

143 FERC ¶ 61,239  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Western Electricity Coordinating Council

Docket No. EL13-52-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued June 20, 2013)

1. On March 12, 2013, the Western Electricity Coordinating Council (WECC) filed a petition for declaratory order (Petition) regarding WECC's plan to establish a separate, independent company, RC Company, to perform the reliability coordinator<sup>1</sup> function in the Western Interconnection, a function currently performed by WECC. WECC seeks confirmation that RC Company can continue to fund the reliability coordinator and WECC Interchange Tool functions under section 215 of the Federal Power Act (FPA).<sup>2</sup> WECC also seeks confirmation that, after transferring the reliability coordinator function to RC Company, WECC will not be precluded from undertaking compliance and enforcement actions with respect to RC Company. For the reasons discussed below, we conditionally grant WECC's Petition.

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<sup>1</sup> A reliability coordinator is "[t]he entity that is the highest level of authority who is responsible for the reliable operation of the Bulk Electric System, has the Wide Area view of the Bulk Electric System, and has the operating tools, processes and procedures, including the authority to prevent or mitigate emergency operating situations in both next-day analysis and real-time operations . . . ." North American Electric Reliability Corporation (NERC) Definitions Used in the Rules of Procedure, Appendix 2 to the NERC Rules of Procedure, at 17 (effective March 5, 2013).

<sup>2</sup> 16 U.S.C. § 824o (2006). WECC states that RC Company will also assume responsibility for the WECC Interchange Tool, which is an interchange authority function. Accordingly, RC Company will perform the reliability coordinator and interchange authority functions currently performed by WECC. WECC Petition at 2.

## I. Background

2. FPA section 215 requires the Commission to certify an Electric Reliability Organization (ERO) to develop and enforce Reliability Standards for the Bulk-Power System.<sup>3</sup> On July 20, 2006, the Commission certified NERC as the ERO.<sup>4</sup> The ERO has the authority to delegate certain statutory functions undertaken pursuant to FPA section 215 to a Regional Entity pursuant to FPA section 215(e)(4) and section 39.8 of the Commission's regulations.<sup>5</sup>

3. On August 23, 2006, NERC filed its proposed 2007 business plan and budget and the proposed 2007 business plans and budgets for eight anticipated Regional Entities, including WECC. The Commission conditionally accepted NERC's proposed business plan and budget and accepted in part the Regional Entity budgets.<sup>6</sup> With respect to WECC, the Commission determined that the WECC reliability coordinator function could not be funded under FPA section 215 because the WECC reliability coordinator engaged in real-time operation of the Bulk-Power System. The Commission also stated that "[u]nless there is a strong separation between oversight and real-time operations, the same entity should not oversee its own compliance with reliability standards."<sup>7</sup> Accordingly, the Commission excluded \$6.9 million of WECC's proposed budget for the reliability coordinator function from funding under FPA section 215.

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<sup>3</sup> 16 U.S.C. § 824o (2006).

<sup>4</sup> *North American Electric 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).

<sup>5</sup> 16 U.S.C. §824o(e)(4); 18 C.F.R. § 39.8 (2012).

<sup>6</sup> *North American Electric Reliability Corp.*, 117 FERC ¶ 61,091, at P 3 (2006) (October 24, 2006 Order), *order on reh'g*, 118 FERC ¶ 61,111 (2007) (February 15, 2007 Order), *order on reh'g*, 119 FERC ¶ 61,059 (2007) (April 19, 2007 Order). In the October 24, 2006 Order, the Commission reserved judgment on the Regional Entity business plans and budgets because the delegation agreements between NERC and the Regional Entities had yet to be executed or filed with the Commission for approval. October 24, 2006 Order, 117 FERC ¶ 61,091 at P 5.

<sup>7</sup> October 24, 2006 Order, 117 FERC ¶ 61,091 at P 52.

4. Subsequently, WECC, Pacific Gas and Electric Company and Southern California Edison Company (SoCal Edison) jointly sought rehearing of the Commission's determination regarding funding of the WECC reliability coordinator. On February 15, 2007, in an order on rehearing, the Commission directed its staff to hold a technical conference to discuss the issues raised in WECC's request for rehearing concerning the funding of WECC's reliability coordinator activities. The Commission stated that it would issue an order following the technical conference.<sup>8</sup>

5. On April 19, 2007, the Commission issued an order on rehearing addressing whether the WECC reliability coordinator function was eligible for funding under FPA section 215. The Commission determined that the WECC reliability coordinator function could be funded under FPA section 215, stating that:

The Commission agrees that all of the load serving entities within WECC's geographic boundaries should pay their allocated share of WECC's reliability coordinator costs . . . based on the net energy for load and that there should not be any "free riders," since in this proceeding, the Commission is granting rehearing and finds that WECC's reliability coordinator function should be a statutory activity pursuant to section 215 of the FPA.<sup>9</sup>

6. While the Commission did not adopt a general policy regarding FPA section 215 funding of reliability coordinators, the April 19, 2007 Order determined that WECC's reliability coordinator function was a statutory activity based on the circumstances specific to WECC.<sup>10</sup> The Commission determined that WECC addressed the concerns discussed in the October 24, 2006 Order.<sup>11</sup> The Commission noted WECC's position

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<sup>8</sup> February 15, 2007 Order, 118 FERC ¶ 61,111 at P 1. The technical conference was held on March 2, 2007.

<sup>9</sup> April 19, 2007 Order, 119 FERC ¶ 61,059 at P 44.

<sup>10</sup> *Id.* PP 21, 24.

<sup>11</sup> On this issue, the Commission gave deference to the advice of the Western Interconnection Regional Advisory Body (WIRAB), which supported FPA section 215 funding for the WECC reliability coordinator function. *Id.* P 22 (citing 16 U.S.C. § 824o(j) (2006) ("A regional advisory body may provide advice to the Electric Reliability Organization, a regional entity, or the Commission regarding the governance of an existing or proposed regional entity within the same region, whether a standard proposed to apply within the region is just, reasonable, not unduly discriminatory or preferential, and in the public interest, *whether fees proposed to be assessed within the region are just,*

(continued...)

that, while “‘legally’ operators of the Bulk-Power System . . . the WECC reliability coordinators do not physically operate grid facilities. Rather, they advise and, when necessary, direct other entities such as balancing authorities and transmission operators to take operational actions.”<sup>12</sup> In concluding that the WECC reliability coordinator function was eligible for FPA section 215 funding, the Commission found that “[t]here is no dispute that WECC’s reliability coordinators are focused on wide-area situational awareness and wide-area operations oversight.”<sup>13</sup> The Commission also noted that WECC proposed to have NERC lead the compliance audit team of the WECC reliability coordinator function. However, in the April 19, 2007 Order, the Commission stated that it would address WECC’s proposal, and the issue of compliance and enforcement oversight of the WECC reliability coordinator generally, in a separate order on the proposed delegation agreement between NERC and WECC.

7. On November 29, 2006, NERC submitted unexecuted delegation agreements between NERC and eight proposed Regional Entities, including WECC. On April 19, 2007, the Commission accepted the WECC delegation agreement.<sup>14</sup> The Commission noted that, according to the delegation agreement, WECC would act as a reliability coordinator and that:

WECC, as a reliability coordinator, is a user, owner, or operator of the Bulk-Power System. As such, WECC is obligated to demonstrate a strong separation between oversight and operational functions.<sup>15</sup>

8. The Commission noted its concern with the level of independence between the WECC reliability coordinator and the WECC Regional Entity compliance and enforcement functions. The Commission determined that “WECC’s compliance staff is

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*reasonable, not unduly discriminatory or preferential, and in the public interest and any other responsibilities requested by the Commission. The Commission may give deference to the advice of any such regional advisory body if that body is organized on an Interconnection-wide basis.”)* (emphasis added).

<sup>12</sup> *Id.* P 23.

<sup>13</sup> *Id.* P 24.

<sup>14</sup> *North American Electric Reliability Corp.*, 119 FERC ¶ 61,060 (2007) (Initial Delegation Agreement Order), *order on reh’g*, 120 FERC ¶ 61,260 (2007).

<sup>15</sup> Initial Delegation Agreement Order, 119 FERC ¶ 61,060 at PP 227, 453.

not sufficiently separated from its reliability coordinators . . . [because] WECC's compliance staff and reliability coordinators are hired and have their performance reviewed by WECC management, and both have their work product reviewed by the same member committees and management personnel."<sup>16</sup> The Commission directed NERC and WECC to remedy these deficiencies and stated that, "[i]f it chooses, and NERC agrees, WECC may engage NERC to oversee the compliance and enforcement functions as they relate to WECC's compliance with reliability standards."<sup>17</sup>

9. In response to the Commission's directive, WECC entered into agreements, first with NERC, and then with Northeast Power Coordinating Council (NPCC), another Regional Entity, to perform compliance and enforcement activities with respect to WECC's reliability coordinator and interchange authority functions. The Commission approved these agreements.<sup>18</sup>

## II. WECC's Petition

10. WECC states that, to achieve a complete separation of the reliability coordinator function from WECC's other Regional Entity activities, WECC proposes to establish an independent entity, RC Company, to provide reliability coordinator functions in the Western Interconnection. WECC requests that the Commission grant WECC's Petition that RC Company may continue to fund the reliability coordinator function under FPA section 215 and that WECC will be able to exercise compliance and enforcement authority over RC Company upon transferring its reliability coordinator functions to RC Company.

11. Specifically, WECC requests that the Commission grant the following requests:

- (1) WECC may support the formation of RC Company during 2013 through its previously approved FPA section 215 budget;
- (2) WECC may include in its 2014 budget proposal a separate budget proposal for RC Company reflecting the amounts needed to

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<sup>16</sup> *Id.* P 456.

<sup>17</sup> *Id.* The Commission stated that "[t]his is just one possible way to help establish the strong separation that we require." *Id.*

<sup>18</sup> *North American Electric Reliability Corp.*, Docket Nos. RR06-1-018, *et al.* (Feb. 17, 2009) (delegated letter order); *North American Electric Reliability Corp.*, Docket No. RR11-2-000 (Nov. 15, 2011) (delegated letter order).

fund RC Company's operations in 2014; upon approval, collect on RC Company's behalf, RC Company's authorized funding amount as part of the annual assessment process that WECC conducts; and transfer to RC Company a portion of WECC's reserves;

(3) Beginning in 2015, RC Company may prepare its own budgets for submission and approval to NERC and the Commission, and WECC may continue to collect, on RC Company's behalf, amounts approved for RC Company in WECC's annual assessment process; and

(4) WECC may exercise all of its compliance and enforcement authorities over RC Company's reliability coordinator and WECC Interchange Tool functions, including conducting event analyses that may implicate the RC Company.<sup>19</sup>

12. WECC states that it is registered with NERC to perform reliability coordinator functions and as an interchange authority in connection with providing and staffing the WECC Interchange Tool.<sup>20</sup>

13. WECC explains that it and the reliability coordinator function in WECC are unique because the region's expansive size and large number of balancing authorities create unique challenges in maintaining situational awareness. WECC also emphasizes that the reliability coordinator is independent of stakeholders and asserts that it has significantly more staff, resources, and programs than reliability coordinators in other parts of the country.<sup>21</sup>

14. WECC states in the Petition that, to achieve complete separation of reliability coordinator functions from WECC's other Regional Entity activities, WECC will establish RC Company as an independent entity. WECC states that RC Company will be established as a non-profit company with an independent board of directors. WECC states that it intends to delegate all reliability coordinator functions to RC Company

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<sup>19</sup> *North American Electric Reliability Corp.*, Docket No. RR10-9-000 (July 23, 2010) (delegated letter order) (approving WECC Interchange Tool as a statutory activity under the situation awareness and infrastructure security program).

<sup>20</sup> WECC Petition at 4. Generally, this order includes WECC Interchange Tool function as well when discussing the reliability coordinator function.

<sup>21</sup> *Id.* at 5-7.

effective January 1, 2014. WECC explains that a three-member Interim Board Committee will assist in developing RC Company and a Member Advisory Committee will assist in establishing the board of RC Company to ensure independence between WECC and RC Company. According to WECC, when the transition is completed in 2015, employees and equipment will have no co-mingling, and WECC “will have no further role in RC Company’s governance, management, operations, and personnel.”<sup>22</sup>

15. WECC states that, after RC Company is incorporated, RC Company will register with NERC as a reliability coordinator and an interchange authority with respect to WECC Interchange Tool functions. WECC explains that it will delegate all of its current reliability coordinator functions to RC Company and enter into a sub-delegation agreement with RC Company to memorialize the transfer, under which RC Company will assume all responsibility and liability for the delegated functions. WECC states that it will only have the residual authority, subject to Commission and NERC approval, to terminate the sub-delegation agreement with RC Company. Additionally, WECC explains that the sub-delegation agreement will require RC Company to independently develop its annual business plan and budget and file it with NERC; and that WECC will collect, on RC Company’s behalf, assessments allocable to RC Company’s budget, as WECC performs currently with respect to assessments allocable to WIRAB. WECC states that it will revise its current delegation agreement with NERC and seek to terminate its current compliance and enforcement agreement with NPCC.<sup>23</sup>

16. WECC states that it intends to file its revised NERC-WECC delegation agreement, amended WECC bylaws, new WECC-RC Company sub-delegation agreement, and new RC Company bylaws with the Commission for review and approval.<sup>24</sup>

17. WECC states that during 2013, reliability coordinator functions and the activities related to the formation of RC Company will be funded consistent with WECC’s Commission-accepted 2013 budget.<sup>25</sup> WECC also states that for 2014, it proposes to include RC Company’s budget proposal in WECC’s 2014 budget submission to the Commission. WECC explains that it proposes to allocate a portion of its reserves to RC Company at the time RC Company incorporates to provide financial stability to RC Company for unforeseen expenses and contingencies. WECC also states that for 2015,

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<sup>22</sup> *Id.* at 10-13.

<sup>23</sup> *Id.* at 13.

<sup>24</sup> *Id.* at 14.

<sup>25</sup> *North American Electric Reliability Corp.*, 141 FERC ¶ 61,086 (2012).

RC Company will separately prepare its own budget and submit the budget request to NERC.<sup>26</sup>

### **III. Notice and Responsive Pleadings**

18. Notice of the Petition was published in the *Federal Register*, 78 Fed. Reg. 17,393 (2013), with interventions and protests due on or before April 11, 2013. On April 8, 2013, Edison Electric Institute (EEI) moved to extend the comment period until April 18, 2013. On April 9, 2013, the comment period was extended until April 18, 2013.

19. Motions to intervene were timely filed by Tucson Electric Power Company, Utah Associated Municipal Power Systems, American Public Power Association, NPCC, Excel Energy Services Inc., Arizona Electric Power Cooperative, Inc. and Southwest Transmission Cooperative, Inc., and California Department of Water Resources State Water Project.

20. Motions to intervene and comments were timely filed by WIRAB, NERC, Avista Corporation and Idaho Power Company (Avista and IPC), PacifiCorp, Puget Sound Energy (Puget), Tacoma Power (Tacoma), Balancing Authority of Northern California (BANC), Modesto Irrigation District,<sup>27</sup> Southwest Transmission Dependent Utility Group, Nevada Power Company and Sierra Pacific Power Company (NV Energy), SoCal Edison, EEL, Portland General Electric Company and Northwestern Corporation (PGE and Northwestern), California Independent System Operator Corporation (CAISO), Salt River Project Agricultural Improvement and Power District (Salt River), San Diego Gas & Electric Company,<sup>28</sup> Bonneville Power Administration (Bonneville), Western Area Power Administration (Western), and Tri-State Generation and Transmission Association, Inc. (Tri-State).

21. Public Power Council, Six Cities (cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, CA), and City of Roseville, California filed motions to intervene out-of-time.

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<sup>26</sup> WECC Petition at 15.

<sup>27</sup> Modesto Irrigation District states that it concurs with the arguments in BANC's comments.

<sup>28</sup> San Diego Gas & Electric Company states that it supports the arguments made in Salt River's comments.

22. Commenters generally support the formation of an independent RC Company; however, several commenters protested aspects of WECC's Petition, as discussed below.

23. WIRAB states that it recommends that the Commission grant WECC's Petition, specifically that FPA section 215 funding will be available for RC Company and that WECC will not be precluded from undertaking compliance and enforcement actions once WECC is bifurcated and the reliability coordinator functions have been transferred to RC Company.<sup>29</sup> WIRAB explains that FPA section 215 funding is critical for providing adequate funding to RC Company, which is critical for reliability. Additionally, WIRAB explains that ensuring that WECC may undertake compliance and enforcement actions with respect to RC Company is critical for reliability in the Western Interconnection.

24. NERC comments that it strongly supports WECC's decision to separate the reliability coordinator and interchange authority functions from WECC. NERC also states that it is willing to include the costs of funding RC Company in its annual budget submission to the Commission and collect those costs through WECC, in the same manner as NERC includes and collects the costs to support WIRAB. Additionally, NERC states that the Commission should restrict any decision it reaches regarding reliability coordinator functions to the Western Interconnection due to the unique circumstances of reliability coordination in the Western Interconnection.<sup>30</sup>

25. Several commenters state that WECC's Petition is premature because necessary bylaws and other pertinent governance documents regarding the formation of RC Company are still in draft form.<sup>31</sup> These commenters note that RC Company is not yet formed, and the bylaws and delegation agreement that will govern the scope of RC Company are not yet finalized. These commenters state that WECC has not yet provided sufficient evidence of, and that WECC should make subsequent filings to identify, WECC's and RC Company's roles and responsibilities, including finalized governance and bylaw documents.

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<sup>29</sup> WIRAB notes that it is a regional advisory body that may provide advice to the Commission regarding the governance and budgets of NERC and WECC.

<sup>30</sup> *See also* Western Comments at 4; Bonneville Comments at 2.

<sup>31</sup> *See* Avista and IPC Comments at 6-7; Puget Comments at 6-7; Tacoma Comments at 2-5; Southwest Transmission Dependent Utility Group Comments at 4-5; PGE and Northwestern Comments at 3-4; BANC Comments at 5-13; CAISO Comments at 3-4; Salt River Comments at 3-7; Western Comments at 4-5; Tri-State Comments at 2-4.

26. Several commenters state that FPA section 215 funding is not appropriate for RC Company.<sup>32</sup> They assert that RC Company is not the ERO or a Regional Entity, and thus is ineligible for FPA section 215 funding. Commenters explain that the proposed sub-delegation agreement is not a direct delegation from the ERO to RC Company; rather, WECC proposes to delegate its reliability coordinator functions to RC Company and such delegation does not satisfy the requirements of FPA section 215 funding. EEI comments that, although it fully supports separating and transferring the reliability coordinator functions from WECC to RC Company, FPA section 215 funding is not appropriate for RC Company. EEI also contends that reliability coordinator functions are not within the scope of FPA section 215 activities for Regional Entities.<sup>33</sup> EEI comments that the Commission should reconsider the April 19, 2007 Order and determine that WECC reliability coordinator functions are not jurisdictional under FPA section 215, given the significant and growing operational role the WECC reliability coordinator provides.<sup>34</sup> By contrast, Bonneville states that it supports WECC's proposal to fund RC Company under FPA section 215.<sup>35</sup>

27. Some commenters state that if FPA section 215 funding is appropriate, funding should be approved only for a two-year transition period, after which another funding mechanism should be established for 2015.<sup>36</sup> These commenters contend that a transitional period of FPA section 215 funding will provide a smooth transition of reliability coordinator functions from WECC to RC Company and the necessary time for RC Company to develop specific financial procedures and policies, including a permanent funding mechanism. EEI, although it believes that reliability coordinator functions generally are ineligible for FPA section 215 funding, states that RC Company should be funded under FPA section 215 for 2013 and 2014; but beginning in 2015, RC Company should be funded by a different mechanism. SoCal Edison states that the costs for reliability coordinator functions in the Western Interconnection should be recovered

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<sup>32</sup> See Avista and IPC Comments at 7-9; Puget Comments at 7-9; Tacoma Comments at 5-6; EEI Comments at 2, 4-8.

<sup>33</sup> EEI Comments at 2, 4-8. See also Avista and IPC Comments at 8-9; Puget Comments at 8-10.

<sup>34</sup> EEI Comments at 8-12.

<sup>35</sup> Bonneville Comments at 2.

<sup>36</sup> See PacifiCorp Comments at 4-5; NV Energy Comments at 2; SoCal Edison Comments at 5-6; PGE and Northwestern Comments at 4-5; BANC Comments at 13.

through a Commission-approved open access transmission tariff under FPA section 205.<sup>37</sup>

28. EEI comments that its members in WECC are “working with both WECC and RC Company leadership . . . to find and implement sufficient non-FPA section 215 sources of funding for RC Company for 2015 and later years.”<sup>38</sup>

29. Several commenters contend that RC Company will lack independence from WECC for compliance oversight and budget purposes. Specifically, this group of commenters asserts that WECC’s ability to collect FPA section 215 assessments would effectively allow WECC to retain control over RC Company, thereby compromising the independence of RC Company.<sup>39</sup> These commenters also state that WECC’s authority to terminate the sub-delegation agreement with RC Company effectively allows WECC to retain control over RC Company.<sup>40</sup>

30. On April 26, 2013, WECC filed an answer. WECC reiterates that the Commission determined that WECC’s performance of reliability coordinator functions is a component of WECC’s situational awareness, which is a FPA section 215 statutory function, based on the unique circumstances presented in the Western Interconnection and the support of WIRAB; therefore, WECC’s reliability coordinator function may be funded under FPA section 215. WECC acknowledges that the Commission’s determination in this proceeding is subject to the Commission’s subsequent acceptance of WECC’s filing of final organizational documents and the sub-delegation agreement.

31. WECC states that the Petition was not filed prematurely and explains that RC Company must be fully operational and ready to assume the delegated reliability coordinator functions beginning on January 1, 2014. However, WECC states that RC Company cannot be fully operational with a finalized governance structure until a funding source is identified that can be implemented concurrently with RC Company start-up. WECC notes its understanding that the Commission’s determination on funding can be relied upon only if the ultimate formation of RC Company is consistent with the

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<sup>37</sup> SoCal Edison Comments at 6 (citing 16 U.S.C. § 824(e) (2006)).

<sup>38</sup> EEI Comments at 3.

<sup>39</sup> See Avista and IPC Comments at 10; Puget Comments at 10; PGE and Northwestern Comments at 5; BANC Comments at 9-10; Tri-State Comments at 4-5.

<sup>40</sup> See Avista and IPC Comments at 10; Puget Comments at 10; Tri-State Comments at 4-5.

representations made in the Petition. WECC also states that it will continue to engage members in formation plans and will make a subsequent filing with the Commission when RC Company organizational documents are finalized.<sup>41</sup>

32. WECC asks that the Commission confirm that RC Company may continue to fund reliability coordinator functions in the Western Interconnection under FPA section 215 and that the Commission should not revisit its prior approval of FPA section 215 funding because the factors the Commission considered in approving the funding for WECC's reliability coordinator functions remain accurate and applicable. WECC explains that these factors will still be met when WECC delegates its reliability coordinator functions to RC Company insofar as RC Company will not physically operate grid facilities; will not be involved in day-to-day operational decisions; will support WECC in carrying out its reliability activities by providing WECC with situational awareness for the Western Interconnection; and will maintain separation between reliability coordinator functions and the users, owners, and operators of the Bulk-Power System.<sup>42</sup>

33. WECC also states that, although it believes the Commission can rule on the issue of permanent FPA section 215 funding, it would not object to the Commission limiting its ruling to a two-year transitional period through 2015. WECC explains that RC Company may explore other funding options once it gains operating and funding experience.<sup>43</sup> WECC included a proposed schedule in its answer under which it would submit filings to the Commission in 2015 to propose a funding mechanism for future years, if the Commission grants FPA section 215 funding for an interim basis.

34. WECC states that RC Company will be independent of WECC once the transition is complete because RC Company will operate completely separately from WECC with its own Board of Directors and chief executive officer, all of whom as of the date of separation from WECC will be independent from WECC. WECC addresses commenters' sub-delegation agreement concern by explaining that WECC may propose termination but has no authority to implement or require termination; only the Commission would have the ability to terminate the sub-delegation agreement.<sup>44</sup> WECC also addresses commenters' "collection agent" concern, explaining that the role of

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<sup>41</sup> WECC Answer at 5-7.

<sup>42</sup> *Id.* at 8-11.

<sup>43</sup> *Id.* at 11-12.

<sup>44</sup> *Id.* at 14 (noting that the current NERC-WECC delegation agreement similarly provides for termination under certain circumstances).

WECC in collecting assessments and then allocating them to RC Company in accordance with a Commission-approved RC Company budget is modeled on the current system in place to collect assessments for WIRAB. WECC asserts that collection and allocation by WECC is a ministerial task that does not give WECC control over the operations of WIRAB and similarly will not give WECC control over the operations of RC Company.<sup>45</sup>

#### **IV. Discussion**

##### **A. Procedural Matters**

35. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

36. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2012), the Commission will grant Public Power Council's, Six Cities', and City of Roseville, California's late-filed motions to intervene given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

37. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept WECC's answer because it provides information that assisted us in our decision-making process.

##### **B. Substantive Issues**

38. For the reasons discussed below, we conditionally grant WECC's Petition.

##### **1. Timing of WECC's Petition**

39. Under Rule 207 of the Commission's Rules of Practice and Procedure, a party may seek a declaratory order to "terminate a controversy or remove uncertainty."<sup>46</sup> The Commission has discretion as to whether to issue a declaratory order.<sup>47</sup> In this matter, we

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<sup>45</sup> *Id.* at 14-15.

<sup>46</sup> 18 C.F.R. § 385.207 (2012).

<sup>47</sup> *PJM Interconnection, L.L.C.*, 139 FERC ¶ 61,024, at P 16 (2012); *USGen New England, Inc.*, 118 FERC ¶ 61,172, at P 18 (2007) ("As the Commission has stated,

(continued...)

exercise our discretion to resolve a controversy and remove uncertainty regarding the formation of RC Company, particularly with respect to the funding of RC Company. We believe that WECC's Petition is not premature because WECC must have assurances that RC Company will be funded by the proposed operational date of January 1, 2014 to proceed with its reorganization plans. The funding issue is central to RC Company's development and will allow WECC to finalize RC Company's governance, including management structure, corporate bylaws, and delegation agreements. WECC's Petition includes enough information for the Commission to provide guidance on WECC's requests. However, as WECC itself acknowledges, the Commission's guidance can only be relied upon if the formation of RC Company conforms to the representations made by WECC in the Petition. Moreover, as discussed below, any final determination concerning the formation of RC Company as raised in WECC's Petition is conditioned on Commission approval of the final RC Company governance documents.

## 2. RC Company FPA Section 215 Funding

40. Based on the information provided in WECC's Petition and the reasoning of the April 19, 2007 Order, we find that RC Company is eligible for continued FPA section 215 funding. WECC currently receives funding for its reliability coordinator activities under FPA section 215 pursuant to the April 19, 2007 Order. The April 19, 2007 Order held that the reliability coordinator function in the Western Interconnection is a FPA section 215 activity, and therefore that function is eligible for FPA section 215 funding.<sup>48</sup> WECC states that it will transfer its reliability coordinator functions to RC Company by a sub-delegation agreement and RC Company will perform reliability coordinator functions for the Western Interconnection.

41. Based on the record, we are not persuaded by commenters' argument that RC Company is not eligible for FPA section 215 funding because RC Company would not be the ERO or a Regional Entity. We conclude that having RC Company perform the reliability coordinator function in WECC pursuant to a sub-delegation agreement between WECC and RC Company does not materially change the factual basis for the Commission's determination to permit FPA section 215 funding for the WECC reliability coordinator in the April 19, 2007 Order.<sup>49</sup> Moreover, in reaching our determination, we

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section 554(e) of the Administrative Procedure Act provides that an agency in its sound discretion may issue a declaratory order to terminate a controversy or remove uncertainty."); *Colonial Pipeline Co.*, 116 FERC ¶ 61,078, at P 45 (2006); *Midwest Independent Transmission System Operator, Inc.*, 136 FERC ¶ 61,010, at P 65 (2011).

<sup>48</sup> April 19, 2007 Order, 119 FERC ¶ 61,059 at P 24.

<sup>49</sup> The Petition cites the number of reliability coordinator directives issued by

(continued...)

give deference to the advice of WIRAB in its role as a regional advisory body. WIRAB supports the formation of an independent and Interconnection-wide reliability coordinator for the Western Interconnection that is funded under FPA section 215.<sup>50</sup>

42. Based on our determination that the reliability coordinator function in WECC can be funded under FPA section 215, we see no reason to restrict such funding to a transitional period. However, we appreciate that entities in the Western Interconnection are still discussing the RC Company issues raised by the Petition, including the funding of RC Company. Those discussions should continue so that interested entities can work to reach common ground on these issues as the formation of RC Company continues to evolve and solidify. Nothing in this order should be read as precluding those entities from further discussions, including discussions on an alternative funding mechanism as RC Company continues to develop. Indeed, the Commission encourages WECC and interested entities to continue with those discussions.

43. We also find that it is appropriate for WECC to support the formation of RC Company during 2013 through its previously approved FPA section 215 budget; include in its 2014 budget a separate budget proposal for RC Company reflecting the amounts needed to fund RC Company's operations in 2014; transfer to RC Company a reasonable portion of WECC's reserves to provide financial stability and prepare against contingencies; and collect RC Company's authorized funding amount as part of the annual assessment process on RC Company's behalf. Further, we find that, beginning for 2015, it is appropriate for RC Company to prepare its own budgets for submission and approval to NERC and the Commission, and for WECC to collect, on RC Company's behalf, amounts approved for RC Company in WECC's annual assessment process.

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WECC between 2009 and 2012 to support the position that WECC reliability coordinator is not involved in day-to-day operational decisions. WECC Petition at 21 n.32. In the April 19, 2007 Order, the Commission found that WECC reliability coordinator was not involved in day-to-day operational decisions. April 19, 2007 Order, 119 FERC ¶ 61,059 at P 23. Based on the Petition, we see no reason to conclude that RC Company will act differently. However, we clarify that the mere number of directives issued by a reliability coordinator should not be a factor in assessing whether a reliability coordinator exercises day-to-day operational control so as to affect its eligibility for FPA section 215 funding for its activities. A reliability coordinator should issue directives when appropriate to maintain regional or Interconnection-wide reliability or to ensure compliance with Reliability Standards as required.

<sup>50</sup> WIRAB Comments at 6. *See* 16 U.S.C. § 824o(j) (2006) ("The Commission may give deference to the advice of any such regional advisory body if that body is organized on an Interconnection-wide basis.").

### 3. WECC Compliance and Enforcement Actions with Respect to RC Company

44. Based on the information provided in the Petition, we find that WECC should be able to exercise compliance and enforcement authority over RC Company. Our finding is conditioned on the representations contained in WECC's Petition and Commission review and approval of finalized governance documents. WECC's proposals in the Petition appear to create a sufficient degree of independence between WECC and RC Company because WECC will have no future role in RC Company's governance, management, operation, or supervision. WECC states that RC Company will have no financial ties with WECC and will be solely liable for any compliance penalties levied as a result of reliability coordinator or interchange authority functions. WECC also states that RC Company will set up its own independent Board of Directors, which will have no overlap with WECC's Board of Directors. As noted by WECC and commenters, WECC is still developing the necessary governance documents for itself and RC Company. Thus, we grant WECC's Petition on the condition that it submits the bylaws and the delegation agreements to the Commission once finalized to allow for Commission review and approval of those documents.<sup>51</sup>

45. We are not persuaded by commenters that RC Company's independence would be compromised based on WECC's proposed authority to collect assessments on behalf of RC Company and WECC's ability to propose termination of the sub-delegation agreement with RC Company. WECC states that collection and allocation of assessments for budget purposes is a ministerial task that will not give WECC control over RC Company.<sup>52</sup> WECC explains that the collection procedure will be modeled on the current system in place for WIRAB, which does not give WECC control over the operations of WIRAB, and thus similarly will not give WECC control over RC Company. Additionally, WECC states that, while WECC will have the ability to *propose* terminating the sub-delegation agreement with RC Company, only the Commission can implement or require termination.<sup>53</sup> Based on WECC's Petition, it appears that RC Company will be sufficiently independent from WECC for WECC to exercise compliance and enforcement authority over RC Company. However, as discussed above, our determination is conditioned on Commission approval of the finalized RC Company governance documents, including the delegation agreements.

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<sup>51</sup> The Commission must approve the governance documents prior to RC Company beginning operations. See 18 C.F.R. §§ 39.8(b), 39.10(c) (2012).

<sup>52</sup> WECC Answer at 15.

<sup>53</sup> *Id.* at 13-14.

The Commission orders:

WECC's Petition is hereby conditionally granted, as discussed in the body of this order. The conditional approval is based on the facts presented and any material change to the facts may change the conditional approval granted herein.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.