

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Governors of Arizona, California,
Colorado, Montana, Nevada, New Mexico,
Oregon, Utah, Washington, and Wyoming

Docket No. RR06-2-000

ORDER ON PETITION TO ESTABLISH A REGIONAL ADVISORY BODY FOR
THE WESTERN INTERCONNECTION

(Issued July 20, 2006)

1. On April 20, 2006, the Governors of the States of Arizona, California, Colorado, Montana, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming (Petitioners) filed a petition with the Commission to establish a regional advisory body (RAB) for the Western Interconnection pursuant to section 215(j) of the Federal Power Act (FPA).¹ The Petitioners propose to organize the Western Interconnection Regional Advisory Body (WIRAB) pursuant to a Policy Resolution of the Western Governors' Association (WGA). The WGA will create WIRAB as a standing advisory committee of the existing Western Interstate Nuclear Board (WINB), which was formed under the auspices of the Western Interstate Nuclear Compact.² WIRAB will have the same status under the compact as the Western Interstate Energy Board (WIEB), which serves as the energy policy advisory body to WGA. WIRAB will function under the bylaws of WINB as revised on April 4, 2006.

Background

2. The Energy Policy Act of 2005 amended the FPA to add a new section 215, which provides for a system of mandatory, enforceable reliability standards for the nation's bulk-power system. These standards are to be developed by an electric reliability organization (ERO) certified by the Commission and are subject to Commission review

¹ Pub. L. No. 109-58, Title XII, Subtitle A, 119 Stat. 594, 941 to be codified at 16 U.S.C. § 824o (2000).

² Pub. L. No. 91-461.

and approval. The ERO will enforce approved reliability standards, subject to the Commission's review, and the Commission may undertake enforcement on its own motion or a complaint. Section 215(e)(4) requires that the Commission issue regulations under which the ERO will be authorized to enter into an agreement to delegate authority to a qualified regional entity for the purpose of proposing reliability standards to the ERO and enforcing them.

3. FPA section 215(j) states:

Regional Advisory Bodies. – The Commission shall establish a regional advisory body on the petition of at least two-thirds of the States within a region that have more than one-half of their electric load served within the region. A regional advisory body shall be composed of one member from each participating State in the region, appointed by the governor of each State, and may include representatives of agencies, States, and provinces outside the United States. 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, 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.

4. The Commission adopted regulations implementing the RAB provisions of FPA section 215(j) on February 3, 2006 in an order designated Order No. 672.³ The regulations closely track the provisions of the statute. They state that the Commission will establish an RAB on the petition of at least two-thirds of the states within a region that have more than one-half of their electric load served in the region.⁴

³ 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. Regulations Preambles ¶ 31,204 (2006) (Order No. 672), order on reh'g, Order No. 672-A, FERC Stats. & Regs. Regulations Preambles ¶ 31,212 (2006) (Order No. 672-A), appeal docketed New York Independent System Operator, Inc. v. FERC, No. 06-1180 (D.C. Cir. May 30, 2006).

⁴ Section 39.13 of the Commission's regulations.

5. The Commission also discussed in Order No. 672 certain policy issues related to RABs. It concluded that it is desirable but not necessary that an RAB cover the same territory as a regional entity authorized by the ERO and approved by the Commission.⁵ The Commission declined to address issues related to adequate representation and voting power of the various states in an RAB or the matters on which an RAB may give advice. The Commission stated that any parties proposing to establish an RAB may develop a voting structure in its petition for RAB status.⁶ The Commission clarified that while an RAB would be established only on the petition of two-thirds of the states in a region that had more than one half of their load served within the region, states with less than one-half of their load served there were free to participate.⁷ Finally, the Commission ruled in Order No. 672 that it was not necessary to provide for RAB funding in its regulations.⁸

6. However, in response to requests for rehearing, the Commission clarified that neither the statute nor Order No. 672 provides explicitly for Commission-approved ERO funding of RABs, nor do they explicitly preclude such funding.⁹ The Commission stated that Order No. 672 appropriately does not automatically provide for ratepayer funding for an RAB, as it would be necessary to consider the nature, size, and cost of RAB activities. The Commission also pointed out that in some regions state governors may prefer to provide state funding to ensure the RAB's independence from the entities it must advise, namely, the ERO, the regional entity, and the Commission.

7. The Commission concluded that it would consider RAB funding on a case-by-case basis in the context of its review of the ERO's overall budget, taking into account the recommendations of the ERO and any relevant regional entity.¹⁰ The Commission stated that any funding request must "specify, for example, whether the funding is just for the travel expenses of [RAB] members, or goes beyond that to include funding for other things (such as funding for state employees who support the members of the [RAB], non-governmental employee staffing for the [RAB] itself, outside consultants or reliability experts, costs of any studies, or any other intended activities)." The Commission noted

⁵ Order No. 672 at P 851-852.

⁶ *Id.* at P 853.

⁷ *Id.* at P 855.

⁸ *Id.* at P 248.

⁹ Order No. 672-A at P 66.

¹⁰ *Id.* at P 66-68.

that the funds would come from the ERO's overall budget, so it would be necessary to consider the recommendation of the ERO and any relevant regional entity.¹¹

The Governors' Petition

8. The Petitioners are governors of ten states that each have more than half of their electric loads served in the Western Interconnection. They propose to organize WIRAB as a standing advisory committee of WINB. WIRAB will function under the bylaws of WINB, as revised April 4, 2006. These bylaws provide that WIRAB will consist of members of the WIEB from the states and provinces that have loads served in the Western Interconnection. The Western Interconnection serves all the electric loads of eight states (Arizona, California, Idaho, Nevada, Oregon, Utah, Washington and Wyoming) and a portion of the load of six additional states (Colorado, Montana, Nebraska, New Mexico, South Dakota and Texas).¹² It also serves the electric load of two Canadian Provinces (Alberta and British Columbia) and a portion of the Mexican State of Baja Norte. According to the petition, each of the 17 states and provinces will be eligible to appoint a WIRAB member.

9. The WINB bylaws provide that WIRAB members will elect a chair and vice chair from their membership, and they permit the chair, with the concurrence of WIRAB members, to appoint committees. The bylaws provide that WIRAB shall take official actions only on the affirmative vote of at least one-half of the members and that those casting affirmative votes must represent at least one-half of the electric energy consumed among the states and provinces participating in WIRAB. WIRAB staff will determine annually from official sources the percentage of electric load served in the Western Interconnection by each member, obtain WIRAB approval of those percentages and post them on the WIEB website. The bylaws also provide (1) for the adoption of an annual budget, maintenance of separate financial records for WIRAB subject to annual audit and expenditures limited to activities authorized by the FPA; (2) for open meetings except for discussion of confidential, privileged, trade secret, or critical infrastructure information, or to protect a legitimate public interest; and (3) that WIRAB will consult with the U.S. Department of Energy (DOE) on the designation of national electric transmission lines pursuant to section 216 of the FPA. WIRAB will meet at least on an annual basis and will make reports on its operations as necessary to the governors of the states represented and will alert the governors of issues that may warrant their direct involvement.

¹¹ *Id.* at P 66-67.

¹² According to art. V(A)(d) of the WINB bylaws, Nebraska, South Dakota, and Texas each have less than half of their electric loads served in the Western Interconnection.

10. Although WIRAB will be a standing advisory committee of WINB, it will not require approval from WINB or WIEB to provide advice. WIRAB will maintain a separate budget and financial records for its activities, subject to annual audit.

11. According to the petition, WIRAB will provide advice on those matters specified in section 215 of the FPA and section 39.13(c) of the Commission's regulations, *i.e.*, (1) the governance of an existing or proposed regional entity within the Western Interconnection; (2) whether a reliability standard proposed to apply within the Western Interconnection is just, reasonable, not unduly discriminatory or preferential, and in the public interest; (3) whether fees for activities under section 215 of the FPA proposed to be assessed within the Western Interconnection are just, reasonable, not unduly discriminatory or preferential, and in the public interest; and (4) any other responsibilities requested by the Commission.

12. The petition includes the WGA Policy Resolution 05-29 dated November 8, 2005, in which the Governors of the Western States direct the formation of WIRAB. The Policy Resolution requires, among other things, that WIRAB be funded by revenues for reliability activities under section 215 of the FPA. The petition requests that the Commission recognize that the work of WIRAB is an important element in achieving the goals of Congress in enacting FPA section 215 and that funding of reasonable costs of providing advice from the mandatory funds collected under section 215 is therefore appropriate. The petition does not further specify the nature or scope of the funding requested, but it does specify that funding would be subject to review by the Commission and by the appropriate regulatory authorities in Canada and Mexico.¹³

Procedural Matters

13. Notice of the petition was published on April 26, 2006, with comments, protests, and interventions due on or before May 26, 2006.

14. Timely motions to intervene were filed by Pacific Gas and Electric Company; the Transmission Agency of Northern California; the Modesto Irrigation District; the City of Santa Clara, California, the City of Redding, California and the M-S-R Public Power Agency; the Northern California Power Agency; the California Independent System Operator Corporation; Allegheny Power and Allegheny Energy Supply Company, LLC; and the Sacramento Municipal Utility District. Motions to intervene out of time were filed on June 1, 2006 by the Arizona Public Service Company and Southern California Edison Company.

¹³ Petition Letter at 3.

15. The Edison Electric Institute (EEI) filed a timely motion to intervene and protest. Timely motions to intervene with comments were filed by San Diego Gas and Electric Company (SDG&E), and jointly by the Cogeneration Association of California and the Energy Producers and Users Coalition. The Public Utilities Commission of the State of California (CPUC) filed a motion for leave to intervene out of time and comments on June 2, 2006.

16. WIRAB filed a timely answer pursuant to 18 C.F.R. § 388.213 on June 9, 2006.

Comments

17. EEI urges the Commission to deny WIRAB's request for funding as premature on two accounts. EEI states that the funding issue should be deferred until after an ERO has been certified and the ERO has entered into a delegation agreement with the relevant regional entity. It is only at that point that the ERO and regional entity will be in a position to review and make recommendations regarding the specific budget and funding requests submitted by an RAB. In addition, the WIRAB proposal falls short of Order No. 672-A, which requires "an opportunity to consider the nature, size and cost of [RAB] activities" prior to approving funding for such activities.¹⁴ Therefore, the Commission should deny without prejudice the WIRAB's open-ended funding request.

18. EEI also comments on WIRAB's proposal that it will offer advice to the Commission when at least one-half of the members (representing at least one-half of the loads served in the Western Interconnection) agree on a position. EEI encourages the Commission to consider a greater level of consensus, such as a two-thirds majority instead of the one-half proposed.

19. The CPUC "strongly supports" the WIRAB petition. It encourages the Commission to provide for the roles of and funding for all RABs prior to ruling on NERC's ERO application. The CPUC asks the Commission to clarify that RABs may provide advice in all areas specified in FPA section 215(j). The CPUC also stresses the importance of participation by states and other stakeholders in the balancing of reliability and commercial concerns as part of the reliability standards approval process, noting that the RABs provide an appropriate vehicle for state participation. The CPUC also notes the unique position RABs will have in advising FERC in delicate issues that will arise.

¹⁴ EEI comments at 3, quoting Order No. 672-A at P 66.

20. The joint comments of the Cogeneration Association of California and the Energy Producers and Users Coalition relate to the unique needs and operating constraints of cogeneration facilities with respect to design of reliability standards.¹⁵

21. SDG&E requests that the Commission convene a proceeding to facilitate review of issues it raised in the ERO certification docket, RR06-1-000, and any possible Western Electricity Coordinating Council (WECC) filing before making a determination on the instant petition. SDG&E states that it may be appropriate for the Commission to consolidate the certification docket with this docket.

WIRAB's Answer

22. In its answer, WIRAB addresses the following four issues: (1) WIRAB's creation and commencement of operations; (2) whether to delay a decision on WIRAB's petition pending action in RR06-1-000 and an anticipated filing by WECC to be a regional entity; (3) funding for WIRAB activities pursuant to section 215; and (4) deference for WIRAB's recommendations.

23. WIRAB states that it is organized and prepared to carry out its statutory functions upon confirmation by the Commission. WIRAB notes that its petition was signed by the governors of ten out of eleven states that have more than half of their loads served in the Western Interconnection, and that those governors have appointed members to serve on WIRAB. Other members may be appointed in the future from four other states,¹⁶ two Canadian provinces,¹⁷ and Baja Norte, Mexico, all of which have territory served by the Western Interconnection. WIRAB is a functioning organization that has already held two meetings in which it adopted bylaws and operating procedures.

24. WIRAB challenges SDG&E's request for the Commission to consider NERC's ERO application and WECC's expected filing to be a regional entity before making a decision on WIRAB's petition, stating that the statute and the related Commission orders argue for prompt acceptance of WIRAB's petition. In Order No. 672, the Commission found that establishment of a regional entity does not need to precede formation of an RAB, and the statute allows an RAB even when there is no regional entity. In fact, the statute provides for the RAB to advise the Commission and the ERO regarding the

¹⁵ These comments are not detailed here because they are not relevant to this proceeding, except to the extent that they support the parties' motion to intervene.

¹⁶ Idaho, Nebraska, South Dakota, and Texas.

¹⁷ Alberta and British Columbia.

governance of the proposed regional entity.¹⁸ In order to be able to provide advice to the Commission regarding the governance of a regional entity for the Western Interconnection, proposed reliability standards, and proposed fees, WIRAB's petition should be acted on promptly, and not delayed to consider events in the ERO certification docket or any future regional entity filing.

25. WIRAB agrees with EEI that it is premature to finalize a WIRAB budget, and clarifies that at present it is requesting that the Commission endorse the principle that an RAB's reasonable costs will be funded under section 215. In support of its position, WIRAB notes that section 215(c)(2)(B) authorizes the Commission to "determine whether an ERO applicant has rules in place that 'allocate equitably reasonable fees, dues and other charges among end users for *all activities under this section.*'" Given that RAB activities are prescribed in section 215(j), they are "activities under this section," and, therefore, entitled to funding under section 215.

26. WIRAB notes that the Commission intends to review specific RAB funding requests within the context of the ERO's overall budget, which will give the Commission the opportunity to review the specific activities for which funding is requested. WIRAB notes that it drafted a preliminary budget for calendar year 2007 and submitted it to WECC as part of WECC's participation in the ERO budget-development process. Until such time as the Commission reviews WIRAB's submission as part of the ERO budget, WIRAB is seeking a statement from the Commission that a properly established RAB, such as WIRAB, will be supported by section 215 funds for all reasonable costs to carry out its statutory responsibilities.

27. Lastly, WIRAB responds to issues raised by EEI regarding WIRAB's voting rules. WIRAB defends its voting as requiring both a majority of member states and a majority of load served to vote in favor of advice before it will be provided to the regional entity, the ERO, or the Commission. The Commission may give deference to advice from WIRAB because WIRAB is organized on an Interconnection-wide basis, and concludes it is reasonable for the Commission to take into account the extent of consensus achieved when deciding how much deference to accord to particular advice. WIRAB suggests that the Commission give deference to advice that was unanimously approved by WIRAB members, but give more scrutiny to advice supported by a bare majority of members. WIRAB notes that voting on all WIRAB decisions will be made a matter of public record, and that the Commission may utilize that information in considering WIRAB advice. WIRAB concludes that it would be inappropriate for the Commission to impose an arbitrary higher standard as a condition for extending deference.

¹⁸ Order No. 672 at P 851.

Discussion

A. Procedural Matters

28. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceeding.

29. The Commission finds that granting all late-filed motions to intervene filed up to the date of issuance of this order will not delay, disrupt, or otherwise prejudice this proceeding, or place an additional burden on existing parties. Therefore, for good cause shown, pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. §385.214(d) (2005), we will grant the late-filed motions to intervene. We also accept the CPUC's late-filed comments.

B. Commission Determination

30. Section 215(j) of the FPA and section 39.13(a) of the Commission's regulations require the Commission to establish an RAB on the petition of at least two-thirds of the states in a region that have more than one-half of their load served within the region. The petition was filed by governors of ten out of eleven states (over ninety percent) that have more than half of their electric load served within the region. The petition satisfies the statutory requirement, and the Commission therefore will establish WIRAB as an RAB under section 215(j).

31. In addition, the Commission approves the Petitioners' proposal that WIRAB may provide advice to the ERO, a regional entity within the Western Interconnection, or the Commission on the following matters: (1) the governance of an existing or proposed regional entity within the Western Interconnection; (2) whether a reliability standard proposed to apply within the Western Interconnection is just, reasonable, not unduly discriminatory or preferential, and in the public interest; (3) whether fees for activities under section 215 of the FPA proposed to be assessed within the Western Interconnection are just, reasonable, not unduly discriminatory or preferential, and in the public interest; and (4) any other responsibilities requested by the Commission (collectively, 215(j) activities.).

32. The Commission notes WIRAB's proposal to consult with the DOE on the designation of national interest electric transmission corridors pursuant to section 216 of the FPA. Although we support WIRAB's collaboration with DOE on this issue, since it falls outside the scope of 215(j) activities, it cannot be funded by monies collected pursuant to section 215.

33. The Commission agrees in principle that reasonable costs incurred by an RAB in performing 215(j) activities may be paid from mandatory fees collected under section 215. However, the Commission will defer further action on the Petitioners' funding request pending completion of the process described below.

34. As stated in Order No. 672-A and recognized by WIRAB in its answer, RAB funding would come from the ERO's overall budget. Any approval of RAB funding thus should be part of the overall ERO funding process. The Commission notes that WIRAB has already submitted a draft budget to WECC as part of the ERO budget-development process. In accordance with Order No. 672-A, the proposed budget should contain sufficient detail to enable a determination regarding what portion thereof is for 215(j) activities. In addition, as stated in Order No. 672-A, in formulating its future budget requests, WIRAB will need to consider any recommendations of the ERO and any relevant regional entity.¹⁹

35. In a manner similar to the process the Commission specified for regional entities in Order No. 672,²⁰ WIRAB annually should develop and submit to the ERO its budget for 215(j) activities and an organizational chart, which the ERO will then review and submit to the Commission. This information should also inform the Commission as to what portion of the RAB's costs for 215(j) activities will be funded from Canada or Mexico, and the basis for this allocation.

36. Any WIRAB funding approved in connection with the overall ERO budget will be limited to its costs incurred in performing 215(j) activities.. Thus, as noted above, costs incurred in consulting with DOE pursuant to section 216 of the FPA cannot be recovered out of funds received from end users of the bulk-power system under section 215. The Commission notes that FPA section 215(c)(2)(B) requires that end user dues, fees and other charges be reasonable. The Commission will not at this time establish principles or standards for evaluating whether WIRAB's budget is consistent with this requirement.

37. The Commission believes that making WIRAB funding a part of the overall ERO budget process provides for stakeholder input.²¹ It also provides the ERO and any relevant regional entity with an opportunity to comment on the RAB's proposed budget,

¹⁹ However, as we noted in Order No. 672 at P 851, we do not believe that formation of an RAB must follow the creation and approval of a regional entity.

²⁰ Order No. 672 at P 228.

²¹ Under NERC's application, the board oversees preparation of the ERO budget, in consultation with the member representatives committee, thus providing for review of the budget proposed by any RABs. NERC's proposed Bylaws, art. XIII.

thus addressing EEI's concern that it is premature to approve the WIRAB funding request before an ERO has been certified. The Commission also believes that expenses incurred by an RAB should be recovered from end users within that same region to the extent practicable.

38. The CPUC requested that the Commission clarify roles and funding for RABs. This order reaffirms the role of the RABs as delineated in 18 C.F.R. 39.13 and sets forth the basic funding process. The other comments raised by the CPUC either do not require a response, or are more appropriately addressed in the context of the ERO certification application docket, Docket No. RR06-1-000, which we are addressing concurrently.

39. Finally, the Commission declines to determine the consensus or voting structure of an independent regional advisory body, and leaves that issue to be resolved by the participating states. However, the level of consensus achieved is one factor the Commission will consider in determining the degree of deference to give a particular WIRAB recommendation.

The Commission orders:

(A) Petitioners' request that the Commission establish WIRAB as a regional advisory body for the Western Interconnection is hereby granted.

(B) The Commission grants Petitioners' request that WIRAB receive funding for the reasonable costs of its 215(j) activities, but defers any further action on this request pending completion of the budget approval process specified in this order.

(C) The Commission directs WIRAB to develop a budget and related information specified in the body of this order and submit it to the ERO, once it is certified, for review by the ERO and submission through the ERO budget approval process.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.