

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

**Rules Concerning Certification of the )  
Electric Reliability Organization; and Procedures ) Docket No. RM05-  
for the Establishment, Approval, and Enforcement ) 30-000; Order No.  
of Electric Reliability Standards ) 672**

**JOINT REQUEST OF THE  
WESTERN GOVERNORS' ASSOCIATION AND THE  
COMMITTEE ON REGIONAL ELECTRIC POWER COOPERATION  
FOR REHEARING AND CLARIFICATION**

Pursuant to Rules 212 and 713 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.212 and 385.713 (2004), the Western Governors' Association (WGA)<sup>1</sup> and the Committee on Regional Electric Power Cooperation (CREPC)<sup>2</sup> respectfully request rehearing and clarification of Order No. 672, issued in the captioned proceeding on February 3, 2006.

**SPECIFICATION OF ERROR**

In Order 672, the Commission states in paragraph 248: "We find that it is not necessary to provide in our regulations funding of a Regional Advisory Body. Such bodies are voluntary organizations with members to be appointed by the Governor of each participating state or province. Each Regional Advisory Body is responsible for developing its own funding means." Order No. 672 at p. 103.

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<sup>1</sup> WGA is an independent, nonprofit organization representing the governors of 18 states and three U.S.-Flag islands in the Pacific. Through their Association, the Western governors identify and address key policy and governance issues in natural resources, the environment, human services, economic development, international relations and public management.

<sup>2</sup> CREPC is a joint committee of the Western Interstate Energy Board and the Western Conference of Public Service Commissioners. It was formed in 1983. All utility regulatory commissions, governor's energy agencies and siting agencies in the states and provinces in the Western Interconnection are eligible to participate in CREPC. Positions are taken by CREPC only if no state or province objects.

Because it is not clear whether this language (1) simply declines to guarantee in the regulations that the budget of a Regional Advisory Body will be funded through the Section 215 mandatory reliability fees or whether (2) it means to *preclude* the inclusion of a Regional Advisory Body budget in the Section 215 fees, it cannot be determined if the language is inconsistent with Section 215 or simply requires clarification. To the extent that the Commission meant to preclude the use of Section 215 fees, WGA and CREPC respectfully note that the Commission's Order is inconsistent with the provisions of Section 215(c)(2)(B) which requires the Commission to determine whether an ERO applicant has rules that "allocate equitably reasonable dues, fees, and other charges among end users for *all* activities under this section." (emphasis added.) Since the activities of a Regional Advisory Body are very clearly provided for in Section 215(j), they are among the activities "under this section" that Congress has referred to in Section 215(c)(2)(B), and equitable allocation of the reasonable cost of those activities among end users is dependent on the Commission providing a mechanism to include the cost of those activities within the Section 215 fees.

To the extent that paragraph 248, quoted above, was only intended to say, in effect, that it is premature to address how the costs of the Regional Advisory Bodies will be funded and that this can be addressed in the Commission's review of an ERO application and the anticipated delegation agreements that will be

included in that application, then there is not necessarily a conflict between paragraph 248 and Section 215(c)(2)(B). Section 215(c)(2)(B) plainly gives the Commission the power to ensure that the mandatory fees to be charged under Section 215 are reasonable, and that implies that Congress anticipated that the Commission would have the power to review the budgets of the ERO and Regional Entities to ensure that such budgets did not include activities outside the scope of the reliability activities provided for in Section 215 and did not impose costs that were unreasonable for those activities. Thus the Commission will also have the authority to review the budgets of a Regional Advisory Body to ensure that the costs of carrying out the functions outlined in Section 215(j) are reasonable and that those costs can be equitably spread to the end users for whose benefit they are being incurred. If the Commission did not intend to preclude funding of the reasonable costs of a Regional Advisory Body through the Section 215 fees but only intended to defer consideration of that issue until more detail was provided concerning the activities of such a Body, once it has been formed, then WGA and CREPC respectfully request that the Commission clarify that paragraph 248 does not preclude the possibility of such funding.

### **BACKGROUND**

On February 3, 2006, in Order No. 672, the Commission adopted Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards, contained in 18 CFR Part 39. 114 FERC ¶ 61, 104. For the most

part, WGA and CREPC believe the Commission has done an admirable job of providing timely guidance as to how Section 215 is to be implemented. We note with approval, the Commission's recognition that Congress has recognized that when reliability issues are addressed on an Interconnection-wide basis, there can be a good reason for differences in the approach taken. Indeed, because reliability problems do not cascade to areas outside an Interconnection, Congress has provided, in Section 215, for deference to the judgments that are made on an Interconnection-wide basis, both for Regional Entities organized on that basis and for Regional Advisory Bodies that are organized on that basis. WGA and CREPC appreciate that FERC's regulations appear to recognize this fundamental point. 18 CFR §§ 39.5(c)(2), 39.8(e), and 39.13(d). We particularly appreciate the Commission's statements that "the statute and our regulations provide for Regional Advisory Bodies to advise the Commission and the ERO on special regional needs. The Commission intends to take such advice seriously." Order No. 672 at p. 318. It is with this statement in mind that we file this Petition in order to ensure that the Commission has the opportunity to receive well-founded independent advice from such Regional Advisory Bodies, which can only occur if they are assured a source of funding that does not depend on voluntary dues mechanisms or contributions from industry participants.

This Petition for Rehearing or Clarification seeks clarification of the issue of funding for Regional Advisory Bodies and also provides comment on how we hope FERC will implement the concept embodied in Section 39.4(g).

## ARGUMENT

- 1. The Commission should make clear through modification or clarification of Order 672 that, subject to the Commission's power of budget review, a Western Interconnection Regional Advisory Body may be funded through the mandatory Section 215 fee.**

WGA and CREPC have both participated in the development of the legislation that became Section 215 and have developed close working relationships with the Western Electricity Coordinating Council (WECC) and with Canadian regulators who share with the Commission the regulatory authority to enforce reliability standards applicable within the Western Interconnection. It is from this perspective that WGA and CREPC have participated in this rulemaking and have encouraged the Commission to value the potential partnership that it could create with Western States and Provinces through the formation of a Regional Advisory Body that is to be formed on an Interconnection-wide basis in the West. We believe that productive collaboration between the Commission and a Western Interconnection Regional Advisory Body (WIRAB) can serve the cause of reliability in the Western Interconnection and may be essential to the success of the goal of uniform enforcement of standards throughout the Interconnection. Thus we were disappointed to read, in paragraph 248, the implication that the Commission regarded the formation of a Regional Advisory Body to be a relatively unimportant event. In Paragraph 248, Order 672 suggests that because formation of a Regional Advisory Body is "voluntary" and the appointments to such an organization would be by the Governor of each

participating state or Province, “Each Regional Advisory Body is responsible for developing its own funding means.” We respectfully request that the Commission modify or at least clarify the meaning of paragraph 248.

The fact that Section 215(j) makes the formation of a Regional Advisory Body “voluntary” should not lead the Commission to view such an event as unimportant and unworthy of encouragement through provision of an equitable means of sharing the costs among all end users who will benefit from the work of this entity. Congress provided for the formation of Regional Advisory Bodies in Section 215(j) primarily at the behest of the West where Western Governors are considering formation of a WIRAB on an Interconnection-wide basis. Section 215(j) specifically sets forth tasks for such an organization related to governance, budgets, and reliability standards. In the West, where the Interconnection spans portions of three nations, the development of an effective WIRAB could be particularly important to the success of the Commission’s goal that the reliability standards program called for in Section 215 would achieve uniform enforcement of standards in all parts of the Interconnection. WGA and CREPC have, for many years, cultivated strong working relationships with the Canadian regulatory community and intend that the WIRAB will take advantage of those long-standing relationships to foster cooperation and understanding of the needs of the entire Interconnection among all of the regulators who will pass on the appropriateness and enforcement of reliability standards.

Unfortunately, the Commission's statement that "[e]ach Regional Advisory Body is responsible for developing its own funding means," if not clarified or modified is likely to greatly reduce the effectiveness of a WIRAB in serving the cause of reliability in the Western Interconnection. The prospect of a simple, equitable, and effective way of spreading the cost of the WIRAB to all end users in the Western Interconnection through the Section 215 fee has encouraged WGA and CREPC to proceed with activities necessary to form the WIRAB and to plan how its activities within the existing Western Interstate Energy Board (WIEB) structure could be efficiently performed. Without approval to use the Section 215 fee as a mechanism to fund the work of following and analyzing the standards development and budgets of WECC and the ERO so that intelligent and meaningful advice can be offered to the Commission, the WIRAB would be dependent on voluntary contributions of State governments and perhaps participants in the bulk power system.

For two reasons such a funding method is undesirable. First, if funding the WIRAB is voluntary, one or more State governments with funding constraints may not pay their fair share, imposing WIRAB costs on other States and Provinces. The more this happens, the more it is likely to happen as other States also make funding the WIRAB a lower priority, resulting in a death spiral for the funding of these activities. Second, the WIRAB will only be useful to the Commission if its advice is impartial and unbiased by the desire not to offend those who contribute to its funding. Thus it is very much in the Commission's

interest to ensure that neither WECC nor the ERO may control the WIRAB budget even if it is to flow through the budgets of those organizations to the Commission for review and approval. Of course, either of those organizations could express their views to the Commission if they believe the WIRAB budget is excessive, but only the Commission should be able to reduce or eliminate the use of the Section 215 fee for Regional Advisory Body activities that are specified in Section 215(j) and in Section 39.13 of the Commission's regulations.

WGA and CREPC recognize that because Section 215(j) does not limit the number of Regional Advisory Bodies that could be formed and does not provide much detail about what they might do, the Commission might reasonably conclude that it is premature to specify a funding mechanism for all such entities in the Commission's regulations. Nevertheless, the activities of Regional Advisory Bodies are clearly specified within Section 215 and Section 215(c)(2)(B) states that all activities under Section 215 are to be funded by a mandatory charge that equitably spreads the cost of those activities to all affected ratepayers. We therefore strongly urge the Commission to clarify that it did not intend to preclude that method of funding a Regional Advisory Body budget that is reasonable in relation to the tasks assigned by Congress in Section 215(j) and that can be collected only from the end users who will benefit from the activities of the Regional Advisory Body.

2. **The Commission should not unduly discourage a Regional Entity like the Western Electricity Coordinating Council from undertaking, with the support of affected States and Provinces, coordination activities that can contribute to system reliability outside the core responsibility for development and enforcement of reliability standards.**

WGA and CREPC have also expended considerable effort and resources over the past several years in the cause of developing greater coordination in the West of (1) transmission expansion planning, (2) accurate assessment of electric resource adequacy including the risks to reliability that are posed by potential weather extremes, transmission limits, and threats to the availability of fuel for generators, (3) commercial practices that interact intimately with reliability and that are affected by reliability standards and their implementation, and (4) tracking renewable generation throughout the Western Interconnection in a way that facilitates valuation of renewable energy attributes by allowing trading of those attributes without fear of double counting or other fraud. We have encouraged the WECC to provide the logical institutional home for such efforts, both because WECC already has the data collection relationships throughout the Interconnection that are essential for all such work and also because these efforts can enhance WECC's understanding of how the system works and thus contribute to its ability to develop the best reliability solutions. Thus it was with some concern that we read in 18 CFR § 39.4(g) that "The Electric Reliability Organization or a Regional Entity may not engage in any activity or receive revenues from any person that, in the judgment of the Commission represents a significant distraction from, or a conflict of interest with, its responsibilities under this part."

Neither WGA nor CREPC request the Commission to modify this section because we certainly agree that there could be activities that would be inconsistent with the responsibilities of a Regional Entity under Section 215. Nevertheless, we encourage the Commission to implement this regulation with great care to avoid discouraging the productive coordination efforts that WECC, WGA, and CREPC have been making in the areas described above. We recognize that the Commission will need to review and approve all of the activities of WECC if it is to become a Regional Entity delegated authority under Section 215, and we will defer to a later date commenting in detail on the specific reasons that we believe WECC should be involved in more than just reliability standards development and enforcement. In general, however, we note that for many years the industry has struggled with the dividing line between commercial and reliability issues and in many specific cases, the fact continues to assert itself that every commercial practice can have implications for reliability and every reliability solution affects the commercial environment. In the West, we have found that the imperfect efforts of one organization to develop solutions that work on both sides has been more efficient and effective than the development of more than one organization with attendant need to arbitrate between them when their functions intersect. The Commission should recognize that the public desires reliable electric service, not perfect reliability standards. While the latter are important to the provision of reliable electric service, they are not sufficient to achieve that goal. Thus we encourage the Commission to permit Regional

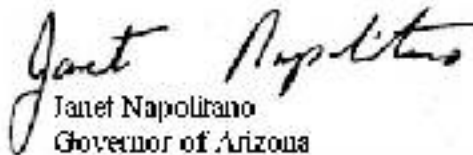
Entities like WECC to perform functions other than just development and enforcement of reliability standards when those functions are complementary and serve the greater cause of provision of reliable electric service.

### CONCLUSION

WGA and CREPC generally congratulate the Commission on a job well done in Order 672, but we respectfully request modification or clarification of Paragraph 248 for the reasons explained above and we encourage the Commission to allow the Western Electricity Coordinating Council to do more in the greater cause of reliability than just development and enforcement of reliability standards.

Dated: March 2, 2006

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Janet Napolitano". The signature is written in a cursive style with a large initial "J".

Janet Napolitano  
Governor of Arizona

Chair, Western Governors' Association

Submission Contents

Western Governors Comments on Docket #RM05-30-000 Order #672  
WGA-FERC672.doc..... 1-11