

I. REQUEST FOR EXPEDITED COMMISSION ACTION

NERC respectfully requests that the Commission consider this filing on an expedited basis and issue an order approving the expenditure by August 15, 2023. Alternatively, NERC requests that the Commission allow 30 days to pass from the date of this filing without acting on it or issuing a tolling order, as provided under Paragraph 7(b)(ii) of the Settlement Agreement. The requested timeline is necessary to enable NERC to submit the ITCS to FERC by the required deadline of December 2, 2024. The request for expedited actions is also warranted due to the fact that the expenditure will have no impact on overall assessments for 2023.

II. NOTICES AND COMMUNICATIONS

Notices and communications with respect to this filing may be addressed to the following:

Shamai Elstein
Associate General Counsel
North American Electric Reliability Corporation
1401 H St., NW
Suite 410
Washington, DC 20005
shamai.elstein@nerc.net

III. INTER-REGIONAL TRANSFER CAPABILITY STUDY

On June 3, 2023, President Biden signed into law the Fiscal Responsibility Act of 2023. As part of that bipartisan legislation to raise the debt ceiling, Congress directed NERC, as the Electric Reliability Organization (“ERO”), to carry out a study, in consultation with the Regional Entities and each transmitting utility that has facilities interconnected with a transmitting utility in a neighboring transmission planning region, to examine the total current transfer capabilities between each pair of neighboring transmission planning regions.

This ITCS must include: (1) current total transfer capability between each pair of neighboring transmission planning regions; (2) a recommendation of prudent additions to total

transfer capability between each pair of neighboring transmission planning regions that would demonstrably strengthen reliability within and among such neighboring transmission planning regions; and (3) recommendations to meet and maintain total transfer capability together with such recommended prudent additions to total transfer capability between each pair of neighboring transmission planning regions.

NERC must deliver the study to FERC within 18 months of passage of the Fiscal Responsibility Act of 2023, which is December 2, 2024. FERC must then publish the study, seek public comment, and submit a report on its conclusions to Congress not later than 12 months after the public comment period ends.

IV. REQUEST FOR APPROVAL TO EXPEND FUNDS FROM ASSESSMENT STABILIZATION RESERVE TO FUND THE INTER-REGIONAL TRANSFER CAPABILITY STUDY

(1) ITCS 2023 Resource Needs and Funding Strategy

While NERC is still assessing the total resources necessary for performing the ITCS, at this time, NERC assesses that it will need to add in-house engineering, project management, and communication resources to complete the ITCS within the required 18-month period. NERC will also need to add certain contractor and consultant support to augment NERC's dedicated technical resources and support executive leadership and public affairs. Although, as explained below, NERC is looking to reprioritize some of its 2023 projects to allow certain existing resources to focus on the ITCS, adding these additional resources in 2023 will allow NERC to work on the ITCS without having to defer too many other core projects included in its 2023 work plan priorities.

To fund these additional personnel and contract and consultant resources in 2023, including associated meetings, travel, and technology costs, NERC currently estimates that it would need

approximately \$1.55 million of additional funds not included in the 2023 Business Plan and Budget approved by the Commission. To avoid any impact on stakeholder assessments in 2023, however, NERC plans to fund the additional \$1.55 million by: (1) deferring the hiring of four budgeted open positions in the Bulk Power System Awareness, Engineering and Security, Reliability Assessment and Technical Committee, and Reliability Standards departments until 2024 (approximately \$450k); (2) repurposing budgeted funds for contracts and consultants for certain other projects (approximately \$400k);³ and (3) expending up to \$700k from NERC’s ASR.

NERC anticipates ongoing costs associated with the study in 2024. It will describe those 2024 costs and the source of funding for those costs in its final 2024 Business Plan and Budget to be filed with the Commission in August 2023, pending approval from the NERC Board of Trustees (“NERC Board”).

(2) Required Approvals for 2023 Funding Strategy

NERC’s Commission-approved WCOR Policy requires the Finance and Audit Committee (“FAC”) of the NERC Board to approve expenditures from operating reserves, including the ASR, in excess of \$500,000.⁴ On July 12, 2023, the NERC FAC, after reviewing the resource plan and funding strategy for the study, approved the proposal to expend up to \$700k from NERC’s ASR to pay for the net incremental 2023 costs associated with the ITCS.

The aforementioned approval action complies with NERC’s WCOR Policy. Under NERC’s WCOR Policy, funds from the ASR may be made available “to mitigate assessment volatility.” The WCOR Policy provides:

³ These projects include GMD/EMP research, BPS cybersecurity risk studies, and emerging technology and environmental policy analyses.

⁴ Additional approval from the full NERC Board is only required for expenditures in excess of \$1 million.

Assessment stabilization funds will be used when available to help stabilize assessments and mitigate year-to-year swings in assessments, which can result from a variety of factors, including but not limited to the application of penalty funds, surplus funds available from a prior period, a need to replenish the Operating Contingency Reserve, or significant but relatively short term operating or capital spending needs.

The requirement that NERC conduct the ITCS within 18 months of the passage of the Fiscal Responsibility Act of 2023 is an unanticipated and unbudgeted expense necessitating the proposed expenditure from NERC's reserves in 2023. Such a study was not contemplated at the time NERC prepared its 2023 business plan and budget. Use of ASR funds will stabilize assessments will avoid the need for any special assessments during 2023.

Additionally, pursuant to Paragraph 7(b)(ii) of the Settlement Agreement, NERC is required to "file for Commission review and approval proposals to expend \$500k or more from reserves designated for "unforeseen contingencies" (as that term is defined in NERC's WCOR Policy)."⁵ Accordingly, NERC seeks Commission approval (whether by issuance of an order or by non-action in 30 days) to expend up to \$700k from its ASR to fund a portion of the 2023 costs for the required ITCS.

(3) NERC's Funding Strategy for the 2023 ITCS Costs is a Prudent and Cost-Effective Approach and Should be Approved by the Commission

The reprioritization of current work, repurposing/deferment of open positions, and the use of ASR funds to cover the 2023 costs of the ITCS is a prudent and cost-effective decision. This approach will mitigate assessment volatility in 2023 and will not require any special assessments

⁵ Paragraph 7(b)(ii) specifies:

NERC will file for Commission review and approval Board-of-Trustees-approved proposals to expend \$500,000 or more from operating reserves designated for "unforeseen contingencies" (as that term is defined in NERC's Working Capital and Operating Reserve Policy (Reserve Policy)). Each such filing will include supporting materials in sufficient detail to justify the proposed expenditure. The filing will be deemed approved if the Commission does not act on it or issue a tolling order extending the time for Commission action within thirty days of the filing date.

in 2023. While there will be some impact to certain projects slated for 2023, NERC's funding strategy will, in large part, allow it to continue devoting resources to its 2023 work plan priorities, including many of the initiatives mandated by the Commission, and help keep total NERC 2023 personnel costs close to the original budget. Moreover, use of ASR, which is funded by U.S. entities only, will ensure that U.S. entities fund the net incremental costs of the ITCS mandated by the U.S. federal government for the reliability of the U.S. electric grid.⁶

The requested use of funds from the ASR will not materially impact NERC's overall operating reserve (i.e., combined OCR and ASR) position and its ability to mitigate assessment volatility or meet other unanticipated contingencies that could require the use of reserves. After withdrawal of the proposed \$700k in 2023 to help fund the 2023 costs of the ITCS, the projected ASR amount at year-end 2023 is estimated at \$1.6 million. Additionally, at the end 2023, there is projected to be \$12.1 million in the OCR to meet other unforeseen contingencies. That amount of OCR is 12.6% of the draft 2024 NERC budget, less the budgets for the Cybersecurity Risk Information Sharing and System Operator Certification programs, each of which has a separate reserve category. This exceeds the target range of 3.5% to 7.0% under the WCOR. Further, NERC maintains a \$4.0 million line of credit with a major financial institution for emergency liquidity needs. Based on the foregoing analysis, NERC management has determined that \$700k can be expended from the ASR in 2023, as proposed herein, without adversely impacting NERC's ability to meet other unanticipated contingencies that could require the use of funds in the ASR or OCR.

⁶ By contrast, NERC's Operating Contingency Reserves ("OCR"), which are reserves for contingencies that were not anticipated, assumed to be likely or the timing of which was uncertain, at the time of preparation and approval of the company's business plan and budget, is funded by both U.S. and Canadian entities.

V. CONCLUSION

For the reasons set forth above, NERC respectfully requests (1) Commission approval to expend up to \$700k from the ASR in 2023 to help fund the cost of the ITCS directed in Section 322 of the Fiscal Responsibility Act of 2023, and (2) the issuance of an order by August 15, 2023, or, alternatively, allowing 30 days to pass from the date of this filing without acting on it or issuing a tolling order, as provided under Paragraph 7(b)(ii) of the Settlement Agreement in Docket No. FA11-21-000.

Respectfully submitted,

/s/ Shamai Elstein

Shamai Elstein
Associate General Counsel
North American Electric Reliability
Corporation
1401 H St., NW, Suite 410
Washington, DC 20007
shamai.elstein@nerc.net

*Counsel for the North American
Electric Reliability Corporation*

July 14, 2023