

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

**Governors of the States of Arizona, California )  
Colorado, Montana, Nevada, New Mexico, ) Docket No. RR06-2-000  
Oregon, Utah, Washington and Wyoming )**

**ANSWER OF THE  
WESTERN INTERCONNECTION REGIONAL ADVISORY BODY  
TO THE MOTIONS TO INTERVENE**

Pursuant to Rule 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §385.213, the Western Interconnection Regional Advisory Body (“WIRAB”) files an Answer to the Motions to Intervene in the above captioned proceeding by Allegheny Power and Allegheny Energy Supply Company, LLC; California Independent System Operator Corporation; the Cogeneration Association of California and the Energy Producers and Users Coalition; Edison Electric Institute (“EEI”); Modesto Irrigation District (“MID”); Northern California Power Agency; Pacific Gas and Electric Company; Sacramento Municipal Utility District; the City of Santa Clara, California, the City of Redding, California, and the M-S-R Public Power Agency (collectively “Santa Clara”); San Diego Gas & Electric Company (“SDG&E”); and the Transmission Agency of Northern California (“TANC”).

**I. Communication**

The persons to whom correspondence, pleadings, and other papers regarding this proceeding should be addressed and the persons whose names are to be placed on the Commission’s official service list are designated as follows pursuant to Rule 203:

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## **II. Introduction**

On April 19, 2006, the Governors of ten States in the Western Interconnection submitted a petition for the creation of the Western Interconnection Regional Advisory Body (the “Petition”). The Commission received the Petition for filing on April 20, 2006. The Commission issued a Notice of Filing in the above captioned proceeding on April 26, 2006. By the comment date of May 26, 2006, eleven motions to intervene have been filed by the entities referenced above.

WIRAB respectfully submits this Answer to address the legal and factual basis of four issues raised by some of the motions to intervene: (A) WIRAB creation and commencement of operations; (B) delay determination of the WIRAB Petition pending review and consideration of other filings by the North American Reliability Council and its affiliate, the North American Electric Reliability Corporation (together, “NERC”) in Docket No. RR06-01, and the anticipated filing by the Western Electricity Coordinating Council (“WECC”) as a regional entity; (C) funding for WIRAB activities pursuant to Section 215 of the Federal Power Act (FPA); and (D) deference for WIRAB recommendations.

### **III. Legal Issues Raised in the Motions for Intervention**

#### **A. WIRAB Creation and Commencement of Operations**

The motions by MID, Santa Clara, and TANC assert that the Petition does not provide a target date for the WIRAB to begin operation. WIRAB has organized and is prepared to carry out its statutory functions with the filing of the Petition and the anticipated confirmation by the Commission.

Section 215(j) of the FPA provides, “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.” The act of filing of the Petition on April 20, 2006, by ten of eleven States that have more than half of their loads served in the Western Interconnection, triggered the process to create WIRAB. The statutory language of Section 215(j) states that the Commission “shall establish” the Regional Advisory Body. Congress did not provide for discretion on the establishment of the Regional Advisory Body. WIRAB is now a legal entity set to carry out its responsibilities under Section 215(j) of the FPA pending confirmation by the Commission.

Governors from the ten WIRAB States have appointed members to serve on WIRAB. Invitations will be extended to other eligible entities that could expand WIRAB members to 14 states with territory served by the Western Interconnection, two Canadian Provinces, and the state of Baja Norte in Mexico. WIRAB is a functioning organization that has held two meetings, adopted bylaws and operating procedures. See <http://www.westgov.org/wieb/site/wirab/wirabindex.htm>). WIRAB will carry out its statutory function to 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.” Section 215(j), FPA.

**B. Delay Determination on the WIRAB Petition Pending Other Filings**

The motion by SDG&E calls for the Commission to convene a proceeding to review and consider the NERC filing to become the Electric Reliability Organization (ERO) and a possible WECC filing to become a Regional Entity before rendering any determination on the WIRAB Petition, and consider consolidating the WIRAB docket with the NERC docket. WIRAB argues that the statutory language, Commission ruling, and practical purpose of providing intelligent advice to the Commission during the implementation stage of Section 215 warranted prompt acceptance by the Commission of the WIRAB Petition.

The Commission has addressed specific features of the relationship between a Regional Advisory Body and a Regional Entity. First, it is generally desirable for a Regional Entity and a Regional Advisory Board to have the same geographic footprint.<sup>1</sup> Second, the formation of a Regional Advisory Body does not have to follow the establishment of a Regional Entity. *Id.* Third, Section 215 of the FPA allows a Regional Advisory Body to be established even if there is no Regional Entity. *Id.* Fourth, since

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<sup>1</sup> Order No. 672, 114 FERC ¶ 61,104 (2006) at P 851. Note that the Western Interconnection Regional Advisory Body encompasses the entire Western Interconnection and the geographic territory covered by the Western Electricity Coordinating Council.

Section 215 of the FPA provides that a Regional Advisory Body is to advise the Commission and ERO about the governance of the proposed Regional Entity, the FPA permits a Regional Advisory Body to be created prior to a Regional Entity. *Id.*

WIRAB is an established and operating entity prepared to provide the Commission advice on the governance of a Regional Entity for the Western Interconnection, reliability standards proposed to apply to the Western Interconnection, proposed fees, and any other responsibilities requested by the Commission. To ensure that the Commission receives timely WIRAB advice on such issues as they are presented in NERC's application to become the ERO, WIRAB filed to intervene in Docket No. RR06-1-000.<sup>2</sup> WIRAB anticipates providing advice on key issues for western states and provinces concerning any delegation agreement between the ERO and a Regional Entity in the Western Interconnection, NERC's proposed transition period, and programs and activities to be funded by mandatory fees.

WIRAB anticipates performing its statutory duties during this important implementation period. It would be contrary to the intent and purpose of Section 215(j) to delay action on the WIRAB Petition until after decisions are made on key issues. The WIRAB Petition should not be subject to the Commission's determination of other pending matters, and the WIRAB petition docket should not be consolidated with other dockets.

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<sup>2</sup> WIRAB does not mean to suggest that it can only provide advice in this manner. Indeed, Section 215(j) does not in any way restrict the provision of advice to the ERO, the Commission, or a Regional Entity by a Regional Advisory Body.

**C. Funding for WIRAB Activities Pursuant to Section 215 of FPA**

EEI calls on the Commission to deny, without prejudice, the WIRAB Petition request on the issue of funding for WIRAB activities.<sup>3</sup> We agree with EEI that it is premature to finalize a detailed WIRAB budget. However, we ask for the Commission to endorse the principle that a Regional Advisory Body receives Section 215 funding for its reasonable costs under the statute.

Under Section 215(c)(2)(B) of the FPA, the Commission must 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*.” (emphasis added). Since WIRAB’s statutory activities are prescribed in Section 215(j), WIRAB activities are within those “activities under this section” referenced in Section 215(c)(2)(B). This provision reflects Congress’ intent to ensure equitable allocation of the reasonable cost of those activities among end users through Section 215 fees. These fees provide the funding mechanism to ensure that established Regional Advisory Bodies provide intelligent and meaningful advice to the Commission, the ERO and Regional Entities.

The Commission articulated a preliminary framework for considering funding requests for Regional Advisory Bodies in Order 672-A.<sup>4</sup> Upon the filing of a petition meeting the statutory criteria, the Commission would “consider subsequently any funding request.” *Id.* at P 67. The Commission intends to review the specific details of a regional advisory body funding request within the context of the ERO’s overall budget and consider the recommendations of the ERO and the relevant Regional Entity. This approach will provide the Commission an opportunity for a detailed review of the

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<sup>3</sup> EEI filed jointly a motion to intervene and a protest. Since EEI’s comments are inextricably tied to the motion to intervene, WIRAB is compelled to answer two specific issues linked to the EEI motion.

<sup>4</sup> Order No. 672-A, 114 FERC ¶ 61,328 (2006).

specific activities covered in the request for funds. While the Commission identified some types of activities that would be appropriate or not appropriate for funding,<sup>5</sup> these examples illustrate the principle that Regional Advisory Bodies will be supported by funding for reasonable costs. Funding request details were left for consideration in a specific application before the Commission.

WIRAB understands the Commission's reluctance to undertake a detailed assessment of specific budgetary criteria at this time.<sup>6</sup> We do think it is reasonable and appropriate, however, for the Commission to acknowledge the principle that an established Regional Advisory Body which meets the statutory criteria, such as the WIRAB, will be supported by Section 215 funds for all reasonable costs to carry out its statutory responsibilities. A statement of principle confirming the Commission's intention to implement this component of Section 215 is not premature. On the contrary, such a statement of principle will provide important guidance to WIRAB and reduce uncertainty in the implementation process. This step will also contribute to a more efficient and intelligent path implementing Congress's goal behind Section 215.

#### **D. Deference for WIRAB Recommendations**

EEI questions Commission deference to WIRAB recommendations under WIRAB's governing voting rules. WIRAB bylaws provide a well-balanced governance and voting that guarantees that no minority of WIRAB member states and provinces nor a majority of those members that represent only a minority of the load of the participating

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<sup>5</sup> "Any such request would have to specify, for example, whether the funding is just for travel expenses of Regional Advisory Body members, or goes beyond that to include funding for other things (such as funding for state employees who support the members of the Regional Advisory Body, non-governmental employee staffing for the Regional Advisory Body itself, outside consultants or reliability experts, costs of any studies, or any other intended activities." *Id.* At P 67.

<sup>6</sup> WIRAB has drafted a preliminary budget for calendar year 2007 that was submitted to WECC as part of WECC's participation in the ERO budget development process. The Commission will have an opportunity to review the WIRAB budget as part of the ERO budget filing.

entities can approve advice to a Regional Entity, the ERO or the Commission. EEI suggests that the Commission may want to specify a higher degree of consensus necessary for the Commission to defer to the advice of a Regional Advisory Body under Section 215(j).

Regional Advisory Bodies have four statutory functions to advise the Commission, the ERO and the relevant Regional Entity. Section 215(j) of the FPA attributes heightened significance to advice from a certain class of Regional Advisory Bodies. “The Commission may give deference to the advice of any such regional advisory body if that body is organized on an Interconnection-wide basis.” Section 215(j), FPA. WIRAB is a Regional Advisory Body that is organized on the Western Interconnection. Therefore, WIRAB is within the class of Regional Advisory Bodies that Congress instructed the Commission to consider extending deference.

The statutory scheme of extending deference to regional advisory bodies based on their organization on an Interconnection-wide basis parallels the special consideration extended to Regional Entities organized on an Interconnection-wide basis. Section 215 specifies three areas where regional entities formed across an interconnection received deferential review by the Commission or the ERO.<sup>7</sup> Taken as a whole, these provisions illustrate Congress’s intent to ensure that the Commission and the ERO extend

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<sup>7</sup> Section 215 (d)(2), “The Commission shall give due weight . . . to the technical expertise of a regional entity organized on an interconnection-wide basis with respect to a reliability standard to be applicable within that Interconnection . . . .”

Section 215 (d)(3), “The Electric Reliability Organization shall rebuttably presume that a proposal from an Interconnection-wide basis for a reliability standard or modification to a reliability standard to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest.”

Section 215 (e)(4), “. . . The ERO and the Commission shall rebuttably presume that a proposal for delegation to a regional entity organized on an Interconnection-wide basis promotes effective and efficient administration of bulk-power system reliability and should be approved.”

heightened deference to the advice provided by the Regional Entities and Regional Advisory Bodies representing a full Interconnection.

WIRAB adopted governing bylaws whereby advisory opinions to the Commission, the ERO, and the Regional Entity must pass a two part voting condition: (1) affirmative approval by at least one-half of the WIRAB members; and (2) those members casting an affirmative vote must represent at least one-half of the electric energy consumed among the states and provinces participating in WIRAB. This two-part voting rule ensures that WIRAB decisions have majority approval among the sovereign state and provincial entities, and majority approval among members representing a majority of the end users across the Interconnection. The WIRAB voting rule balances diverse interests similar in principle to the constitutional structure of the U.S. Congress where the Senate is based on representation by the states and the House is based on representation of the populace. We believe the WIRAB voting rules establish a reasonable minimum for providing advice that deserves deference.<sup>8</sup> Nevertheless, WIRAB recognizes that Section 215(j) does not require the Commission to accord deference to its advice but rather permits it to do so. Thus we believe it is reasonable that the Commission would tend to grant that deference taking into account the extent of the consensus achieved with the WIRAB for any given advice. We suggest that advice that comes to the Commission with unanimous approval of the members of WIRAB should normally receive Commission deference while advice that is only supported by a bare majority should receive greater scrutiny by the Commission.

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<sup>8</sup> EEI suggests a higher voting standard such as a two-thirds majority of the WIRAB members representing at least 50% of those members' load share within WIRAB. WIRAB notes that the U.S. Constitution applies the majority rule for adopting laws such as the EPAct and Section 215. The two-thirds voting rule for Congress is used for exceptionally important decisions such as approving constitutional amendments and Senate ratification of international treaties.

If the past is a guide, we anticipate a great deal of consensus among the states and provinces in the Western Interconnection on reliability issues. To the extent differences arise, WIRAB decisions will be a matter of public record with an accounting of voting records for all decisions. The Commission may wish to draw upon that information over time as it considers the advice of WIRAB. We believe it would be inappropriate at this stage, however, to impose an arbitrary higher voting standard as a condition for extending deference to WIRAB advice.

WIRAB respectfully asks the Commission to consider the four issues discussed above when considering the motions to intervene in this proceeding.

Respectfully submitted,


A handwritten signature in black ink, appearing to read "Douglas Larson". The signature is written in a cursive style with a large initial "D" and a long horizontal stroke at the end.

Douglas Larson  
Executive Director  
Western Interstate Energy Board

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each party designated on the official service list in this proceeding.

Dated at Denver, Colorado, this 9th day of June, 2006.

A rectangular box containing a handwritten signature in cursive script, which appears to read "Thomas A. Carr".

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Thomas A. Carr

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