

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

**North American Electric Reliability Council     )     Docket No. RR06-3-000  
North American Electric Reliability Corporation)**

**ADVICE OF THE  
WESTERN INTERCONNECTION REGIONAL ADVISORY BODY  
ON FUNDING WESTERN RELIABILITY COORDINATORS**

The Western Interconnection Regional Advisory Body (WIRAB) submits advice to the Federal Regulatory Energy Commission in response to the order of October 24, 2006, denying statutory funding for Western Reliability Coordinators in the budget request of the Western Electricity Coordinating Council (WECC).<sup>1</sup>

Section 215(j) of the Federal Power Act authorizes WIRAB to provide the Commission advice on “whether fees proposed to be assessed within the region are just, reasonable, not unduly discriminatory or preferential, and in the public interest...”<sup>2</sup>

Western Governors formed WIRAB in April, 2006 to “advance the goal of the United States Congress in enacting Section 215 of the Federal Power Act.”<sup>3</sup> On behalf of Governors of 12 western States and Premiers of two Canadian Provinces, WIRAB represents the public interest and policy objective of ensuring a reliable electric system across the Western Interconnection.

In advice submitted to the Commission on October 6, 2006, WIRAB found that WECC’s proposal to fund Western Interconnection Reliability Centers from statutory

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<sup>1</sup> Order Conditionally Accepting 2007 Business Plan and Budget of the North American Electricity Corporation Approving Assessments to Fund Budgets and Order Compliance Filings, 117 FERC ¶ 61,091 (October 24, 2006), P. 51-53. (*Budget Order*).

<sup>2</sup> Section 215(j) of the Federal Power Act (FPA), 16 U.S.C. 824.

<sup>3</sup> Petition of the Governors, Docket No. RR06-2-000 (April 20, 2006), p. 3.

assessments under Section 215 of the Federal Power Act to be just, reasonable, not unduly discriminatory or preferential, and in the public interest.<sup>4</sup>

We are concerned that the Commission has locked itself into an analytical legal framework that undermines the broader policy goals of ensuring electric system reliability in the Western Interconnection. WIRAB believes that the Commission's decision to deny statutory funding for Western Reliability Coordinators is not required by the Federal Power Act and undermines the policy objectives that Congress envisioned in the Energy Policy Act of 2005.

WIRAB unanimously advises<sup>5</sup> that:

- **The Commission should grant the WECC's petition for rehearing; and**
- **There are no alternatives to Section 215 funding for WECC RCs that are just, reasonable, not unduly discriminatory or preferential, and in the public interest.**

### **FERC Should Grant WECC's Petition for Rehearing**

WIRAB has reviewed and concurs with the Request for Rehearing filed by WECC, and joined by Pacific Gas and Electric Company and Southern California Edison Company, in the above captioned docket.<sup>6</sup> We highlight below some of the most germane issues in the WECC filing that WIRAB supports.

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<sup>4</sup> Advice of the Western Interconnection Advisory Body On Fees and Consolidated Budget Proposal of the North American Electric Reliability Council, Docket No. RR06-3-000 (October, 6, 2006).

<sup>5</sup> Approved by the representatives of the Governors and Premiers of Alberta, Arizona, British Columbia, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington and Wyoming.

<sup>6</sup> Request of the Western Electricity Coordinating Council, Pacific Gas and Electric Company and Southern California Edison Company For Rehearing of Order Conditionally Accepting 2007 Business Plan and Budget of the North American Electric Reliability Corporation, Docket RR06-3-000.

- WECC’s Reliability Coordinator (RC) function is within the scope of activities to be funded under Section 215.<sup>7</sup>
- The Commission’s prior rulings provide the legal basis for statutory funding of RCs. The Commission adopted the general rule for statutory activities: “We generally believe that anything required of the ERO or a Regional Entity by the statute, Order 672 pursuant to the statute, *or any subsequent Commission order pursuant to section 215 of the FPA* is a statutory activity.”<sup>8</sup> (emphasis added). In proposed rules issued October 19, 2006, the Commission would require Regional Entities to “establish one or more reliability coordinators to continuously assess transmission reliability and coordinate emergency operations among the operating entities within the region and across the regional boundaries.”<sup>9</sup> Since the Commission will require Regional Entities to establish RCs under Section 215, the RC activities become a statutory activity to be funded by statutory assessments.<sup>10</sup>

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<sup>7</sup> Section 215(c) of FPA. “The Commission may certify one such ERO if the Commission determines that such ERO . . . (2) has established rules that . . . (B) allocate equitably reasonable dues, fees, and other charges among end users for all activities under this section.” Section 215 does not contain any express restriction on the use of funds to particular reliability “activities under this section” or distinguishing between operational and non-operational activities.

<sup>8</sup> Order Certifying North American Electric Reliability Corporation as the Electric Reliability Organization and Ordering Compliance Filing, 116 FERC ¶ 61,062 (July 20, 2006), Docket No. RR06-1-000, P. 185. (*Certification Order*).

<sup>9</sup> Mandatory Reliability Standards for the Bulk-Power System, 117 FERC ¶ 61,084 (October 20, 2006) Docket No. RM06-16-000, P. 506. (*Reliability Standards NOPR*).

<sup>10</sup> If the Commission continues to deny Section 215 funds for RCs, then it would be logical to conclude that FERC would not approve a Western Interconnection RE since WECC could not be assured of raising the money to fund RCs, something FERC is proposing to require of REs. If there are no western RCs and no Western Interconnection RE, then how will NERC, the ERO, fulfill its responsibilities for situational awareness, as well as many other responsibilities REs are being asked to do?

- WECC RCs primarily perform monitoring and coordination activities that fall within the NERC function of situational awareness<sup>11</sup> that the Commission has approved for statutory funding in the *Budget Order*.
- The Commission should adopt the bright line test offered by WECC as a means to determine whether an RC is eligible for statutory funding.
- Statutory funding for WECC's RC promotes the functional separation between industry participants engaged in real time operations and RCs that monitor and coordinate reliability of the system.

**There Are No Alternatives to Section 215 Funding for WECC RCs that Are Just, Reasonable, Not Unduly Discriminatory or Preferential, and in the Public Interest.**

WIRAB has examined the only two potentially feasible alternatives to funding RCs under Section 215 – voluntary contributions and a transmission tariff rider.

**Voluntary Contributions:** There is no legal requirement for WECC members or anyone in the Western Interconnection to make voluntary contributions to pay for RCs. Given the public good nature of RCs, there is little incentive for parties to make voluntary contributions. Once one party decides it won't make a voluntary contribution for RCs, other parties may decide not to pay their proportionate share or pay nothing. We want to emphasize this point to FERC because the Commission's ability to exercise moral suasion to "encourage" parties to make voluntary contributions will carry little weight with those entities not under its jurisdiction, including municipal utilities, rural cooperatives, federal power marketing administration, and all entities in the Canadian and Mexican portions of

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<sup>11</sup> NERC Rules of Procedure, Section 1001, p. 74; Reliability Functional Model, Version 2, (February 10, 2004), p. 12.

the Western Interconnection. These non-jurisdictional entities constitute a large part of the electric system in the Western Interconnection. It is not in the public interest to continue to rely on voluntary contributions to fund western RCs.

Furthermore, in enacting Section 215, Congress did not intend that the reliability of the power grids would continue to be dependent on voluntary actions by market participants. In denying Section 215 funding for WECC RCs and failing to identify any alternatives, FERC is suggesting that the historic practice of asking for voluntary contributions to fund RCs be continued.

Relying on some parties, but not requiring all parties, to fund Western Interconnection RCs is discriminatory and preferential. Relying on voluntary contributions discriminates against the parties electing to make contributions compared to those who elect not to contribute. Voluntary funding opens the door to preferential behavior by RCs because their existence will depend upon those parties that make voluntary contributions.

**Transmission Tariff Rider:** The other alternative to funding WECC RCs from Section 215 funds is to impose a transmission tariff rider. A FERC-approved tariff rider would be discriminatory, preferential, and not equitably share the costs of RCs since many parties in the Western Interconnection do not have to file tariffs with FERC. As is the case with voluntary contributions, a tariff rider that applies to some, but not all entities would discriminate against those who are forced to pay and opens the door to preferential behavior by RCs in favor of those entities that pay their salaries.

In addition the tariff rider option is not practical in the Western Interconnection because there is no west-wide RTO, nor is there a dominant transmission owner to collect

funds for RCs. A FERC-approved tariff rider for all jurisdictional transmission owners in the Western Interconnection would need to be modified annually to reflect changes in RC budgets. Such annual modifications would impose unreasonable costs on transmission owners and their customers and increase the workload at FERC.

If these alternative methods of funding the RC function appear to work in the Eastern Interconnection and in ERCOT, the Commission harms no one by allowing a different method of funding the RCs in the West. Only Western electricity users will pay the added Section 215 fees to fund WECC's RCs. WIRAB supports the use of Section 215 fees to fund this essential reliability function because Western end users will have to pay for this function if, as the Standards NOPR proposes, a Western RE will have the responsibility of establishing RCs, and the Section 215 fee is the most equitable method of doing so.