funded in part by financing \$2,400,000 for capital software expenditures.²⁸ NERC proposes a 2024 staffing level of 251.14 FTEs, an increase of 14.26 FTEs from the 2023 budget staffing levels.²⁹

16. NERC explains that the Fiscal Responsibility Act of 2023³⁰ directed NERC, as the ERO, to carry out a study, in consultation with the Regional Entities and transmitting utilities across transmission planning regions with interconnected facilities, to examine the total current transfer capabilities between neighboring transmission planning regions (the Interregional Transfer Capability Study or ITCS).³¹ NERC states that the ITCS must be completed and filed with the Commission by December 2, 2024 and is a significant driver of the increased staffing reflected in the addition of 3.76 FTEs in RAPA and 0.94 FTE in Corporate Services.³²

17. NERC states that it collected \$735,000 in penalties between July 1, 2022, and June 30, 2023, and proposes to deposit those funds in NERC's Assessment Stabilization Reserve.³³ Additionally, pursuant to section 1107.4 of the NERC Rules of Procedure,

²⁴ NERC Application at 18-19. NERC notes that CRISP comprises 31.2% of the total E-ISAC budget.

²⁵ *Id.*, attach. 2 at 11.

²⁶ *Id.*, attach. 2 at 52.

²⁷ *Id.*, attach. 2 at 60.

²⁸ *Id.*, attach. 2 at 5; *see also id.* at 24.

²⁹ *Id.*, attach. 2 at 13.

³⁰ Fiscal Responsibility Act of 2023, Pub. L. No. 118-5, 137 Stat. 10 (2023).

³¹ NERC Application, attach. 2 at 8-9.

³² *Id.* at 9.

³³ *Id.* at 22-23.

NERC requests an exception to section 1107.2 of the NERC Rules of Procedure to permit it to use \$1,300,000 from the Assessment Stabilization Reserve to fund the ITCS non-personnel costs, as the ITCS mandate was issued by the U.S. government, and the Assessment Stabilization Reserve consists entirely of U.S. penalties.³⁴

b. Commission Determination

18. We accept NERC's 2024 business plan and budget. We find that NERC's 2024 budget is reasonable and that the associated costs of NERC's jurisdictional functions are allocated equitably among end users in the United States. Additionally, based on the details provided by NERC in its application, we grant NERC's request for an exception under section 1107 of the NERC Rules of Procedure and approve the withdrawal of \$1,300,000 from the Assessment Stabilization Reserve. We note that the decision here is limited to this case. The Commission will address any future requests for an exception to section 1107.2 of the NERC Rules of Procedure based on the facts at that time.

2. Regional Entity Business Plans and Budgets

a. Proposal

19. The NERC Application includes the 2024 business plans and budgets of each Regional Entity. The proposed total assessment for the Regional Entities that is allocable to the United States is \$128,308,223, which represents a \$15,298,552 (13.54%) increase from 2023.³⁵ 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.³⁶

20. NERC also states that the Regional Entity 2024 business plans and budgets were finalized prior to the development of the ITCS work plan. As such, the Regional Entity budgets do not include additional resources directly attributable or specific to Regional Entity participation in performing the ITCS. However, NERC explains that the Regional Entities currently plan to support the ITCS with resources already included in their 2024 budgets and will adjust if needed according to each organization's business plan and budget process.³⁷

³⁴ *Id.*; see also *id.*, attach. 2 at 8-9.

³⁵ *Id.*, attach. 1 at 2.

³⁶ *Id.* at 26.

³⁷ *Id.* at 27.

21. NERC requests, in accordance with the Commission's June 18, 2015, Order³⁸ and pursuant to section 1107.4 of the NERC Rules of Procedure, an exception to section 1107.2 of the NERC Rules of Procedure (1) to permit NPCC and SERC to deposit penalty monies received during the period of July 1, 2022, through June 30, 2023, into their assessment stabilization reserves, and (2) to allow MRO to use penalties collected prior to July 1, 2022 and held in the MRO Assessment Stabilization Reserve to reduce its 2024 assessments. NERC states that NPCC collected \$535,018 in penalties in the 12 months ending June 30, 2023, and proposes to place the funds into NPCC's Assessment Stabilization Reserve and to use \$400,000 from the NPCC Assessment Stabilization Reserve to offset 2024 assessments.³⁹ NERC also states that SERC proposes to place \$6,596,448 of penalties collected during the 12 months ending June 30, 2023 into SERC's Assessment Stabilization Reserve and to release \$2,896,449 from the SERC Assessment Stabilization Reserve to offset SERC's 2024 assessment.⁴⁰ Further, NERC states that MRO proposes to use \$119,026 of penalties collected between July 1, 2022 and June 30, 2023 and to release \$1,182,052 from MRO's Assessment Stabilization Reserve, which includes \$61,834 of interest earned by the Assessment Stabilization Reserve, to reduce MRO's 2024 assessments.⁴¹

22. In addition, NERC explains that in December 2020, WECC entered into an agreement with Peak Reliability, in connection with Peak Reliability's termination of operations and its corporate dissolution, to receive a donation from Peak Reliability's remaining funds.⁴² NERC states that, as it described in the NERC 2022 Business Plan and Budget, WECC, as a tax-exempt mutual benefit corporation under section 501(c)(4) of the Internal Revenue Code, Peak Reliability was required by Internal Revenue Service rules (and by its own non-profit governance documents) to donate any funds remaining after discharging liabilities to another non-profit organization.⁴³ Peak Reliability proposed to donate its remaining funds of \$4.1 million to WECC to support WECC's reliability and

³⁸ *N. Am. Elec. Reliability Corp.*, 151 FERC ¶ 61,225, at P 19 (2015) (declining to provide a blanket exception regarding the use of penalty funds and instead explaining that the Commission would consider each request on a case-by-case basis).

³⁹ NERC Application at 29.

⁴⁰ *Id.* at 32.

⁴¹ *Id.* at 27-28.

⁴² Peak Reliability was formerly the reliability coordinator for the Western Interconnection. It ceased all reliability coordinator operations in December 2019 and dissolved as a corporate entity in December 2020.

⁴³ NERC Application at 34; *see also N. Am. Elec. Reliability Corp.*, 177 FERC ¶ 61,078, at PP 21-23, 25 (2021).

security mission, subject to a hold-back agreement.⁴⁴ NERC states that as provided in the hold-back agreement, WECC agreed to hold \$300,000 for a period of five years to pay any Peak Reliability bills that may be presented following Peak Reliability's formal dissolution on December 31, 2020. NERC notes that this was recorded as a non-statutory liability in WECC's 2020 financial results. The remaining funds were put into a separate reserve called the Peak Reliability Donation Reserve.⁴⁵

23. NERC indicates that WECC has identified two projects to be funded from the Peak Reliability Donation Reserve: (1) an expanded trial of PLEXOS software, an energy market simulation platform to provide in-depth analytics and modeling support for reliability assessment activities; and (2) acquisition of Electromagnetic Transient simulation software to support data collection and analysis of inverter-based resources.⁴⁶ For 2024, WECC seeks approval to use \$250,000 from the Peak Reliability Donation Reserve to fund the above-referenced projects.⁴⁷

b. WIRAB Advice

24. WIRAB submitted advice stating that it reviewed WECC's proposed 2024 business plan and budget and finds the statutory budget and assessment reasonable and in the public interest. WIRAB explains that it supports WECC's 2024 business plan and budget because: (1) WECC's RAPA program is adequately funded; (2) WECC's Compliance Monitoring and Enforcement Program is adequately funded; (3) WECC's Informational Technology is adequately funded; and (4) WECC is adequately funded to achieve its mission and fulfill its delegated function. WIRAB advises and requests the Commission to approve the 2024 statutory budget and assessment for WECC as presented.⁴⁸

c. Commission Determination

25. We find that each Regional Entity submission reasonably supports the level of expenditures identified in their respective budgets and that each Regional Entity is focused on adequately staffing and funding all of their respective program areas to perform the delegated statutory functions. Accordingly, we accept the Regional Entity business plans and budgets. Additionally, based on the details provided by NERC in its application, we

⁴⁴ NERC Application at 34.

⁴⁵ *Id.*

⁴⁶ *Id.* at 34-35.

⁴⁷ *Id.* at 35.

⁴⁸ WIRAB Advice at 3-5.

grant NERC's request to allow for an exception under section 1107 of the NERC Rules of Procedure and permit NPCC and SERC to deposit the penalty monies received for the period of July 1, 2022, through June 30, 2023, into their assessment stabilization reserves, as well as to allow MRO to use penalties collected prior to July 1, 2022 and held in the MRO Assessment Stabilization Reserve to reduce its 2024 assessments. We note that our decision to allow for this exception is limited to the 2024 MRO, NPCC, and SERC budgets. The Commission will address any future requests for an exception to section 1107.2 of the NERC Rules of Procedure based on the facts at that time.

26. We also grant NERC and WECC's request to release up to \$250,000 from the Peak Reliability Donation Reserve account to fund: (1) an expanded trial of PLEXOS software, an energy market simulation platform to provide in-depth analytics and modeling support for reliability assessment activities; and (2) acquisition of Electromagnetic Transient simulation software to support data collection and analysis of inverter-based resources.

3. WIRAB Business Plan and Budget

a. Proposal

27. WIRAB proposes statutory expenses of \$831,492 in 2024, which is a \$52,028 (5.9%) decrease from its 2023 budget.⁴⁹ To fund its operations in 2024, WIRAB proposes a statutory assessment of \$692,692, of which \$580,417 would be allocable to end users in the United States.⁵⁰ WIRAB's budget includes 2.60 FTEs for 2024, which is a decrease of 0.40 FTEs from 2023.⁵¹

28. The NERC Application indicates that WIRAB will pursue three strategic initiatives in 2024 include the following: (1) advise WECC to continue to serve as an unbiased source of interconnection-wide information regarding the resource adequacy of the Western Interconnection and work collaboratively with the regional resource adequacy programs in the West; (2) advise WECC to add value to transmission planning in the West by conducting reliability assessments on long-term transmission trends and disseminating transmission planning information to stakeholders in the Western Interconnection; and (3) advise WECC to work with WIRAB to engage state and provincial regulators and policymakers in the West

⁴⁹ NERC Application at 36.

⁵⁰ *Id.*, attach. 1 at 2; *see also id.*, attach. 9 at 3 (WIRAB Proposed 2023 Business Plan and Budget).

⁵¹ *Id.*, attach. 9 at 3.

to better understand the reliability impacts of energy policymaking in the Western Interconnection from diverse stakeholders.⁵²

b. Commission Determination

29. Based on the information provided in the instant filing, we conclude that WIRAB's 2024 business plan and budget is reasonable and, accordingly, accept it.

The Commission orders:

- (A) NERC's 2024 business plan and budget is hereby accepted.
 - (B) The Regional Entities' 2024 business plans and budgets are hereby accepted.
 - (C) NERC's request for waiver of section 1107 of its Rules of Procedure for NERC, MRO, NPCC, and SERC is hereby granted.
 - (D) NERC's request for WECC's use of the Peak Reliability Donation Reserve account funds is hereby granted.
 - (E) WIRAB's 2024 business plan and budget is hereby accepted.
- By the Commission. Commissioner Danly is concurring with a separate statement attached.

(S E A L)

Debbie-Anne A. Reese,
Deputy Secretary.

⁵² *Id.*, attach. 9 at 9-15.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

North American Electric Reliability Corporation

Docket No. RR23-3-000

(Issued October 19, 2023)

DANLY, Commissioner, *concurring*:

1. Although I concur in today's order,¹ I write separately to note that over the last few years NERC's budget requests have grown significantly. It is now time for the Commission to pause to reflect upon whether we are really getting value for the money we are spending to address known or emerging reliability risks. I am not convinced that we are. I am convinced, however, that we do need to see a significant improvement in the speed and agility with which NERC acts in response to those risks.

2. In an order issued concurrently today,² we direct NERC to develop new or modified mandatory and enforceable NERC Reliability Standards prior to 2030 in order to address a set of reliability risks that we have known about, and been actively discussing, since at least 2016, and about which I have long warned. Up to nearly fourteen years is a very long time, and the reliable operation of the Bulk-Power System (BPS) remains imperiled until these risks are adequately addressed. We are as responsible for this situation as NERC.

3. Today, we approve a total funding requirement for NERC for 2024 that represents a 12.5% increase over NERC's 2023 total funding requirement.³ The 2024 NERC budget is 15.2% higher than its 2023 budget excluding E-ISAC costs.⁴ Last year, we approved a total funding requirement for NERC for 2023 that was a 13.7% increase over NERC's 2022 total funding requirement.⁵ The 2023 NERC budget was 12.5% higher than its

¹ *N. Am. Elec. Reliability Corp.*, 185 FERC ¶ 61,047 (2023).

² *N. Am. Elec. Reliability Corp.*, 185 FERC ¶ 61,042 (2023).

³ *N. Am. Elec. Reliability Corp.*, 185 FERC ¶ 61,047, at P 13.

⁴ *Id.*

⁵ *N. Am. Elec. Reliability Corp.*, 181 FERC ¶ 61,095, at P 15 (2022).

2022 budget excluding E-ISAC costs.⁶ Those are some hefty raises in a fairly short period.

4. Will this increased funding actually help expedite the development and implementation of needed NERC Reliability Standards? Based on NERC's recent track record, I have my doubts. Both NERC and the Commission need to be faster in responding to emergent threats to BPS reliability.

For these reasons, I respectfully concur.

James P. Danly
Commissioner

⁶ *Id.*