

141 FERC ¶ 61,086  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

North American Electric Reliability Corporation      Docket Nos. RR12-13-000  
FA11-21-000  
(Not Consolidated)

ORDER ACCEPTING 2013 BUSINESS PLAN AND BUDGET OF THE  
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION  
AND ORDERING COMPLIANCE FILING

(Issued November 2, 2012)

1. On August 24, 2012, as supplemented on September 10, 2012, the North American Electric Reliability Corporation (NERC) filed its 2013 business plan and budget, the 2013 business plans and budgets of each Regional Entity, and the 2013 business plan and budget of the Western Interconnection Regional Advisory Body (WIRAB) (collectively, NERC Application).<sup>1</sup> As discussed in this order, the Commission accepts the 2013 business plans and budgets of NERC, the Regional Entities and WIRAB, as well as the associated attachments and updates. NERC is authorized to issue billing invoices to fund the fiscal year 2013 operations of the Regional Entities, WIRAB, and itself.<sup>2</sup>

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<sup>1</sup> The eight Regional Entities include: Florida Reliability Coordinating Council (FRCC); Midwest Reliability Organization (MRO); Northeast Power Coordinating Council, Inc. (NPCC); ReliabilityFirst Corporation (RFC); SERC Reliability Corporation (SERC); Southwest Power Pool Regional Entity (SPP RE); Texas Reliability Entity (Texas RE); and Western Electricity Coordinating Council (WECC).

<sup>2</sup> Unless otherwise addressed in this order, acceptance of NERC's 2013 business plan and budget does not prejudice any issues pending before the Commission in the "Performance Audit of the North American Electric Reliability Corporation for Budget Formulation, Administration, and Execution" (Performance Audit), Docket No. FA11-21-000. Issues raised in the Performance Audit will be addressed in a future order in that proceeding to the extent that such issues are not specifically addressed in this order.

2. Also, as discussed in this order, the Commission directs NERC to make a compliance filing, consistent with its commitment in the NERC Performance Audit proceeding, to develop written criteria for determining whether a reliability activity is eligible to be funded under Federal Power Act (FPA) section 215. As discussed below, we direct NERC to submit a compliance filing that includes the written criteria no later than February 1, 2013.

## **I. Background**

### **A. Regulatory History**

3. Section 215 of the FPA requires the Commission to certify an Electric Reliability Organization (ERO) to develop mandatory and enforceable Reliability Standards, subject to Commission review and approval.<sup>3</sup> In July 2006, the Commission certified NERC as the ERO.<sup>4</sup>

4. 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.”<sup>5</sup> On February 3, 2006, the Commission issued Order No. 672 to implement the requirements of FPA section 215, which generally provides for Commission authorization of funding for “statutory” functions, i.e., those functions carried out pursuant to FPA section 215.<sup>6</sup> Among other things, Order No. 672 sets forth requirements for funding the ERO and the approval of an ERO business plan and budget.<sup>7</sup> Moreover, the Commission’s regulations require the ERO to file with the Commission the ERO’s proposed annual budget for statutory and non-statutory activities 130 days before the beginning of its fiscal year.<sup>8</sup> Further, the ERO’s filing must contain

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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(c)(2)(B) (2006).

<sup>6</sup> *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval and Enforcement of Electric Reliability Standards*, Order No. 672, FERC Stats. & Regs. ¶ 31,204, *order on reh’g*, Order No. 672-A, FERC Stats. & Regs. ¶ 31,212 (2006).

<sup>7</sup> Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 197.

<sup>8</sup> 18 C.F.R. § 39.4(b) (2012).

the annual budgets of each Regional Entity for statutory and non-statutory activities and provide supporting materials, including the ERO's and each Regional Entity's complete business plan and budget organizational chart. The filing must also explain the proposed collection of all dues, fees, and charges, as well as the proposed expenditure of funds collected.

5. In an October 2006 order, the Commission conditionally accepted NERC's 2007 business plan and budget for its first year of operation as the ERO and provided NERC guidance on future business plan and budget submissions.<sup>9</sup> Subsequently, the Commission provided additional guidance on future business plan and budget submissions when it conditionally accepted NERC's 2008 through 2012 business plans and budgets.<sup>10</sup>

**B. NERC's 2013 ERO Business Plan and Budget Application**

6. NERC's Application contains its proposed business plan and budget for the year ending December 31, 2013, as well as the proposed business plans and budgets of WIRAB and each of the eight Regional Entities for the year ending December 31, 2013.

7. The proposed assessment for the total ERO for 2013 is \$161,188,857, which includes \$47,604,156 for NERC funding; \$113,050,009 for Regional Entity funding; and \$534,692 for WIRAB funding. NERC states that the portion allocable for the United States statutory activities of NERC, the Regional Entities, and WIRAB is \$144,255,780.

8. NERC's Application indicates that it will continue to allocate costs to end users in the United States based on Net Energy for Load (NEL) from 2011. NERC states that it will calculate and bill the assessments to certain entities, referred to as "designees," based on NEL values that include the NEL for other load-serving entities served by the designee or for which the designee has otherwise agreed to accept responsibility for assessments.<sup>11</sup> Further, NERC states that the calculation and billing of assessments to

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<sup>9</sup> *North American Electric Reliability Corp.*, 117 FERC ¶ 61,091 (2006), *order on reh'g*, 119 FERC ¶ 61,059 (2007).

<sup>10</sup> *North American Electric Reliability Corp.*, 121 FERC ¶ 61,057 (2007); *North American Electric Reliability Corp.*, 125 FERC ¶ 61,056 (2008), *order granting clarification*, 126 FERC ¶ 61,021 (2009), *order on compliance*, 128 FERC ¶ 61,025 (2009); *North American Electric Reliability Corp.*, 129 FERC ¶ 61,040 (2009); *North American Electric Reliability Corp.*, 133 FERC ¶ 61,062 (2010); *North American Electric Reliability Corp.*, 137 FERC ¶ 61,071 (2011).

<sup>11</sup> NERC Application at 23, n. 35; *see also id.*, Attachment 2 (NERC Proposed 2013 Business Plan and Budget), Appendix 2C.

designees is not a departure from the principle that the ERO funding requirement should be recovered from load-serving entities based on NEL, but rather is a matter of administrative convenience and efficiency.<sup>12</sup>

9. In addition to the NERC, Regional Entity, and WIRAB business plans and budgets, NERC includes various attachments in its Application, including: Discussion of Comments Received During Development of NERC's 2013 Business Plan and Budget (Attachment 12), Status Report on the Achievement of NERC's 2012 Goals (Attachment 14), Metrics Comparing Regional Entity Operations Based on the 2013 Budgets (Attachment 15), and Metrics on NERC and Regional Entity Administrative (Indirect) Costs Based on the 2012 and 2013 Budgets (Attachment 16).

### **C. Performance Audit of NERC**

10. On August 22, 2011, the Commission's Division of Audits in the Office of Enforcement informed NERC by letter that it was commencing an audit of NERC pursuant to FPA section 215.<sup>13</sup> The audit letter stated that the Performance Audit will evaluate "NERC's budget formulation, administration, and execution . . . will focus on the costs and resources used to achieve program objectives . . . [and] will cover the period from August 23, 2006 to the present."<sup>14</sup>

11. On May 4, 2012, the Office of Enforcement issued its Performance Audit report (Audit Report) by delegated letter order. The delegated letter order stated that the Audit Report covered the period from August 23, 2006 to March 14, 2012, and contained 11 audit findings and 42 audit recommendations. The delegated letter order stated that NERC had 30 days to notify the Commission as to whether it would seek a hearing, such as a paper or trial type hearing, on issues in the Audit Report contested by NERC. The delegated letter order further indicated that it constituted a final agency action with respect to any uncontested issues in the Audit Report and that NERC could seek rehearing before the Commission on the uncontested audit findings and recommendations within 30 days.

12. On May 15, 2012, NERC filed with the Commission a proposed schedule for a hearing process to address the 42 audit recommendations made in the Audit Report. Also on May 15, 2012, NERC filed a request for rehearing of the delegated letter order issued by the Office of Enforcement, arguing all of the recommendations should be treated as

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<sup>12</sup> *Id.* at 23, n.35.

<sup>13</sup> 16 U.S.C. § 824o (2006); 18 C.F.R. § 39.2(d) (2012).

<sup>14</sup> The August 22, 2011 audit letter to NERC is available on the Commission's eLibrary document retrieval system in Docket No. FA11-21-000.

contested and subject to the hearing procedures proposed by NERC. NERC stated that its request for rehearing would be rendered moot if the Commission adopted NERC's proposed hearing process. On June 4, 2012, the Commission issued an Order on Procedures adopting NERC's proposed process with modifications, establishing a paper hearing to address all 42 audit recommendations as well as disputed factual findings.<sup>15</sup>

13. Pursuant to the Order on Procedures, NERC filed an initial brief on July 17, 2012. On August 16, 2012, the California Public Utilities Commission filed a response. On August 20, 2012, American Public Power Association (APPA), Edison Electric Institute (EEI), Electric Power Supply Association, Electricity Consumers Resource Council, Large Public Power Council, National Rural Electric Cooperative Association, and Transmission Access Policy Study Group (jointly, Trade Associations) filed a joint response to NERC's initial brief, as did non-decisional staff from the Office of Enforcement. On September 10, 2012, NERC filed a reply brief.

14. The Audit Report finds that NERC should establish and operate under formal criteria that ensure all of its program activities that are funded pursuant to FPA section 215 are statutory. The Audit Report contains two recommendations (numbers 37 and 38) in this regard. Specifically, the Audit Report recommends that NERC:

37. Establish written criteria for determining whether a reliability activity should be funded under section 215 through coordination and discussion with Commission staff and stakeholders. Submit to audit staff the criteria established from this collaborative process; and
38. Identify all ERO activities funded under section 215, detailing at a minimum the purpose of the activity, a description, and the justification for using section 215 funding. Submit all documentation to audit staff for these reliability activities.

15. In NERC's reply brief, NERC, *inter alia*, states that it accepts the Office of Enforcement's Audit Report recommendation 37 that NERC should develop statutory and non-statutory criteria in an open stakeholder process.<sup>16</sup> NERC proposes to file the criteria with the Commission in a compliance filing by March 1, 2013, and to use the criteria to develop its 2014 business plan and budget if the Commission's order on the

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<sup>15</sup> *North American Electric Reliability Corp.*, 139 FERC ¶ 61,179 (2012) (Order on Procedures). In the Order on Procedures, the Commission created a separation of functions among Office of Enforcement staff, designating certain employees as non-decisional.

<sup>16</sup> *North American Electric Reliability Corp.*, Docket No. FA11-21-000, September 10, 2012 Reply Brief at 46 (NERC Reply Brief).

compliance filing issues sufficiently in advance of the filing date (i.e., August 23, 2013) for the 2014 business plan and budget, otherwise the criteria would be applied to the 2015 business plan and budget.<sup>17</sup>

16. Regarding recommendation 38, in its initial brief NERC proposes revisions to recommendation 38 to read:

38. In its annual business plan and budget filings, provide an explanation as to why the proposed activities to be undertaken by each program area for the budget year are statutory, including, at a minimum: a description and the purpose of the major activities to be undertaken by each program area and an explanation for why the activity is a statutory activity.<sup>18</sup>

In its response, Office of Enforcement staff objects to the proposal to change “all ERO activities” to “major activities” in recommendation 38. Office of Enforcement staff states that NERC may only expend FPA section 215 funds on statutory activities, and the Commission will not have the information it needs to determine whether NERC is complying with that mandate without information about both major and non-major activities.<sup>19</sup> In reply to that, NERC submits that Office of Enforcement staff is taking the term “major activities” out of context, as the first sentence of NERC’s version would require NERC to provide, on an annual basis, an explanation as to why the proposed activities to be undertaken in a budget year are statutory. NERC explains that the reference to “major activities” recognizes that various activities in a program area can be grouped into categories and the purpose and statutory basis for each such category explained, without the need to describe each activity therein and its individual connection to FPA section 215.<sup>20</sup> NERC states that it has a strong incentive to provide complete explanations of why all its proposed activities are statutory, to avoid having activities

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<sup>17</sup> *Id.* at 47.

<sup>18</sup> North American Electric Reliability Corp., Docket No. FA11-21-000, July 19, 2012 Initial Brief at 99 (NERC Initial Brief).

<sup>19</sup> Office of Enforcement, Docket No. FA11-21-000, August 20, 2012 Response Brief at 78-79.

<sup>20</sup> NERC states that an example of a “major activity” would be providing stakeholder education regarding standards and compliance, versus identifying and explaining the FPA section 215 basis for each workshop or seminar that will be held in furtherance of this activity. NERC Reply Brief at 47-48.

removed from the budget and to avoid having to submit compliance filings providing more information.<sup>21</sup>

## **II. Notice and Responsive Pleadings**

17. Notice of NERC's August 24, 2012 filing was published in the *Federal Register*, 77 Fed. Reg. 53,882 (2012), with interventions and protests due on or before September 14, 2012. Notice of NERC's September 10, 2012 update to its August 24, 2012 filing was published in the *Federal Register*, 77 Fed. Reg. 57,563, with interventions and protests due on or before September 28, 2012.<sup>22</sup> On August 31, 2012, EEI moved to extend the comment period for the August 24, 2012 filing until September 28, 2012. On September 5, 2012, NERC filed a response in which it stated that it did not object to a reasonable extension of the comment period. On September 10, 2012, the comment period was extended until September 28, 2012.

18. Motions to intervene were timely filed by Exelon Corporation and the Modesto Irrigation District. Motions to intervene and comments were timely filed by APPA and EEI. As discussed further below, APPA and EEI support Commission approval of NERC's 2013 business plan and budget, but request Commission action on specific issues in the NERC Performance Audit proceeding that relate to the development of future business plan and budget filings.

## **III. Discussion**

### **A. Procedural Matters**

19. 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.

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<sup>21</sup> *Id.*

<sup>22</sup> NERC states that the update revises sections of NERC's 2013 business plan and budget to reflect the transfer of NERC's Events Investigation group, comprised of six employees, from the Event Analysis and Investigations Department to the Compliance Operations and Organization Registration and Certification Department, which occurred after NERC filed the 2013 business plan and budget with the Commission. NERC September 10, 2012 Filing at 1.

**B. Substantive Issues****1. NERC Business Plan and Budget****a. NERC Application**

20. NERC states that its 2013 business plan and budget was developed under a rigorous process that provided ample opportunity for review by the Finance and Audit Committee (FAC) of the NERC Board of Trustees and allowed for stakeholder comment during the process. NERC states that during the development process, successive versions of the 2013 business plans and budgets were discussed in meetings and conference calls of the FAC and of the full NERC Board of Trustees, in each case with opportunities for stakeholders to make comments.

21. NERC explains that its principal goals in 2013 are to: (1) develop clear, reasonable, and technically sound mandatory Reliability Standards in a timely and efficient manner; (2) be a strong enforcement authority that is independent, without conflict of interest, objective and fair; (3) promote a culture of compliance with mandatory Reliability Standards across the industry; (4) identify the most significant risks to reliability – identify and prioritize reliability risks, identify actions to mitigate these risks, and monitor results; (5) be accountable for mitigating reliability risks; (6) ensure effective and timely compliance and mitigation, by working with industry stakeholders and experts to ensure the mitigation of known risks to reliability using standards enforcement and other methods where appropriate; (7) promote a culture of reliability excellence, by facilitating a learning environment throughout the industry through event causal analysis, communication of lessons learned, and tracking of recommendations; (8) improve transparency, quality, and consistency of results; (9) operate as a collaborative enterprise; and (10) improve efficiencies and cost effectiveness, by engaging the support of stakeholders, being an efficient steward of resources, and leveraging information systems to create efficiencies and process controls.<sup>23</sup>

22. NERC states that its 2013 business plan and budget is based on the following program areas: (1) Reliability Standards; (2) Compliance Monitoring and Enforcement, which is comprised of two groups - Compliance Operations and Organization Registration and Compliance Enforcement; (3) Reliability Assessment and Performance Analysis; (4) Reliability Risk Management, which is comprised of two groups - Situation Awareness and Event Analysis and Investigations; (5) Critical Infrastructure Protection; and (6) Training, Education and Personnel Certification.<sup>24</sup> For these program areas,

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<sup>23</sup> NERC Application at 7-8.

<sup>24</sup> *Id.* at 21-22; *see also* Attachment 1.

NERC describes each program, identifies the program's goals and objectives, and provides the number of full-time equivalent employees (FTE), as well as the amount budgeted for 2013. NERC also provides 2012 approved budget data and 2013 projected data for comparison.

23. NERC's proposed total funding for 2013 is \$52,252,656, a decrease of \$859,616 from, or 1.6 percent less than, the 2012 budget requirement of \$53,726,465. NERC's proposed 2013 net funding requirement is \$47,604,156 (i.e., total budget less funding from other sources), of which \$43,036,224 is allocated to the United States.<sup>25</sup> The net funding requirement allocated to the United States is a decrease of \$3,095,965 from, or 7.2 percent less than, the 2012 budget proposal.<sup>26</sup> NERC states that its proposed total United States net funding requirement is equivalent to \$0.0000108 per kWh, based on the aggregate NEL of the United States in 2011.<sup>27</sup>

24. NERC states that the proposed 2013 business plan and budget reflects a negative provision for working capital and operating reserve funding in the amount of \$2,033,600, whereas the 2012 business plan and budget reflected no provision (increase or decrease) for working capital reserve funding.

25. As shown in Appendix A of this order, NERC proposes a 2013 staffing level of 186.25 FTEs, which is an increase of 9.5 FTEs over the 2012 budget staffing level.

#### **b. Comments**

26. APPA states that it supports prompt Commission approval of NERC's proposed business plans and budgets, and associated allocations, for 2013. APPA also notes the pending Performance Audit docket, but urges the Commission to forego making any revisions to NERC's proposals for 2013 on the basis of ongoing matters in the Audit Report proceeding. APPA suggests that the Commission direct NERC to incorporate the final decisions made in that proceeding into the preparation of NERC's proposed 2014 business plans, budgets, and allocations.

27. EEI also states that it supports Commission approval of NERC's proposed 2013 business plan and budget. Going forward, EEI suggests that NERC be required to identify its scope of work, its strategic priorities, and activities that are beyond

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<sup>25</sup> NERC Application at 21.

<sup>26</sup> The 2013 business plan and budget includes \$2,512,500 in penalty payments NERC received from registered entities during the period July 1, 2011 through June 30, 2012, thus reducing the net funding requirement for 2013. NERC Application at 20.

<sup>27</sup> *Id.* at 21.

section 215 and that do not require the unique expertise of the ERO. EEI believes that the development of clear statutory criteria, including a process to prioritize key ERO functions, will be an essential exercise that should enable NERC to identify: (1) functions that are not statutory; (2) activities that are closest to the core of ERO statutory activities that deserve priority for funding; and (3) functions that while arguably within the scope of FPA section 215 are of such low priority and reliability value that NERC should consider discontinuing them. EEI therefore urges the Commission to accept the proposed NERC budget, and direct NERC to complete the development of criteria for identifying statutory activities including the prioritization of core functions, and file those criteria for Commission review and public comment on or before March 1, 2013. EEI states that, following Commission approval, NERC should use these criteria to ensure that NERC prioritizes core statutory functions within its 2014 budget and excludes from the FPA section 215 funding mechanism any non-statutory functions.

28. The Trade Associations, in their August 20, 2012 responsive brief filed in the Performance Audit proceeding, state that they support NERC's development of written criteria for determining whether NERC's activities are statutory through a stakeholder process that would be submitted to the Commission.<sup>28</sup> The Trade Associations state that the criteria would be used in preparing NERC's 2014 business plan and budget and further state that "these criteria should be applied to the NERC budget as soon as practicable."<sup>29</sup>

**c. Commission Determination**

29. We accept NERC's 2013 business plan and budget. We find that NERC's 2013 budget is reasonable and the associated costs of NERC's jurisdictional functions are equitably allocated among end users in the United States.<sup>30</sup> As discussed above, EEI and APPA submitted comments relating to Audit Report recommendations 37 and 38, concerning the statutory nature of NERC's activities funded under FPA section 215. These concerns touch on the identification and funding of NERC's statutory functions as the ERO. Given that NERC and Office of Enforcement staff appear to generally agree on a process for resolving these issues, we address those two recommendations here in order to ensure that these issues are promptly resolved for reflection in the 2014 budget. Our action here is without prejudice to any future rulings on the other Audit Report findings and recommendations.

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<sup>28</sup> Trade Associations, Docket No. FA11-21-000, August 20, 2012 Response at 8.

<sup>29</sup> *Id.* at 8-9.

<sup>30</sup> 16 U.S.C. § 824o(c)(1)(B) (2006).

30. We agree with recommendation 37 of the Audit Report that NERC should establish written criteria for determining whether a reliability activity is eligible to be funded under FPA section 215, such that these criteria can be applied to future budgets. This is necessary to ensure that all of NERC's program activities that are funded pursuant to FPA section 215 are statutory. Therefore, we adopt recommendation 37 in the Audit Report, as agreed to by NERC, to establish written criteria for determining whether a reliability activity is eligible to be funded under FPA section 215 through coordination and discussion with stakeholders.<sup>31</sup> With regard to NERC's proposed timeline for developing and filing the statutory funding criteria by March 1, 2013, we will adopt a slightly more expedited timeline. A slightly more expedited timeline is warranted to provide sufficient time for the Commission to review the filing and act on the proposed criteria in time to ensure that the criteria can be taken into account to determine the statutory basis for all NERC activities to be funded under FPA section 215 prior to the filing of the 2014 NERC and Regional Entity business plans and budgets. We find that the revised timeline will enhance NERC, the Regional Entities, and all interested parties' efficient development and implementation of 2014 business plans and budgets. We also believe that this deadline is practicable, as we note that NERC has already begun the process of developing the criteria and has indicated that it could post the proposed criteria in mid to late November.<sup>32</sup> Accordingly, we direct NERC to make a compliance filing with the Commission by February 1, 2013, containing NERC's proposed statutory funding criteria. We believe that the February 2013 timeframe for filing will provide sufficient time for NERC to develop the criteria and to consider comments of stakeholders prior to filing. Once the criteria are filed, the Commission intends to issue an order expeditiously to ensure application of the criteria to the 2014 business plan and budget.

31. We also address recommendation 38 of the Audit Report, concerning the application of the criteria developed pursuant to recommendation 37 to identify NERC's statutory activities. While we are not requiring NERC to apply its proposed criteria to all of its activities as part of its February 1, 2013 compliance filing, we believe a common understanding on this matter will assist in the development of the criteria. Specifically, we adopt recommendation 38, with the revisions proposed by NERC in its initial brief, and NERC's explanation as to what constitutes a "major activity."<sup>33</sup> As NERC explains,

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<sup>31</sup> NERC Reply Brief at 45-46. We also note NERC's statement that it will "also solicit feedback from Commission staff as part of the process of developing these [statutory] criteria." NERC Initial Brief at 100.

<sup>32</sup> See Agenda of NERC Finance and Audit Committee, Agenda Item 6 at 1 (October 31, 2012), available at [http://www.nerc.com/docs/bot/finance/FAC\\_11-12a-complete.pdf](http://www.nerc.com/docs/bot/finance/FAC_11-12a-complete.pdf).

<sup>33</sup> NERC Initial Brief at 99-101; NERC Reply Brief at 47-48.

“major activities” recognizes that various activities in a program area can be grouped into categories and the purpose and statutory basis for each such category explained, without the need to describe each activity therein.<sup>34</sup> Additionally, we rely on NERC’s statement that it has a strong incentive to provide complete explanations of why all its proposed activities are statutory, to avoid having activities removed from the budget and to avoid having to submit compliance filings providing more information.<sup>35</sup> We believe that this formulation of recommendation 38 strikes an appropriate balance as it will necessitate a comprehensive review of NERC’s activities, without any gaps, yet allow NERC to categorize activities in a useful, efficient manner. The criteria developed and filed with the Commission should be specific and detailed enough so that when applied the Commission can readily determine what activities are and are not statutory activities.

32. We are not ruling on any other issues regarding the ongoing Performance Audit proceeding. All other issues raised in the Performance Audit will be addressed in a future order in that proceeding. We are not consolidating the two proceedings in this order and, therefore, the compliance filing directed herein should be submitted to the Commission in the Performance Audit proceeding in Docket No. FA11-21-000.

## **2. Regional Entity Business Plans and Budgets**

33. NERC’s Application includes the 2013 business plans and budgets of each Regional Entity. NERC states that it reviewed the Regional Entity business plans and budgets and concludes that each Regional Entity proposes necessary and adequate resources to carry out its delegated functions.<sup>36</sup> The Commission finds that each submission reasonably supports the level of expenditures identified in the budgets.

34. We are satisfied that the Regional Entities are focused on adequately staffing and funding all of their program areas to perform the delegated, statutory functions. Accordingly, the Commission accepts the Regional Entity business plans and budgets.

## **3. WIRAB Budget**

35. WIRAB proposes statutory expenses of \$595,180 in 2013, which is a \$19,497 decrease from its 2012 budget. To fund its operations in 2013, WIRAB proposes a statutory assessment of \$534,692, of which \$471,491 would be allocable to end users in the United States. WIRAB proposes to increase its statutory assessment in 2013 by \$291,843 over its 2012 assessment, and includes a contribution of \$59,688 from

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<sup>34</sup> NERC Reply Brief at 48.

<sup>35</sup> *Id.* 47-48.

<sup>36</sup> NERC Application at 23-24.

WIRAB's working capital reserve. WIRAB explains that its 2013 statutory assessment is significantly higher than the 2012 statutory assessment because WIRAB used its working capital reserve to fund a substantial portion of its 2012 budget and that reserve has now been reduced. WIRAB states that it will employ 2.75 FTEs for 2013, which is the same as 2012.

36. Based on the information provided by WIRAB, the Commission concludes that WIRAB's 2013 budget is reasonable and, accordingly, the Commission accepts the WIRAB 2013 budget.

The Commission orders:

- (A) NERC's 2013 business plan and budget is hereby accepted.
- (B) The Regional Entity 2013 business plans and budgets are hereby accepted.
- (C) The WIRAB budget is hereby accepted for funding.
- (D) NERC is directed to submit a compliance filing by February 1, 2013, as discussed in the body of this order.

By the Commission. Commissioner Norris is dissenting in part with a separate statement attached.

( S E A L )

Kimberly D. Bose,  
Secretary.

### NERC 2013 Budget by Program

NERC Program	2013 Budget <sup>1</sup>	Direct FTEs <sup>2</sup>	Change in FTEs from 2012 Budget
Reliability Standards	\$5,134,738	26.50	1.58
Compliance Operations	\$4,787,043	18.00	-3.66
Compliance Enforcement	\$3,047,746	21.00	0
Reliability Assessment and Performance Analysis	\$4,516,620	18.75	2.25
Situational Awareness	\$4,193,507	6.50	-1.67
Event Analysis and Investigations	\$2,074,908	15.50	2.50
Critical Infrastructure Department	\$5,089,407	19.25	2.25
Training Education and Operator Certification	\$2,170,906	8.00	1.25
General and Administrative	\$7,325,556	8.00	1.00
Legal and Regulatory	\$4,045,729	14.00	1.00
Information Technology	\$7,978,705	16.75	4.00
Human Resources	\$1,527,797	3.00	-3.00
Accounting and Finance	\$2,201,294	11.00	2.00
Contribution to Working Capital Reserve	(\$2,033,600)		
<b>Total Budget</b>	<b>\$54,286,256</b>	<b>186.25</b>	<b>9.5</b>

<sup>1</sup> The amounts projected for each program area are the total direct expenses for Canada, Mexico, and United States. NERC September 10, 2012 Filing at 28.

<sup>2</sup> *Id.* at 29.

Less Other Funding Sources, Working Capital Reserves, and Penalty Funds	(\$6,682,100)		
Net Funding Requirement	\$47,604,156		

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

North American Electric Reliability  
Corporation

Docket Nos. RR12-13-000  
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(Not Consolidated)

(Issued November 2, 2012)

NORRIS, Commissioner, *dissenting in part*:

In addressing NERC's submission of proposed criteria for determining whether a reliability activity it conducts is one that should be funded under section 215 of the Federal Power Act (FPA), my overarching concern is that we ensure adequate time for NERC and its stakeholders to file a comprehensive and fully-vetted proposal. I therefore disagree with the directive in today's order that truncates NERC's proposed timeline for developing and filing proposed criteria by establishing a deadline of February 1, 2013.

There is consensus that developing strong written criteria for differentiating between statutory and non-statutory activities is critical to assuring the public that ratepayer funds collected under FPA section 215 are appropriately applied to statutory activities. NERC and the parties to the proceedings all agree with this premise, and NERC has committed to work with its stakeholders to develop and submit proposed criteria to the Commission by March 1, 2013, with the goal of applying those criteria to develop its next budget. A robust stakeholder process is essential to the development of a strong set of criteria that the NERC stakeholders (and the ratepayers who will ultimately foot the bill) have confidence in, and that can be applied to future budgets for years to come. I am concerned that accelerating the timeline offered by NERC, and agreed to by EEI and other parties, will result in a less robust stakeholder process that produces criteria that have not been fully vetted.

For these reasons, I respectfully dissent in part.

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John R. Norris  
Commissioner