

122 FERC ¶ 61,246  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

North American Electric Reliability  
Corporation

Docket No. RR07-16-001

ORDER ON COMPLIANCE FILING

(Issued March 21, 2008)

1. On December 14, 2007, the North American Electric Reliability Corporation (NERC) submitted a filing in compliance with the order approving its 2008 business plan and budget.<sup>1</sup> In that order, the Commission found that the portions of NERC's 2008 budget submission pertaining to the Regional Entities,<sup>2</sup> with the exception of RFC, contained many inconsistencies between the business plan and budget of the Regional Entity and directed NERC and the Regional Entities to correct or explain their business plans and budgets to eliminate the inconsistencies. In this order, the Commission accepts NERC's compliance filing, with the exception of that portion pertaining to SPP, which is conditionally accepted.

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<sup>1</sup> *North American Electric Reliability Corp.*, 121 FERC ¶ 61,057 (2007) (2008 Budget Order).

<sup>2</sup> NERC's eight Regional Entities are Florida Reliability Coordinating Council (FRCC); Midwest Reliability Organization (MRO); Northeast Power Coordinating Council (NPCC); ReliabilityFirst Corporation (RFC); Southeastern Reliability Council (SERC); Southwest Power Pool, Inc. (SPP); Texas Regional Entity (TRE), a Division of Electric Reliability Council of Texas, Inc. (ERCOT); and Western Electricity Coordinating Council (WECC). The WECC budget included the funding request for the Western Interconnection Regional Advisory Body (WIRAB), a regional advisory body established pursuant to section 215(j) of the Federal Power Act (FPA). 16 U.S.C. § 824o (Supp. V 2005).

## I. Background

2. On August 24, 2007, as corrected on August 31, 2007, NERC, the Commission-certified Electric Reliability Organization (ERO),<sup>3</sup> filed its 2008 business plan and budget as well as the 2008 business plan and budget of each Regional Entity. In the *2008 Budget Order*, the Commission conditionally accepted the proposed budgets and the ERO's business plan. In addition, the *2008 Budget Order* approved a total funding requirement for 2008 allocable under section 215 of the FPA<sup>4</sup> to end users in the United States of \$82,587,129. This amount included \$22,780,492 for NERC funding, \$59,402,602 for Regional Entity funding and \$404,035 for WIRAB funding.

3. In the *2008 Budget Order*, the Commission found that the portions of NERC's filing pertaining to the Regional Entities, with the exception of RFC, contained many inconsistencies between the business plan of the Regional Entity and its budget as laid out in its income statement, even after NERC filed a corrected budget on August 31, 2007.<sup>5</sup> The Commission stated that the business plan and budget submissions must be not only clear and accurate but also consistent. Therefore, we directed NERC and the Regional Entities to correct or explain their business plans and budgets to eliminate the inconsistencies. Because of the inconsistencies, the Commission conditionally allowed the Regional Entities to collect their budgets as provided in their income statements. However, we stated that if a Regional Entity intended the budget for a given program to be that found in the business plan, and not the income statement, NERC should file a modified income statement and support the Regional Entity's proposed changes. The Commission further stated that it expects that the 2009 business plans and budgets will not contain similar discrepancies. Finally, the Commission raised specific concerns regarding FRCC's, MRO's and SPP's business plans and budgets.

## II. Procedural Matters

4. Notice of the filing was published in the *Federal Register*, 72 Fed. Reg. 74,278 (2007), with interventions and protests due on or before January 14, 2008. None were filed.

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<sup>3</sup> *North American Electric Reliability Corp.*, 116 FERC ¶ 61,062, *order on reh'g and compliance*, 117 FERC ¶ 61,126 (2006) (*ERO Certification Order*).

<sup>4</sup> 16 U.S.C. § 824o (Supp. V 2005).

<sup>5</sup> The discrepancies noted by the Commission were identified in Attachment B to the *2008 Budget Order*.

### III. Discussion

#### A. SPP

##### 1. 2008 Budget Order

5. In addition to noting discrepancies between the SPP business plan and budget, the Commission identified several concerns regarding SPP's business plan. The Commission stated that SPP's business plan and budget appeared to contemplate a significant degree of employee sharing between the statutory and non-statutory activities of SPP. When the Commission approved the delegation agreement between NERC and SPP,<sup>6</sup> the Commission also identified concerns regarding the adequacy of the separation and independence of the SPP Regional Entity from the SPP regional transmission organization (RTO) and directed SPP to address those concerns in another filing.<sup>7</sup> In the *2008 Budget Order*, the Commission directed NERC to file a compliance filing in which SPP explains whether the business plan and budget submitted by SPP was based on the SPP structure approved by the Commission in the *Delegation Agreement Order*, or contemplated the changes made by SPP in support of its response to the *Delegation Agreement Order*.<sup>8</sup>

6. The Commission was further concerned about potential for SPP as a Regional Entity to subsidize non-statutory activities of the RTO with FPA section 215 funding. SPP indicated that it calculates its indirect funding costs based on the application of a \$110 per hour charge for shared and support services, which would produce substantially higher indirect costs for SPP than other Regional Entities. Moreover, the Commission found that SPP did not provide adequate support for the \$110 per hour charge. Therefore, NERC was directed to provide information on the \$110 per hour charge, explaining the differences in the allocation methods used for administrative services and

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<sup>6</sup> *North American Electric Reliability Corp.*, 119 FERC ¶ 61,060 at P 396, *order on reh'g*, 120 FERC ¶ 61,260 (2007) (*Delegation Agreement Order*).

<sup>7</sup> *Id.* P 397-98.

<sup>8</sup> *2008 Budget Order* at P 68.

direct funding needs in 2008 versus 2007, the reason for the change and the dollar impact of the change.<sup>9</sup>

7. Finally, the Commission expressed concern that NERC's filing suggested that SPP's budget for internal training includes the cost of training the RTO's operational employees. The Commission directed NERC to submit a compliance filing in which SPP provides an explanation regarding this training and its funding.

## **2. NERC Compliance Filing**

8. NERC states that the corrected 2008 Business Plan and Budget and 2008 income statement provided in Attachment 6 to its compliance filing addresses the total costs of each of SPP's programs and the full-time equivalent employees (FTEs) for each program (direct and indirect) and the non-statutory budget. Further, NERC maintains that the revised income statement shows total direct costs and total indirect costs for each program, and the revised 2008 Business Plan and Budget shows total cost for each program, as directed by the Commission. NERC also states that, although not specifically requested in the *2008 Budget Order*, the revised SPP Regional Entity 2008 Business Plan and Budget now includes the 2007 Budget and Variance to 2007 Projection, to be consistent with the presentations of the other Regional Entities.<sup>10</sup>

9. With respect to the Commission's concerns regarding the sharing of employees by SPP Regional Entity and the SPP RTO, NERC first states that SPP's 2008 Regional Entity Business Plan and Budget was based on the structure as approved in the *Delegation Agreement Order*. Further, NERC states that the significant degree of employee sharing between SPP Regional Entity and the SPP RTO provides support functions, thus providing the operational and economic efficiencies that benefit SPP's members, customers and registered entities. According to NERC, the *Delegation Agreement Order* approved SPP serving as both a RTO and a Regional Entity, creating

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<sup>9</sup> *Id.* Organization-Wide, metric 2-3 (Organization Structure and RE Staff: Distinct, shared, loaned; Describe RE Shared Services Arrangements) ("SPP [Regional Entity] utilizes a combination of dedicated and shared staff to perform the functions and programs under the Delegation Agreement. For the SPP Compliance Monitoring and Enforcement Program, SPP RE has dedicated staff of four full time employees and contracted services for up to three employees. The shared staff includes engineers, managers, administrative support, and attorneys, and provides additional support for the RE functions. SPP shares staff to support RE functions. The support groups consist of Information Technology, Accounting/Payroll, Human Resources, Communications and other indirect functions. Currently, SPP charges the RE \$110 per hour for each hour worked by a shared staff member").

<sup>10</sup> See NERC Compliance Filing, Attachment 6, at 20 (Table 1).

separation where necessary, but taking advantage of the efficiencies noted above for support functions that have little or no opportunity for conflict.

10. In its compliance filing, NERC describes SPP's compliance filing to the *Delegation Agreement Order*. NERC states that the organization charts provided in SPP's 2008 Business Plan and Budget as originally filed have been modified to depict the reporting relationships described in SPP's compliance filing to the *Delegation Agreement Order*.<sup>11</sup>

11. In addition, NERC provided SPP's response to the Commission's concern regarding the calculation of its \$110 per hour charge for indirect services provided by SPP RTO. SPP states that by requiring SPP RTO's employees to record all time spent working on all Regional Entity statutory activities, SPP RTO has been able to clearly identify the costs which should be attributed to the Regional Entity. Through the timekeeping process, SPP determined that there are direct costs,<sup>12</sup> other clearly identifiable costs<sup>13</sup> and indirect costs<sup>14</sup> related to the time spent on Regional Entity statutory activities which should be attributed to the Regional Entity. SPP states that it derived a cost allocation methodology using the 2008 Regional Entity budget by which the indirect costs are allocated to the Regional Entity based on the number of hours recorded in support of statutory functions. SPP states that the \$110 per hour rate was calculated by segregating SPP business group costs which support all of SPP's functions from SPP's Operational Resource Pool. These aggregate costs were then divided by an average annual employee utilization rate of 1,880 hours.

12. Finally, with respect to the Commission's concern that SPP Regional Entity may bear certain training costs for the SPP RTO, NERC states that the SPP RTO employees do not charge time or expenses for training to the SPP Regional Entity budget. Time and expenses incurred by SPP personnel for training are entirely allocated to the SPP, Inc. budget. The costs included in the SPP Regional Entity budget for training represent the time and expense for SPP training staff (and associated support) to offer NERC

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<sup>11</sup> *See id.*

<sup>12</sup> Direct costs includes salary, company paid medical insurance, Medicare and Social Security taxes, and other company paid benefits.

<sup>13</sup> The other clearly identifiable costs stem from: travel, meetings, contractors, professional services, independent trustees and other direct administrative expenses.

<sup>14</sup> The indirect costs or Shared Services Costs include costs related to payroll and accounts payable processing, human resources and benefit management, accounting, information technology, executive leadership, corporate affairs and communication, office costs and other support services and expenditures.

standards-related training for the SPP Regional Entity registered entity members. The SPP RTO is registered with the SPP Regional Entity as the Reliability Coordinator for the SPP Regional Entity footprint. According to NERC, since the Reliability Coordinator function is performed on behalf of the SPP RTO members, all expenses for the SPP Reliability Coordinator, including training, are funded by the SPP RTO membership and not through the SPP Regional Entity budget.

### **3. Commission Conclusion**

13. The Commission conditionally accepts NERC's compliance filing relating to SPP. While we accept the revised SPP business plan and budget, the Commission remains concerned regarding the adequacy of the separation of functions between the SPP RTO and SPP Regional Entity. For example, the SPP Regional Entity organizational chart provided in its compliance filing to the *Delegation Agreement Order* indicates that SPP Regional Entity employs three full time employees in addition to the Executive Director of Compliance and Enforcement. Other SPP Regional Entity personnel, both professional and administrative, are shared employees with SPP RTO. The Commission is concerned whether the full time staff dedicated to Regional Entity functions can support adequate reliability oversight in the SPP region. Further, the Commission is concerned whether SPP Regional Entity's reliance on shared professional employees, including engineers and attorneys, and potentially management, allows for a strong separation of functions as contemplated by the Commission in Order No. 672.<sup>15</sup> The Commission has initiated an audit to further inquire into SPP Regional Entity's organizational structure and practices.<sup>16</sup> A final Commission determination regarding the adequacy of the separation of functions between SPP Regional Entity and SPP RTO will remain pending the results of the audit.

14. Similarly, the Commission will approve SPP's use of the \$110 per hour rate for shared employees, subject to NERC submitting SPP's detailed analysis of its actual costs in its April 2009 true-up filing. However, we direct SPP to provide a detailed accounting of actual employee costs when it files the true-up to the 2008 budget in April 2009 to ensure that neither the SPP Regional Entity nor the SPP RTO is paying more than their actual costs.<sup>17</sup> The true-up should include specific information regarding the actual hours

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<sup>15</sup> *Rules Concerning Certification of the Electric Reliability Organization; 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).

<sup>16</sup> *See* Docket No. PA08-2-000. The scope of the audit is not limited to the matters described in this order.

<sup>17</sup> *2008 Budget Order* at P 23.

shared employees work on SPP Regional Entity business and their actual per hour rate. Each shared employee is expected to record, on a daily basis, hours worked on Regional Entity business. If the actual cost for shared employees differs from the \$110 figure, the cost must be true-up. In addition, SPP must provide detailed definitions of each indirect cost allocation function, which clearly set forth what the function is and how it supports the Regional Entity. In future annual business plan and budget filings, SPP must include the above information for each indirect cost allocation for shared services.

15. The Commission notes that SPP has not included the total cost of the direct funding category for each of the statutory functions in its corrected 2008 Business Plan and Budget as directed by the *2008 Budget Order*.<sup>18</sup> NERC is directed to submit 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 when it files its true-up in April, 2009.<sup>19</sup>

## **B. Other Regional Entities**

### **1. 2008 Budget Order**

16. As stated above, the Commission directed NERC and the Regional Entities to correct or explain their business plans and budgets to eliminate certain inconsistencies. For example, we noted that NPCC's Income Statement listed Membership Dues as \$672,056, while the 2007 Total Budget & Projection and 2008 Budget Comparison listed it as \$0. The Commission also found that SERC did not break out total Direct Funding or Total Indirect Funding for Total SERC Resources in the business plan and budget and did not list FTEs for Committee and Member Forums and Administrative. Further, the

<sup>18</sup> 2008 Budget Order at Attachment B.

<sup>19</sup> For example, the table in the Business Plan for the Reliability Readiness Program would be revised as shown below.

Reliability Readiness Evaluation and Improvement Program Resources			
	2007 Budget	2007 Projection	2008 Budget
Total FTEs	0.3 FTE	0.2 FTE	0.5FTE
Total Direct Funding	\$56,598	\$51,672	Salary \$61,126 Travel \$15,000 <b>Total \$76,126</b>
Total Indirect Funding		\$7,984	\$103,419
Total Funding	\$56,598	\$59,656	\$179,545

Commission found that TRE failed to list FTEs for several programs. We stated that, if a Regional Entity intended the budget for a given program to be that found in the business plan, and not the income statement, NERC should file a modified income statement and support the Regional Entity's proposed changes.

17. In addition, the Commission stated that FRCC provided insufficient detail regarding its decision to move certain communications-related tools and other activities as reliability coordinator to the Member Services Division in its 2008 business plan and budget. The Commission stated that greater detail as to the size, scope and specific "tools and services" at issue must be provided. The Commission therefore directed NERC to submit a compliance filing in which FRCC lists and documents the tools and services at issue (and the associated costs) and how such items are proposed to be realigned and reconciled in the 2008 budget proposal. We required the specifics of any tools and services, and associated costs, recognized as improperly aligned but not reconciled in the 2008 budget to also be included.

18. Further, the Commission required MRO should explain and justify why MRO's indirect costs for statutory activities went from \$1,485,700 in the 2007 budget to \$2,648,719 in the 2008 budget while FTEs remain unchanged.

## **2. NERC Compliance Filing**

19. According to NERC, FRCC, MRO, and NPCC intended their budget amount for each of their programs to be the amount found in its Business Plan, and not the amount found in the originally filed income statement. For each of the discrepancies listed for these Regional Entities in Attachment B to the *2008 Budget Order*, NERC states that the figures in the income statements were incorrect and the figure in the other document(s) cited in Attachment B was correct. In Attachments to its compliance filing, NERC provides a corrected 2008 income statement for each of these Regional Entities.

20. With respect to the Commission's concern regarding the lack of detail about FRCC's decision to move certain communications-related tools and other costs, such as items associated with its activities as Reliability Coordinator, to the Member Services Division in its 2008 business plan and budget, NERC describes which items were included in the FRCC 2007 budget for statutory functions but were later determined, after careful consideration and detailed analysis by the FRCC Operating Committee, subsequent to approval of the 2007 budget, to be Member Services Division items (non-statutory items funded through membership dues).<sup>20</sup>

21. With respect to the Commission's concerns about the increase in MRO's indirect costs for statutory activities, NERC notes that, while the overall MRO budget increase

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<sup>20</sup> See NERC Compliance Filing at 7-8.

was 6.2 percent, the MRO budget increase from 2007 to 2008 for indirect costs for statutory activities was 78.3 percent. NERC states that, in preparing its 2008 Business Plan and Budget, MRO found that, in order to be consistent with NERC's definitions of direct and indirect costs, it needed to change how certain budgeted costs were accounted for in 2008 compared to 2007. According to NERC, from the 2007 budget to the 2008 budget, there were significant account-by-account changes in the classification of costs as indirect rather than direct, for example, costs relating to participation in NERC committees. According to NERC, another source of the nominal increase in indirect costs is that in 2007, certain revenues were recorded as an expense offset (rather than as revenues), but in the 2008 budget were recorded as revenues. Finally, NERC states that a significant increase in the indirect cost category Legal and Regulatory was budgeted in 2008 in anticipation of increased activity for processing Reliability Standards violations and for regulatory filings by MRO. However, NERC maintains that, despite the increase in MRO's indirect costs, there was not a significant increase in the overall budget from 2007 to 2008 as shown by the fact that the overall increase is only 6.2 percent. NERC states that MRO prepared a worksheet that provides additional line item detail and explanations for the changes in direct and indirect costs from the MRO 2007 budget to the 2008 budget.<sup>21</sup>

22. NERC also explains that NPCC's original filing income statement lists its membership dues as \$672,056, while the 2007 Total Budget & Projection and 2008 Budget Comparison list it as \$0 because the information in the budget comparison list was for statutory functions only, whereas membership dues on the income statement are non-statutory revenues. NERC states that NPCC has requested a new account, "Non-Statutory Assessments," and the \$672,056 for Membership Dues is shown in this account on the revised income statement.

23. With respect to SERC, the Commission was concerned that SERC does not break out Total Direct Funding or Total Indirect Funding for Total SERC Resources in the Business Plan and Budget and does not list FTEs for Committee and Member Forums and Administrative. NERC states that the table "Total SERC Resources"<sup>22</sup> has been revised to show Total Direct Funding and Total Indirect Funding. In addition, NERC states that the corrected 2008 income statement included in Attachment 5 to its compliance filing shows FTEs for all functions. NERC also states that the income statement figures for SERC's total direct costs and total indirect costs were correct, and has submitted a revised SERC business plan to conform to the income statement. In Attachment 5 to its compliance filing, NERC provides a corrected 2008 business plan and

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<sup>21</sup> NERC Compliance Filing, Attachment 9.

<sup>22</sup> See NERC compliance filing, Attachment 5 at 1.

income statement for SERC.<sup>23</sup> The revised 2008 SERC income statement provided in Attachment 5 incorporates the correct figure for each discrepancy cited in the *2008 Budget Order*.

24. NERC states that it has filed a corrected TRE 2008 Business Plan and Budget and corrected 2008 income statement in Attachment 7 to its compliance filing. According to NERC, the revised income statement shows FTEs for all direct and indirect functions, including for the non-statutory programs. The revised 2008 income statement also shows the TRE 2008 budget for non-statutory functions. Further, NERC states that the revised TRE income statement shows a more detailed allocation, and the revised 2008 TRE Business Plan and Budget provides indirect costs and total costs for each program.

25. Finally, NERC states that it has filed a corrected 2008 Business Plan and Budget and revised 2008 income statement for WECC in Attachment 8 to its compliance filing. According to NERC, the revised Business Plan and Budget includes a 2007 Projection and 2008 Budget and Comparison.<sup>24</sup> NERC maintains that the revised income statement shows the FTEs for all direct and indirect programs, including the non-statutory programs. The revised income statement and revised Business Plan and Budget show the direct funding, indirect funding and total funding for each program.

### **3. Commission Conclusion**

26. The Commission accepts NERC's compliance filing regarding FRCC, MRO, NPCC, SERC, TRE and WECC. Each Regional Entity has corrected the discrepancies between its income statement and business plan. Because of the confusion caused by these discrepancies, namely that neither the Commission nor commenters could identify the intended budget proposal, the 2009 budgets and business plans must not contain similar discrepancies. The Commission reiterates that in the future each Regional Entity's business plan and budget must be clear, accurate and consistent with its income statement.<sup>25</sup> In future filings, this type of wide-spread inconsistency between budgets and business plans (or any supporting material) may delay acceptance of the NERC or Regional Entity budgets.

27. The Commission is also satisfied with the detail provided regarding the FRCC decision to move certain costs to its Member Services Division. The Commission

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<sup>23</sup> NERC notes that the only two changes to the document are in the "Total SERC Resources" table on page 1 of Attachment 4 to its compliance filing and in Table 1 on page 33 of Attachment 4.

<sup>24</sup> See NERC Compliance Filing, Attachment 7, at 26-27 (Table 2).

<sup>25</sup> *2008 Budget Order* at P 64.

accepts NERC's explanation of the increase in MRO's indirect costs for statutory activities. The Commission appreciates MRO's efforts to be consistent with NERC's definitions of direct and indirect costs; however, in the future, such changes made by any regional entity should be described in detail in the initial budget filing.

28. Finally, the Commission finds sufficient NERC's explanations of the changes to the NPCC, SERC, TRE and WECC budgets and business plans.

The Commission orders:

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

(B) The revised business plans and budgets for FRCC, MRO, NPCC, SERC, TRE and WECC are hereby accepted, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.