

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

North American Electric Reliability Corporation

Docket No. RR06-3-001

ORDER ON REHEARING

(Issued April 19, 2007)

1. On November 24, 2006, the Western Electricity Coordinating Council (WECC), Pacific Gas and Electric Company and Southern California Edison Company (collectively, Petitioners) jointly filed a request for rehearing of the Commission's order issued on October 24, 2006 addressing the North American Electric Reliability Corporation's (NERC) first proposed business plan and budget as the Electric Reliability Organization (ERO).¹ Petitioners seek rehearing of a single aspect of the *October 24 Budget Order*, the decision that WECC's reliability coordinator activities should not receive mandatory funding through the ERO. In an order issued on February 15, 2007,² we directed the Commission staff to convene a technical conference to discuss the issues raised in Petitioners' request for rehearing concerning funding for WECC's reliability coordinator activities. The technical conference took place on March 2, 2007 at the Commission and written comments on the discussion at the technical conference were filed.

¹ *North American Electric Reliability Corporation*, 117 FERC ¶ 61,091 (2006) (*October 24 Budget Order*).

² *North American Electric Reliability Corporation*, 118 FERC ¶ 61,111 (2007) (*February 15 Order*).

2. In this order, we grant Petitioners' request for rehearing and permit WECC's reliability coordinator activities to be funded through the ERO under section 215 of the Federal Power Act (FPA).³

Background

3. In a July 20, 2006 Order, the Commission certified the North American Electric Reliability Council, on behalf of its wholly-owned subsidiary, NERC as the ERO.⁴ On August 23, 2006, NERC filed its proposed 2007 business plan and budget as well as the proposed 2007 business plans and budgets of eight anticipated Regional Entities.

4. In the *October 24 Budget Order*, the Commission conditionally accepted the proposed budgets and the ERO's business plan. The Commission determined that the activities identified by NERC should be funded through the ERO as statutory under section 215 of the FPA. In addition, the *October 24 Budget Order* approved the NERC funding request of \$66,425,996 for operation in the United States for fiscal year 2007, less the \$6.9 million requested by WECC for WECC's reliability coordinator activities.⁵

5. With respect to the \$6.9 million requested by WECC for its reliability coordinator activities, the *October 24 Budget Order* held:

Although WECC's reliability coordinator function is independent of control areas, we are not persuaded that, in its current form, WECC's real-time reliability coordinator function should be funded under section 215 of the FPA. WECC's justification that its role as a reliability coordinator is similar to NERC's situational awareness activity is not persuasive. While WECC's reliability coordinators are involved in real-time operations of the bulk-power system, NERC's situational awareness activity is narrow in

³ *To be codified at* 16 U.S.C. § 824o.

⁴ *North American Electric Reliability Corporation*, 116 FERC ¶ 61,062, *order on reh'g*, 117 FERC ¶ 61,126 (2006) (*ERO Certification Order*). North American Electricity Reliability Council has merged into NERC.

⁵ NERC defines "reliability coordinator" as "the 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." See NERC Glossary of Terms at 15.

scope and limited to such things as providing tools and support services for the use and benefit of reliability coordinators and other bulk-power system operators. Moreover, NERC makes it clear that it has no intentions of becoming involved in real-time operations.

WECC's claim that as a reliability coordinator, it is subject to 137 requirements of NERC's proposed reliability standards is also not convincing as to why its reliability coordinator function should be treated as a statutory activity. Unless there is a strong separation between oversight and real-time operations, the same entity should not oversee its own compliance with reliability standards. We are not persuaded that is the case here. Therefore, we exclude \$6.9 million of WECC's proposed budget from funding under FPA section 215.⁶

6. As noted above, Petitioners seek rehearing of the *October 24 Budget Order's* determination that WECC's reliability coordinator activities are not statutory and therefore may not be funded through the ERO under section 215 of the FPA. According to Petitioners, the Commission's determination was made on the basis of a misunderstanding of the WECC reliability coordinator functions. They explain that the WECC reliability coordinators are primarily involved in situational awareness and are not directly involved in real-time operations because they rely on other entities to carry out their operational directives and they are not involved in the day-to-day operation of the grid. Petitioners state that the three WECC reliability coordinators, each located in a "host" facility, are operated and funded separately from its host, and WECC compensates the host for use of its facilities.

7. Petitioners argue that WECC's reliability coordinator function is clearly within the scope of functions to be funded under section 215 of the FPA. They state that under section 215(c)(1)(b) of the FPA, the ERO as well as a Regional Entity can "allocate equitably reasonable dues, fees, and other charges among end users for all activities under this section." Thus, Petitioners contend that, by denying funding of the WECC reliability coordinators, which perform a statutory function, *i.e.*, situational awareness and wide area monitoring, the Commission has prevented WECC from having the ability to allocate equitably the costs of that function to all end users.

8. Further, according to Petitioners, the failure to allow mandatory funding of the WECC reliability coordinator activities through the ERO will create significant funding uncertainty and thereby undermine the effectiveness of the reliability coordinators. They

⁶ *October 24 Budget Order*, 117 FERC ¶ 61,091 at P 51-52 (footnotes omitted).

state that, absent funding through the ERO, WECC will have to continue to depend upon voluntary funding from WECC members to fund the reliability coordinators. Further, Petitioners raise the concern that voluntary funding may give entities overseen by the reliability coordinators a significant role in their funding, creating the appearance or reality of a conflict of interest.

9. In response to the Commission's concerns stated in the *October 24 Budget Order*, Petitioners state that WECC will not oversee its own compliance with reliability standards that apply to reliability coordinators. Rather, they state that NERC will audit the WECC reliability coordinator function for compliance.

10. In the *February 15 Order*, the Commission found that Petitioners' request for rehearing addressed a number of concerns expressed in the *October 24 Budget Order* regarding funding of the WECC reliability coordinators, and the Commission saw benefits from WECC's approach.⁷ However, the Commission remained concerned about funding WECC's reliability coordinator activities, noting that several details about WECC's funding request were still unclear, for example: (1) the ERO's oversight of WECC's compliance with reliability standards that apply to reliability coordinators; (2) how WECC's reliability coordinator employees are corporately and physically independent of users, owners and operators of the grid; (3) whether the WECC reliability coordinators would be subject to penalties for non-compliance as an operator of the Bulk-Power System, and how a monetary penalty assessed against a reliability coordinator for non-compliance with a reliability standard would be funded; and (4) billing and allocation. To consider those issues and other matters relevant to Petitioners' request for

⁷ The Commission found that:

Based on our review of Petitioners' request for rehearing, the WECC reliability coordinator model may be superior to other regional reliability coordinator models. Under WECC's approach, reliability coordinators appear to be independent from users, owners and operators of the Bulk-Power System and report directly to WECC, not to the host entities. The reliability coordinators' independence from users, owners and operators of the Bulk-Power System is an important factor in ensuring the reliability of the grid. . . . WECC's reliability coordinator structure appears to provide for corporate separation from users, owners and operators, which allows for greater independence of judgment in making decisions necessary for Bulk-Power System reliability in the Western Interconnection.

rehearing, the Commission directed the Commission staff to convene a technical conference, which was held on March 2, 2007 at the Commission.

Notice of Technical Conference and Comments

11. Notice of the technical conference was published in the *Federal Register*,⁸ with written comments on the discussion at the technical conference due on or before March 12, 2007. On March 12, 2007, supplemental comments were filed by: NERC, Western Interconnection Regional Advisory Body (WIRAB), Southern California Edison Company (SCE), Arizona Public Service Company (APS), Edison Electric Institute (EEI); Florida Reliability Coordinating Council (FRCC), and WECC (Supplemental Comments). On March 13, 2007, EEI filed corrected comments.

Discussion

A. Statutory Function

12. WECC states that, as a matter of law, the WECC reliability coordinators are “operators” because, pursuant to NERC standards, they have authority to “take action” to prevent or mitigate threatened or actual system emergencies affecting the interconnection. According to WECC, however, the “action” that the reliability coordinators take is not to physically operate grid facilities, but rather to first advise and, if necessary, direct functionally separated balancing authorities and transmission operators to take operational actions (such as reducing a line loading).

13. WECC argues that the operational role of the reliability coordinators is distinct from that of the balancing authorities and transmission operators in that the reliability coordinators are required to continuously monitor and evaluate the system on a wide-area basis and may only “take action” when necessary to ensure compliance with standards and to avoid system emergencies. WECC contrasts this to the day-to-day operational role of the balancing authorities and transmission operators.

14. With this background, WECC reiterates its request that the Commission consider a two-part test for funding of reliability coordinators under section 215 of the FPA. The proposed test would distinguish between a Reliability Coordinator that is engaged in operations (and thus not eligible for funding under section 215) and one that is not (and thus is eligible for funding under section 215 if the reliability coordinator is otherwise engaged in statutory activities):

⁸ 72 Fed. Reg. 8726 (2007).

1. Does the reliability center perform direct physical operation of the grid (*i.e.* can the reliability center change power flows directly?); and
2. Can the reliability center direct or request a change in operation for any other purpose than maintaining *regional or interconnection-wide* reliability and/or ensuring compliance with Reliability Standards?⁹

15. WECC suggests that, if the answer to either of the above questions is “yes,” the reliability coordinator’s function presumptively includes operation or control of the grid, and the reliability coordinator would not qualify for section 215 funding, at least for those portions of its budget that involve operations. If the answer to both questions is “no,” the reliability coordinator’s function presumptively does not include operation or control of the grid, and all of its budget should qualify for section 215 funding.

16. WECC contends that the proposed two-part test clarifies what the Commission means by “involved in” operations to more precisely distinguish genuine operational activity from situational awareness and enforcement. Plainly, *any* effort to improve reliability can be characterized as being “involved in” operations to some extent. At the same time, there is a very clear and legitimate difference between the responsibilities of system operators and those of reliability coordinators (at least as implemented in the WECC). The two-part test described above articulates that distinction so as to ensure that critically important situational awareness achieved by the Reliability Coordinators can be effectively and urgently communicated to those who actually do have physical control of the power system in time to avoid incidents like the August 14, 2003 Blackout. WECC firmly believes that this is an appropriate bright line and is essential to achievement of the objectives of Congress in enacting section 215.¹⁰

17. APS supports WECC’s request to receive statutory section 215 of the FPA treatment for the \$6.9 million costs of running three reliability coordinator centers. APS believes that approval of this funding request will allow WECC to continue providing this vital service to the Western grid.

18. WIRAB advises the Commission that statutory funding of western reliability coordinators under section 215 of the FPA is necessary to ensure effective and independent western reliability coordinators, which are critically important to ensure reliability in the Western Interconnection. WIRAB states that statutory funding under

⁹ WECC Supplemental Comments at 16.

¹⁰ *Id.* at 15-16.

section 215 of the FPA is the only viable mechanism to ensure adequate resources for the investments in western reliability coordinators envisioned by WECC's Reliability Center Strategic Initiative (Reliability Center Strategic Initiative).¹¹ WECC explains that its Reliability Center Strategic Initiative seeks to remove any appearance of a lack of independence by transitioning all its employees to full independence from industry hosts. According to WECC, the Reliability Center Strategic Initiative will consolidate its three reliability coordinator centers into two reliability coordinator centers, each with the capability to operate as the primary reliability center while the other will serve as a "hot standby" backup.

19. WIRAB explains that implementing the Reliability Center Strategic Initiative is essential to ensure the WECC reliability coordinators: (1) comply with NERC's proposed mandatory reliability standards that will apply to reliability coordinators, (2) develop common tools to perform reliability coordinator functions and ensure backup coverage between the reliability coordinator centers, and (3) strengthen the independence of reliability coordinators from industry hosts. WIRAB advises that statutory funding for the WECC reliability coordinators is just, reasonable, not unduly discriminatory or preferential, and in the public interest. WIRAB notes the broad support for statutory funding among western interests, including the Western Governors, the Western Interstate Energy Board, the Committee on Regional Electric Power Cooperation, and numerous entities in the industry.

20. FRCC states that it takes no position on the particular facts and circumstances of the reliability coordinator function as implemented in WECC. However, FRCC cautions the Commission that the question of mandatory funding of the reliability coordinator activities must be based on a rigorous application of the statutory standard for funding to those facts and circumstances. FRCC argues that the Commission should not permit statutory funding for functions unless there is a clear demonstration that section 215's mandate requiring that funding be limited to "establishing and enforcing" reliability standards has been satisfied.

Commission Determination

21. FRCC raises concerns regarding the statutory basis for mandatory funding of the WECC reliability coordinator function. In Order No. 672, as clarified in Order No. 672-

¹¹ See WECC Supplemental Comments at 11-12 & Att. A-1. The Reliability Center Strategic Initiative is a five-year strategic initiative whose purpose is to ensure that the reliability coordinators will be able to meet the reliability needs of the Western Interconnection as well as fulfill all requirements imposed by NERC.

A, the Commission found that the ERO can collect a Commission-approved assessment of dues, fees or charges for all activities performed pursuant to section 215 of the FPA.¹² The Commission also stated that it will consider what a permissible statutory activity is when shown a specific proposal.¹³ In the *October 24 Budget Order*, the Commission stated “as explained in the *ERO Certification Order*, anything required of the ERO or a Regional Entity by the statute, Order No. 672 pursuant to the statute, or any subsequent Commission order pursuant to section 215 of the FPA is a statutory activity.”¹⁴ While we recognize that this is not a clear-cut issue, given that reliability coordinators, in general, are themselves subject to certain Commission approved reliability standards we conclude, for the reasons discussed below, based on the circumstances presented in this case, that WECC’s reliability coordinator function is a statutory activity that may be funded through the ERO under section 215 of the FPA. Thus, the Commission grants rehearing on this issue.

22. WECC states in its pleadings that its reliability coordinators perform the situational awareness function as they are the entities with the wide-area view of the Western Interconnection. WIRAB, in its role as a regional advisory body under the statute,¹⁵ advises that the Commission should approve WECC’s request, stating that situational awareness is a function that will be delegated to WECC under a delegation agreement with the ERO.¹⁶ In Order No. 693,¹⁷ the Commission chose to rely on

¹² *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, *order on reh’g*, Order No. 672-A, FERC Stats. & Regs. ¶ 31,212 at P 65 (2006).

¹³ *Id.*

¹⁴ *October 24 Budget Order*, 117 FERC ¶ 61,091 at P 12.

¹⁵ Section 215(j) of the FPA provides that a regional advisory body may provide advice to the ERO, a regional entity or the Commission regarding, *inter alia*, whether proposed fees to be assessed within the region are just, reasonable, not unduly discriminatory or preferential, and in the public interest. Further, the Commission may give deference to the advice of a regional advisory body organized on an Interconnection-wide basis.

¹⁶ *See* March 12, 2007 WIRAB Advice at 5, 9.

¹⁷ *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, 72 Fed. Reg. 16,416 (April 4, 2007), FERC Stats. & Regs., ¶ 31,242 (2007).

NERC's Compliance Registry to identify the set of entities, including the reliability coordinators, that are responsible for compliance with particular reliability standards.¹⁸ In so doing, the Commission accepted WECC's role as a reliability coordinator. As will be addressed later in this order, the specific separation of duties between WECC as a Regional Entity and WECC as a reliability coordinator will be addressed under the regional delegation agreements in Docket No. RR06-1-004, *et. al.* Therefore in this instance, the Commission gives deference to WIRAB's advice as a regional advisory body organized on an Interconnection-wide basis.

23. In the *October 24 Budget Order*, the Commission found that the ERO's situational awareness activities could be funded as an activity pursuant to section 215 of the FPA.¹⁹ In the same order, the Commission denied mandatory funding for the WECC reliability coordinator function on the rationale that it is involved in real-time operations of the Bulk Power System.²⁰ In its supplemental comments following the technical conference, WECC acknowledges that its reliability coordinators are "legally" operators of the Bulk-Power System. However, it explains that, unlike other operators such as balancing authorities or transmission operators, 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.²¹ Further, unlike other operators of the Bulk-Power System, the WECC reliability coordinators are not involved in day-to-day operational decisions and do not request a change in operation for any purpose other than maintaining regional or interconnection-wide reliability or ensuring compliance with Reliability Standards. In doing so, and with the organizational structure between WECC and the reliability coordinators, those reliability coordinators are helping to carry out WECC's reliability regulator activities.

24. While the Commission declines WECC's suggestions to adopt as a general Commission policy, a bright-line test (WECC's proposed two-part test) to distinguish between a reliability coordinator that is engaged in operations and one that is not, and its

¹⁸ Order No. 693 at P 39.

¹⁹ *See October 24 Budget Order* at P 28-30.

²⁰ *Id.* at P 51.

²¹ *See* WECC Supplemental Comments at 13-17. WECC also notes that its reliability coordinators typically direct a result and leave to the operating entity's judgment how to achieve that result.

explanation that reliability coordinators are not involved with day-to-day operations²² we find WECC's explanation to be informative. There is no dispute that WECC's reliability coordinators are focused on wide-area situational awareness and wide-area operations oversight. In fact, in describing their Reliability Center Strategic Initiative, WECC has stated that it is significantly improving situational awareness and reliability by replacing its three existing reliability coordinators, who have situational awareness for pieces of the Western Interconnection, with two reliability coordinators, each with interconnection-wide situational awareness. At that point, each reliability coordinator (primary and backup) will provide WECC with a situational awareness that matches WECC's significant geographic footprint. WECC's model to act as both a Regional Entity and as a reliability coordinator is strengthened by the independence of its reliability coordinators from the users, owners and operators of the bulk-power system, as discussed further below, and that independence will, in turn, be further enhanced under the Reliability Center Strategic Initiative. Therefore, we conclude that the Commission's concerns have been sufficiently addressed, with the additional attention to independence and compliance oversight discussed below, for us to determine that the WECC reliability coordinator function should be funded as a statutory activity pursuant to section 215 of the FPA.

B. Independence of WECC Reliability Coordinators

25. WECC states that it has instituted a variety of measures to ensure that the WECC employees perform the reliability coordinator function independently of users, owners, and the physical operators of the grid. These measures include their employment status, funding, the lines of authority and supervision and their physical independence.

26. WECC explains that the three reliability coordinator centers are located at the facilities of host organizations, currently, California Independent System Operator (CAISO),²³ Western Area Power Administration (WAPA)²⁴ and Bonneville Power

²² Order No. 693 (at P 519) noted that some operating actions of transmission providers and balancing authorities that would have impacts beyond their own areas must involve the reliability coordinator who has the wide-area views and the necessary operating tools, including monitoring facilities and real-time analytic tools with wide-area representation to enable the reliability coordinator to fulfill its responsibility.

²³ CAISO is the host for California-Mexico Reliability Center (CMRC).

²⁴ WAPA is the host for Rocky Mountain Desert Southwest Reliability Center (RDRC).

Administration (Bonneville).²⁵ WECC explains that the legal employer of the reliability center employees currently varies among the three centers and by position. For example, in WAPA, the manager, the lead coordinator, and all but three of the on-shift coordinators are employed by WECC; the remaining three coordinators are employees of WAPA. According to WECC, employees of all three reliability coordinator centers: work solely for the center; are funded independently through legally enforceable funding agreements between the WECC and each of the reliability coordinators; and report to the center's manager who in turn reports to and is supervised by the WECC Director of Reliability Coordination and the WECC Reliability Coordination Subcommittee. Thus, WECC proffers that the reliability center employees are supervised independently and function independently from users, owners and operators of the bulk-power system. In addition, WECC states that it is in the process of transitioning all employees to full independent employment status.

27. WECC argues that regardless of the legal employer, the WECC funding, supervision and review of all reliability center staff gives them *de facto* independence from the host. According to WECC, reliability center staff have every incentive, including direct economic incentives, to function independently from the host, meet all NERC Reliability Standards, and comply with WECC supervision. WECC notes that the incentives include independent annual performance reviews for all employees, annual performance goals and metrics for measuring achievement of such goals, and economic incentives.

28. WECC explains that there are benefits to having reliability center staff hosted in a facility with full access to the data the reliability center staff needs to provide situational awareness, including access to the system monitoring and state estimation tools necessary to analyze data and present results to the reliability coordinator operators on duty. This requires highly sophisticated computer systems and support staff found in major grid operations centers. However, to further assure independence, WECC has also sought to balance this hosting benefit with some physical separation of the reliability coordinators from the host.²⁶

²⁵ Bonneville is the host for Pacific Northwest Security Center (PNSC). All of the employees at PNSC are independent contractors of PNSC.

²⁶ At WAPA, the reliability coordinator staff is located on a different floor, in a separate room with secured access. At PNSC, the reliability coordinator staff work in a separate room in the host's control floor; the room is marked as a confidential area, off limits to unauthorized persons. The reliability center at the CMRC is not at this time physically separated from the host.

29. WECC points out that one of the reasons it is seeking statutory funding for the reliability coordinators is to enhance their fiscal independence. WECC argues that if statutory funding is denied, it will have to rely on its members for voluntary funding. WECC explains that notwithstanding the strong support for the reliability coordinators by the hosts and balancing authorities to date, the WECC membership favors providing funding to the reliability coordinators that is not dependent, even indirectly, on discretionary decisions by the entities that the reliability coordinators oversee.

30. In addition, WECC states that, under the Reliability Center Strategic Initiative, all reliability center employees and the entities hosting those employees will be required to sign a standards of conduct agreement. According to WECC, these proposed standards would emphasize the importance of independence from the host. If a reliability center or host employee were to violate these standards, WECC will be empowered to demand corrective action.

31. WIRAB advises that effective and independent reliability coordinators are critically important to ensure reliability in the Western Interconnection. WIRAB believes that statutory funding under section 215 of the FPA is the only viable mechanism to ensure adequate resources for the investments in western reliability coordinator centers envisioned by WECC's Reliability Center Strategic Initiative. These upgrades will make it possible for the WECC reliability coordinators to comply with mandatory reliability standards. WIRAB also states that funding WECC's reliability coordinators under section 215 of the FPA will strengthen their independence from host entities or other users, owners and operators of the grid in the Western Interconnection and will ensure that future reliability coordinators do not have administrative or funding linkages to their host entities.

32. EEI suggests that the Commission require two additional features to further ensure independence between the reliability coordinator function and WECC. First, according to EEI, the Commission should require reliability coordinator employees to sign both conflict of interest and confidentiality agreements. Second, if any change is made to an existing physical or contractual arrangement, or the organizational structure under which WECC conducts the reliability coordinator function, the Commission should require that WECC clearly demonstrate such changes will maintain strong separation between WECC enforcement and activities performed as part of the reliability coordinator function.

Commission Determination

33. The Commission finds that WECC has achieved a distinct level of corporate independence of users, owners and operators of the grid. As discussed above, all of the

reliability coordinator employees located at PNSC and most of the reliability coordinator employees located at WAPA have no employment links with the host.²⁷ While reliability coordinator employees at the CAISO site maintain a link at the present time, WECC plans to change this in the future under its Reliability Center Strategic Initiative.²⁸ Moreover, all reliability center employees are funded independently by WECC; work full time for WECC; report to WECC management, not that of the host facility; and are disciplined and rewarded solely by WECC. As we stated in the *February 15 Order*, this corporate independence allows for greater independence of judgment in decisions necessary for the bulk-power system reliability in the Western Interconnection.

34. Regarding EEI's suggestion that we require WECC reliability center employees to sign confidentiality agreements, we find that EEI has not provided sufficient support for the need for mandatory confidentiality agreements and we will not direct such a requirement. The Commission notes that WECC is currently developing standards of conduct that would apply specifically to the reliability coordinator employees. The Commission agrees with EEI that WECC should notify the Commission of any changes to the existing arrangement so that we can determine whether sufficient independence is being maintained. Thus, we direct that WECC notify the Commission if any significant changes are made to existing physical or contractual arrangements or the organizational structure under which WECC conducts the reliability coordinator function and to demonstrate such changes will maintain strong separation between WECC compliance enforcement and all activities performed as part of the reliability coordinator function.

C. Compliance Oversight and Monetary Penalties

35. In response to the Commission's concerns regarding compliance and enforcement oversight of the WECC reliability coordinator function,²⁹ WECC explains that NERC will serve as the audit team lead for compliance audits of the WECC reliability coordinators.³⁰ The audit team for audits of the WECC reliability coordinators will

²⁷ See *supra* P 26.

²⁸ WECC Supplemental Comments at 7 (“A key element of the plan is to transition all employees to full independent employment status.”).

²⁹ *October 24 Budget Order*, 117 FERC ¶ 61,091 at P 52.

³⁰ In Petitioners' November 24, 2006 request for rehearing (at 24), they state:

WECC will *not* “oversee its own compliance with reliability standards.”
Rather, consistent with the Commission's previous orders, NERC will audit

(continued)

consist of a NERC staff (or contractor) audit team lead, and other independent audit team members from within WECC and elsewhere as appropriate to provide the necessary expertise for the audits. Commission staff may also participate in these audits. The NERC audit team leader will be responsible for development of the final audit report. According to WECC, violations of mandatory reliability standards will be documented in the final audit report and transmitted to WECC's independent compliance staff for processing by WECC through the uniform Compliance Monitoring and Enforcement Program. To further the independence of the compliance staff, WECC explains that it plans to revise its compliance committee structure to ensure that there is a separation between oversight and operations. WECC states that it will establish appropriate penalties, sanctions, mitigation plans and/or remedial action directives and will conduct any hearings on contested violations or penalties. WECC proposes that any penalty monies levied against WECC's reliability coordinator should be paid to WECC as a general offset of its budget requirements for U.S. related activities for the subsequent year.

36. NERC states that having WECC establish appropriate penalties is necessary to maintain NERC as the venue for any appeals of such actions. NERC would have the opportunity to review penalties assessed against the WECC reliability coordinator in NERC's role as the venue of appeal. NERC explains that the NERC audit team leader that audits the WECC reliability coordinator would not have a role in any such appeal.

37. APS supports the requirement ensuring clear separation between the entities that must comply with mandatory reliability standards and those that oversee compliance.

38. EEI agrees there must be clear separation between the entities that must comply with mandatory reliability standards and those that oversee compliance. To satisfy this goal, EEI believes that the Commission must require WECC to clearly demonstrate that sufficient safeguards are in place to maintain the independence of the reliability coordinator function from other WECC activities performed under section 215 of the FPA. EEI proposes that NERC and not WECC perform the reliability coordinator compliance enforcement function, including audits and investigations, review of the contracts under which the reliability coordinator functions are performed, methods used for hiring and retaining personnel, and the relationship of the reliability coordinator function to the other parts of the WECC organization.

the WECC Reliability Coordinators in order to ensure that the Reliability Coordinators are in compliance with all applicable Reliability Standards. (Emphasis in original.)

Commission Determination

39. While WECC's proposal to have NERC lead the audit team of the WECC reliability coordinator function is a step in the right direction, we believe that the full complexity of the issue of compliance oversight and monetary penalties is better addressed in the context of Regional Entity delegation agreements with the ERO in Docket No. RR06-1-004, *et. al.* Addressing these issues in Docket No. RR06-1-004 will ensure consistent treatment of compliance oversight and monetary penalties when a Regional Entity has dual responsibility such as here.

D. Billing and Allocation

40. In the initial NERC budget filing, WECC requested \$6.9 million funding for the WECC reliability coordinator function. In its Supplemental Comments, WECC revises this figure, stating that the total funding level for its reliability coordinator function in 2007 is \$6,774,190,³¹ of which \$5,716,892 or 84.39 percent is apportioned to the continental U.S. and \$1,057,298 or 15.61 percent is apportioned to Canada and Mexico.

41. WECC points out that the bills for all of 2007 have been delivered and, in many cases, paid as in the past by WECC members.

42. WECC states that if the Commission determines its reliability coordinator activities to be statutory, other entities that have not paid their share in the past will be billed. However, WECC states that it would be administratively easier to start billing the entities that have historically paid as well as new entities, for the reliability coordinator function beginning in 2008. Nevertheless, WECC is prepared to re-bill for the 2007 budget if the Commission requires it to do so.

43. SCE argues that an order authorizing statutory funding should be applied to the already-billed 2007 budget because SCE believes that it would be unfair to the ratepayers of entities that are WECC members to bear the full monetary burden for reliability coordinator services that should rightly be shared among all load in the Western Interconnection.

Commission Determination

44. 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

³¹ WECC states that the total is lower as a result of more recent information on insurance costs and common cost allocations. WECC Supplemental Comments at 20.

costs for the fiscal year 2007 based on 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.³² However, given WECC’s statements that recovering the costs in 2007 may create an administrative burden, the Commission leaves it to WECC to determine how to handle the billing. For example, WECC may choose to either re-bill the load serving entities as part of its fiscal year 2007 billing and invoicing process or it may decide that it is more appropriate to recover its 2007 reliability coordinator related costs in its fiscal year 2008 billing and invoicing process. If WECC decides to collect WECC’s reliability coordinator costs for fiscal year 2007 as part of the 2008 budget and invoice process, proper credit must be made for those who paid too much to cover the 2007 shortfall pending our determination that these costs are statutory, and that those who should have paid for 2007 ultimately do so. Consistent with WECC’s revised budget figure for its U.S. reliability coordinator activities, our approval for funding WECC’s reliability coordinator activities through the ERO for 2007 is for \$5,716,892.

The Commission orders:

Petitioners’ request for rehearing of the *October 24 Budget Order* is hereby granted, as discussed in the body of this order.

By the Commission. Commissioner Moeller not participating.

(S E A L)

Philis J. Posey,
Deputy Secretary.

³² As noted *supra* P 21, in Order No. 672, as clarified in Order No. 672-A, the Commission found that the ERO can collect a Commission-approved assessment of dues, fees or charges for all activities performed pursuant to section 215 of the FPA.