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December 23, 2021

VIA ELECTRONIC FILING

Ms. Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

**Re: North American Electric Reliability Corporation
Docket No. RR21-5-000
Informational Filing in Response to Commission Order Dated December 2, 2021**

Dear Ms. Bose:

The North American Electric Reliability Corporation (NERC) hereby submits the “Informational Filing of the North American Electric Reliability Corporation in Response to Commission Order dated December 2, 2021.”

Please contact the undersigned if you have any questions concerning this filing.

Respectfully submitted,

/s/ Owen E. MacBride
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Attorney for North American Electric
Reliability Corporation

In Section III of this filing, NERC provides the information specified in ¶13 of the Order. However, NERC respectfully disagrees with the conclusion in ¶12 of the Order that NERC needed to make a ¶7(b)(ii) filing for approval to place unspent funds that were budgeted in 2020 for the CRISP OT pilot programs into a CRISP Special Projects Reserve from which the funds would be used to carry out the same CRISP OT pilot programs for which the funds were originally budgeted in NERC’s 2020 Business Plan and Budget. NERC details the basis for its disagreement with this conclusion in Section II of this filing.

I. Notices and Communications

Notices and communications regarding this filing may be addressed to:

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II. NERC’s Disagreement with the Conclusion that a ¶7(b)(ii) Filing Was Necessary

Paragraph 7(b)(ii) of the 2013 Settlement Agreement states that (a) “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)” and that (b) “the Parties agree that this requirement for Commission review and approval is triggered if any amount allocated from the unforeseen contingencies account of operating reserves plus any amount redirected from previously budgeted funds is, in the aggregate, \$500,000 or more for any one specific project or

major activity in a program area.”⁴ However, as detailed below, the funds budgeted in 2020 for the CRISP OT pilot programs *have not been redirected or reallocated* from the specific projects and activity for which they were budgeted to any other project or activity – let alone to another program area (*i.e.*, to a NERC program area other than CRISP or, more broadly, the Electricity Information Sharing and Analysis Center program).⁵ Rather, the funds originally budgeted in 2020 for the CRISP OT pilot programs have been and are planned to continue to be used solely for that approved purpose, until the pilot programs are completed. Moreover, with the approval of and by agreement with 100 percent of the CRISP participants, the budgeted but unspent funding they provided in 2020 for the CRISP OT pilot programs has effectively been credited to them against subsequent years’ participant funding requirements.

In its 2020 Business Plan and Budget (filed with the Commission on August 23, 2019), NERC budgeted approximately \$1.0 million for the CRISP OT pilot programs, to be paid by the CRISP participants.⁶ As noted in ¶6 of the Order, NERC stated in its accompanying filing that any “underrun in the CRISP budget which is allocated to and funded by CRISP participants will be applied as a credit against future CRISP participant funding requirements, pursuant to the terms of the CRISP agreements.” These provisions envisioned that, in the normal and ordinary course of business, the CRISP OT pilot programs would be carried out during 2020 as planned and that any funds not needed to complete the programs would be credited to CRISP participants against future CRISP funding requirements.

⁴ The references to “(a)” and “(b)” have been added to aid in parsing the text. The conclusion in ¶12 of the Order is not based on any expenditure of funds from NERC’s unforeseen contingencies reserve and so the portion of ¶7(b)(ii) on which the Order bases its conclusion is the text identified as “(b)” above, not “(a).”

⁵ “Reallocation of budgeted funds” is the term used in NERC’s Commission-approved Working Capital and Operating Reserve Policy to describe circumstances in which a ¶7(b)(ii) filing may be required.

⁶ Docket No. RR19-8-000. The CRISP OT pilot programs were funded by Third-Party Funding from the CRISP participants, and not by §215 assessments to U.S., Canadian and Mexican load-serving entities.

Unfortunately, beginning in early 2020, the onset of the Covid-19 pandemic interrupted the normal and ordinary course of business. As has been well-documented in other filings (and referenced in ¶¶8-9 of the Order), due to the pandemic, NERC delayed or deferred many activities that were planned and budgeted for 2020, including the CRISP OT pilot programs. Further, throughout 2020, there was uncertainty as to how long the exigencies of the pandemic would interrupt or interfere with the normal conduct of activities, and when planned but delayed activities could resume. In September 2020, NERC concluded that it would not be able to conduct the CRISP OT pilot programs in 2020 as planned.

However, the fact that these programs could not be conducted in 2020 did not mean they should be abandoned or were not needed. Accordingly, on September 16, 2020, NERC sent a memorandum to CRISP participants proposing that they agree that the unused funds provided in 2020 for the CRISP OT pilot programs be carried over to 2021 so that the pilot programs could be conducted in that year.⁷ The CRISP participants were specifically informed that no additional funding beyond that already budgeted and collected in 2020 would be needed to conduct the CRISP OT pilot programs. One hundred percent of the CRISP participants agreed with this proposal, with the final participant approval received in October 2020. Thus, the CRISP participants approved using the CRISP OT pilot program funds collected from the participants in 2020 to fund the CRISP OT pilot programs in 2021. Notably, the CRISP Special Projects Reserve into which the funds were placed was not created as a reserve for “unforeseen contingencies,” but rather to hold funds that were earmarked for the specific purpose of conducting and completing

⁷ Although NERC had filed its 2021 Business Plan and Budget with the Commission on August 24, 2020 (Docket No. RR20-6-000), which was 23 days prior to September 16, 2020, the 2021 Business Plan and Budget was essentially finalized, after the usual extensive development and stakeholder review process, by August 13, 2021, when it was posted on the NERC website for final stakeholder review in anticipation of the meetings of NERC’s Finance and Audit Committee (FAC) and Board of Trustees scheduled for August 19-20, 2021.

the approved CRISP OT pilot programs.

NERC reported in its quarterly variance report for the fourth quarter of 2020, filed with the Commission on February 16, 2021 in accordance with ¶7(b)(i) of the 2013 Settlement Agreement, that as of December 31, 2020, CRISP was \$1,313,087 under budget, mainly due to timing and implementation of the OT pilot program costs which would be deferred to 2021, and that CRISP participants have approved placing the \$1.0 million of OT pilot program funds collected from CRISP participants during 2020 into a reserve that will be used to fund OT pilot program costs in 2021.⁸ Consistent with the foregoing, the fourth quarter 2020 variance report also showed that the exact balance in the CRISP Special Projects Reserve at year-end 2020 was \$1,049,549.⁹ (The \$49,549 above the original budgeted amount of \$1.0 million represented contributions paid in by new CRISP participants that joined CRISP during the course of 2020.) The quarterly variance reports for the second quarter 2021 (filed August 16, 2021) and third quarter 2021 (filed November 15, 2021) stated that CRISP pilot program costs originally budgeted for 2020 were being expended in 2021. The third quarter variance report reported that a total of \$806,000 was projected to be spent on the OT pilot projects by year-end 2021, which would reduce the initial (December 31, 2020) balance in the CRISP Special Projects Reserve, \$1,049,549, to \$243,549 at year-end 2021.

At no time subsequent to the February 3 and 4, 2021 FAC and Board meetings or the February 16, 2021 fourth quarter 2020 quarterly variance report filing did NERC receive any comments, objections, or questions from load-serving entities, CRISP participants, or other NERC stakeholders, or from any representative of the Commission, to the use of funds received from

⁸ The unaudited financial statements as of December 31, 2020 that were the basis for the fourth quarter 2020 variance report were approved by the NERC FAC and Board in meetings on February 3 and 4, 2021.

⁹ The initial balance in the CRISP Special Projects Reserve was comprised of (i) approximately \$656,000 budgeted to be spent on one of the two CRISP OT pilot programs, and (ii) approximately \$395,000 budgeted to be spent on the other CRISP OT pilot program.

CRISP participants in 2020 to fund the CRISP OT pilot programs in 2021, let alone any suggestion that a ¶7(b)(ii) filing was necessary in order to use the unspent funds budgeted in 2020 for the CRISP OT pilot programs for the same purpose and activity in 2021.¹⁰

To date, the funds budgeted to be spent on the CRISP OT pilot programs in 2020, but which, by agreement of the CRISP participants, were carried over to 2021 to be spent on these same programs, have been spent only on the CRISP OT pilot programs, the purpose the funds were originally budgeted for in 2020. As of December 15, 2021, \$520,425 has been expended on one of the two OT pilot programs, with additional expenditures of \$13,375 anticipated through year-end 2021, resulting in total spend on this pilot program of \$533,800 as of December 31, 2021.¹¹ Additional expenditures of \$122,200 are anticipated to complete this OT pilot program in 2022, resulting in estimated total expenditures for this OT pilot program of \$656,000.

With respect to the other of the two OT pilot programs, as of December 15, 2021, \$76,149 from the CRISP Special Projects Reserve has been spent on that pilot program, with a total of \$150,000 currently expected to be spent by December 31, 2021. It is currently projected that an additional \$245,000 will be expended from the CRISP Special Projects Reserve in 2022 to

¹⁰ NERC, of course, recognizes that reporting information in a quarterly variance filing is not the same as requesting approval for expenditures via a ¶7(b)(ii) filing, where required. However, the requirement for quarterly variance reports was included in the 2013 Settlement Agreement to give the Commission a more frequent and transparent view of NERC's expenditures against budget than was available through the annual business plan and budget and annual true-up filings. NERC is unaware that any concerns about the deferral of the expenditure of the approved CRISP OT pilot program funding, or the need for a ¶7(b)(ii) filing, were expressed until some 9-1/2 months after disclosure in NERC's filings with the Commission. Further, any questions or concerns about whether the funds budgeted in 2020 were being used for the same purpose and activity in 2021, could have been answered and resolved if posed earlier.

¹¹ The amounts cited as spent as of December 15, 2021, are based on invoices received from contractors and consultants working on the pilot programs as of that date, which lag the actual performance of work on the projects. Similarly, NERC will not know the specific amounts spent on the pilot programs through December 31, 2021, until it receives invoices from contractors and consultants in January 2022. However, the currently-projected total spend for 2021 on the two OT pilot programs, \$683,800, is \$122,200 lower than the estimate reported in NERC's quarterly variance report for the third quarter 2021 and cited in ¶13 of the Order (\$806,000), due to more current information being available at the time of this filing.

complete this pilot program, resulting in total spend on this pilot program of \$395,000, and total aggregate spending on the two pilot programs of \$1,051,000. Assuming these expenditure projections prove to be accurate, the total expenditures on the two CRISP OT pilot programs will exceed the funds placed into the CRISP Special Projects Reserve by \$1,451 (0.14%).

In summary, the amounts budgeted to be spent on the CRISP OT pilot programs in 2020, although they were deferred in 2020 due to the exigencies of the pandemic, are being spent in 2021 on the same CRISP OT pilot programs for which the expenditures were originally approved, and is planned to be spent on those OT pilot programs in 2022 to complete them. There has been no redirection or reallocation of the budgeted but unspent 2020 funds to any other project, activity, or program area from that in which the funds were originally budgeted. Indeed, placing the unspent 2020 funds into a CRISP Special Projects Reserve served to *highlight* that these funds would be spent on these CRISP activities and not on any other project, activity, or program, and set the funds aside for that purpose. Therefore, no ¶7(b)(ii) filing was necessary or called for.

There is an additional, separate reason that no ¶7(b)(ii) filing was necessary. Through the transactions relating to the budgeted 2020 funds for the CRISP OT pilot program, NERC has effectively credited the unspent (in 2020) budgeted funds to the CRISP participants against their future funding obligations. By placing the unspent 2020 funds into a CRISP Special Projects Reserve, to be used for the same purpose in 2021, NERC (and the CRISP participants) avoided the need to bill the CRISP participant for the funds needed to perform the OT pilot programs in 2021 and 2022. In fact, in the September 2020 memorandum, the CRISP participants were specifically informed that since the participants were already billed for the costs of the OT pilot programs in 2020, deferral of the programs to 2021 would not affect the 2021 billings to participants. These transactions have had the same mathematical effect as would have been the case if NERC had (i)

issued “credits” to the CRISP participants in the amount of the unspent 2020 funds, and also (ii) farther down the page on their billing statements, billed them in the same amount to pay for the same activity in 2021 that they had already been billed for in 2020. And further – the CRISP participants who originally provided the funds to perform the OT pilot programs in 2020 unanimously approved the proposal to spend the unspent 2020 funds on the same, originally-approved activity in 2021.

For the foregoing reasons, NERC respectfully disagrees with the conclusion in ¶12 of the Order that a ¶7(b)(ii) filing was required.

III. Information on the CRISP OT Pilot Programs Requested in the Order

The following table details the amounts budgeted and spent on the CRISP OT pilot projects in 2020, 2021 and projected for 2022, as called for in ¶13 of the Order.

Budgeted in 2020 Business Plan and Budget (filed Aug, 23, 2019)	\$1,000,000
Additional contributions from CRISP participants joining during 2020	\$ 49,549
Spent in 2020	<u>\$ 0</u>
Unspent at December 31, 2020 – Placed in CRISP Special Projects Reserve	<u>\$1,049,549¹²</u>
Estimated spending on CRISP OT Pilot Programs in 2021:	
OT Pilot Program #1	(\$533,800)
OT Pilot Program #2	<u>(\$150,000)</u>
	<u>(\$683,800)</u>
Projected Balance in CRISP Special Projects Reserve at December 31, 2021	<u>\$365,749</u>
Estimated spending on CRISP OT Pilot Programs in 2022	
OT Pilot Program #1	(\$122,200)
OT Pilot Program #2	(\$245,000)
	<u>(\$367,200)</u>
Estimated remaining balance in CRISP Special Projects Reserve after Completion of CRISP OT Pilot Programs	<u>(\$ 1,451)</u>

The following tables shows the components of the estimated expenditures for the two CRISP OT pilot programs.

	<u>OT Pilot Program #1</u>	<u>OT Pilot Program #2</u>
Estimated spending in 2021:		
Contractor fees	\$303,800	
Software	\$200,000	
Hardware	<u>\$ 30,000</u>	<u>\$150,000</u>
Total 2021	<u>\$533,800</u>	<u>\$150,000</u>
Estimated spending in 2022:		
Contractor fees	<u>\$122,200</u>	
Hardware		<u>\$245,000</u>
Software		
Total estimate 2021-2022	<u>\$656,000</u>	<u>\$395,000</u>

¹² Total balance in the CRISP Reserves at December 31, 2020 was \$1,549,549, as shown on Table B-5 of NERC's 2022 Business Plan and Budget filed on August 24, 2021 in Docket No. RR21-9-000, including the \$500,000 balance maintained in the existing participant-funded CRISP reserve.

IV. Conclusion

NERC respectfully requests that the Commission accept this Informational Filing as satisfying the directive in the Order.

Respectfully submitted,

/s/ Owen E. MacBride

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December 23, 2021

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document upon all parties listed on the official service list compiled by the Secretary in this proceeding.

Dated at Chicago, Illinois this 23d day of December, 2021.

/s/ Owen E. MacBride

Owen E. MacBride
Counsel for North American
Electric Reliability Corporation