

173 FERC ¶ 61,277  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: James P. Danly, Chairman;  
Neil Chatterjee and Richard Glick.

North American Electric Reliability Corporation

Docket No. RR20-5-000

ORDER CONDITIONALLY APPROVING REVISED *PRO FORMA* DELEGATION  
AGREEMENT AND REVISED DELEGATION AGREEMENTS WITH REGIONAL  
ENTITIES

(Issued December 30, 2020)

1. On June 29, 2020, North American Electric Reliability Corporation (NERC) and the six Regional Entities<sup>1</sup> jointly petitioned the Commission to approve: (1) a revised *pro forma* Delegation Agreement; and (2) revised Delegation Agreements between NERC and each of the six Regional Entities. The currently-effective Delegation Agreements between NERC and each Regional Entity expire on December 31, 2020. NERC proposes that the revised Delegation Agreements become effective January 1, 2021.<sup>2</sup>

2. In this order, we conditionally approve the agreements in the Joint Petition to become effective January 1, 2021. As discussed below, we direct NERC and the Regional Entities to modify the revised *pro forma* Delegation Agreement and revised Delegation Agreements and submit a compliance filing to address these modifications within 120 days of the date of this order.

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<sup>1</sup> The six Regional Entities are: Midwest Reliability Organization (MRO); Northeast Power Coordinating Council, Inc. (NPCC); ReliabilityFirst Corporation (ReliabilityFirst); SERC Reliability Corporation (SERC); Texas Reliability Entity (TRE); and Western Electricity Coordinating Council (WECC).

<sup>2</sup> *North American Electric Reliability Corporation, et al*, Petition for Approval of The Revised Pro Forma Regional Delegation Agreement And Revised Regional Entity Regional Delegation Agreement (June 29, 2020) (Joint Petition).

## I. Background

3. On February 3, 2006, the Commission issued Order No. 672<sup>3</sup> to implement the requirements of section 215 of the Federal Power Act (FPA) governing electric reliability.<sup>4</sup> In July 2006, the Commission, pursuant to section 215 of the FPA, certified NERC as the Electric Reliability Organization (ERO).<sup>5</sup> The Commission conditionally accepted NERC's proposal to delegate certain ERO functions to its designated Regional Entities. In addition, the Commission conditionally accepted NERC's proposed *pro forma* Delegation Agreement, and directed NERC to specify in its Rules of Procedure various due process procedures for its enforcement proceedings and initial hearings that the ERO and Regional Entities are to follow.<sup>6</sup>

4. On November 29, 2006, NERC submitted a compliance filing consisting of a Uniform Compliance Monitoring and Enforcement Program (CMEP) and a revised *pro forma* Delegation Agreement providing for the delegation of certain ERO functions and duties to Regional Entities. On the same date, NERC also submitted for Commission review and approval unexecuted Delegation Agreements between NERC and the proposed Regional Entities that, consistent with Order No. 672, delegated authority to the Regional Entities to audit, investigate, and otherwise ensure that users, owners, and operators of the Bulk-Power System comply with NERC's mandatory Reliability Standards, subject to ERO oversight.<sup>7</sup> Further, the Delegation Agreements addressed: (1) regional Reliability Standards development; (2) registration of entities that must comply with Reliability Standards; and (3) other services supporting NERC's functions, including reliability assessments, event analysis, and training and education. The Commission accepted the *pro forma* Delegation Agreements and NERC's uniform

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<sup>3</sup> *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards*, Order No. 672, 114 FERC ¶ 61,104, *order on reh'g*, Order No. 672-A, 114 FERC ¶ 61,328 (2006).

<sup>4</sup> 16 U.S.C. § 824o (2018).

<sup>5</sup> *North American Electric Reliability Corp.*, 116 FERC ¶ 61,062 (ERO Certification Order), *order on reh'g and compliance*, 117 FERC ¶ 61,126 (2006), *order on compliance*, 118 FERC ¶ 61,030, *order on clarification and reh'g*, 119 FERC ¶ 61,046 (2007), *aff'd sub nom. Alcoa Inc. v. FERC*, 564 F.3d 1342 (D.C. Cir. 2009).

<sup>6</sup> ERO Certification Order, 116 FERC ¶61,062 at P 476.

<sup>7</sup> Order No. 672, 114 FERC ¶ 61,104 at P 654.

CMEP including the CMEP Hearing Procedures, and the executed Delegation Agreements.<sup>8</sup>

5. On June 9, 2010, as supplemented on June 17, 2010, NERC filed a petition for the Commission to approve revisions to NERC's Rules of Procedure, the *pro forma* Delegation Agreement, Delegation Agreements between NERC and the Regional Entities, and bylaws of Florida Reliability Coordinating Council and MRO. On October 21, 2010, the Commission conditionally approved NERC's petition and directed NERC to submit a compliance filing.<sup>9</sup> NERC submitted a compliance filing, and the Commission accepted the compliance filing on October 7, 2011.<sup>10</sup>

6. On June 26, 2015, NERC filed a petition requesting the Commission to approve revisions to NERC's Rules of Procedure, the *pro forma* Delegation Agreement and Delegation Agreements between NERC and the Regional Entities. On November 2, 2015, the Commission conditionally approved NERC's petition and directed NERC to submit a compliance filing.<sup>11</sup> NERC submitted a compliance filing, and the Commission accepted the compliance filing on March 23, 2016.

## II. Joint Petition

7. In their June 29, 2020 Joint Petition, NERC and the Regional Entities propose revisions to the *pro forma* Delegation Agreement and its attachments, and the Delegation Agreements with the six Regional Entities. NERC requests that the Commission approve its proposals effective January 1, 2021.<sup>12</sup>

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<sup>8</sup> See *North American Electric Reliability Corp.*, 119 FERC ¶ 61,060 (2007) (accepting the *pro forma* Delegation Agreements and uniform CMEP); *Delegation Agreement Between the North American Electric Reliability Corp. and the Texas Regional Entity, a division of ERCOT*, 119 FERC ¶ 61,232 (2007) (accepting executed delegation agreements).

<sup>9</sup> *North American Electric Reliability Corp.*, 133 FERC ¶ 61,061 (2010), *reh'g denied*, 134 FERC ¶ 61,179 (2011) (2010 Delegation Agreement Order).

<sup>10</sup> *North American Electric Reliability Corp.*, 137 FERC ¶ 61,028 (2011). The Commission has accepted further modifications to some Delegation Agreements since October 7, 2011.

<sup>11</sup> *North American Electric Reliability Corp.*, 153 FERC ¶ 61,135 (2015).

<sup>12</sup> Joint Petition at 3.

8. NERC states that the proposed revisions to the *pro forma* Delegation Agreements reflect the evolution of NERC over the past five years, as NERC and the Regional Entities strengthen their activities and relationships under section 215 of the FPA.<sup>13</sup> NERC submits that the governance structure of each Regional Entity ensures they perform their oversight role and delegated activities with adequate independence.<sup>14</sup>

9. NERC states that over the past five years, NERC, in consultation with the Regional Entities, has taken steps to further strengthen its commitment to independent governance. NERC explains that while section 215 of the FPA and Commission regulations permit each Regional Entity to be governed by an independent board, a balanced stakeholder board or a combination thereof (a “hybrid board”), the proposed revisions reflect NERC’s determination and the Regional Entities’ agreement that independent and hybrid boards provide greater independence than stakeholder boards, particularly with respect to oversight of the compliance and enforcement responsibilities of Regional Entities.<sup>15</sup> Accordingly, section 2(a)(i) of the *pro forma* Delegation Agreement have been amended to remove the reference to balanced stakeholder board.<sup>16</sup>

10. NERC also proposes a new provision within section 2(a)(ii) of the *pro forma* Delegation Agreement stating that each Regional Entity executing the Delegation Agreement commits to maintaining a governing board with a sufficient number of independent members to perform certain oversight obligations related to governing a Regional Entity. NERC states that these obligations include: (1) nominating independent board members; (2) compensating the chief executive officer; (3) implementing the compliance monitoring and enforcement program; (4) retaining fair and reasonable compensation for independent board members; and (5) retaining appropriate conflict of interest and recusal policies for board members and staff alike.<sup>17</sup>

11. NERC also states that the proposed revisions include modifications to sections 4 and 9(j) of the *pro forma* Delegation Agreement to remove language previously

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<sup>13</sup> *Id.* at 2.

<sup>14</sup> *Id.* at 3.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 8.

<sup>17</sup> *Id.* at 8-9.

necessary to address Regional Entities performing functions of registered entities because there are no longer Regional Entities that perform such functions.<sup>18</sup>

12. NERC proposes to replace the existing maps of the Regional Entities' boundaries (Exhibit A) with descriptions of their geographic boundaries because the precision of the current maps varies across Regional Entities and may inadvertently provide misleading information. NERC argues that removing the maps will eliminate the need to amend the Delegation Agreements if a registered entity is transferred from one Regional Entity to another.<sup>19</sup> Accordingly, NERC proposes to revise the recitals and sections 1(c) and 2(iv) of the *pro forma* Delegation Agreement to no longer reference the geographic boundaries "identified" in Exhibit A, but to reference the boundaries "described" in Exhibit A.<sup>20</sup> Each Regional Entity will be responsible for the enforcement of the Reliability Standards within its geographic boundaries described in Exhibit A.<sup>21</sup>

13. NERC proposes to modify section 6(e) of the *pro forma* Delegation Agreement to prohibit stakeholder representatives from leading a Regional Entity board compliance committee.<sup>22</sup> NERC explains that the role of a compliance committee is to assist with oversight of Regional Entity decision-making within its compliance monitoring and enforcement program implementation. NERC states that to the extent that there is a compliance committee of a Regional Entity board, it should consist of a majority of independent board members and be chaired by an independent board member.<sup>23</sup>

14. Further, NERC is amending section 12(b) of the *pro forma* Delegation Agreement to clarify that the Delegation Agreements may be terminated prior to the stated five-year term if the terminating party provides written notice to terminate no later than one year prior to the then-effective expiration of the term.<sup>24</sup>

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<sup>18</sup> *Id.* at 9-10.

<sup>19</sup> *Id.* at 7-8.

<sup>20</sup> *Id.*

<sup>21</sup> *See Id.*, Attachment 1, Amended and Restated *Pro Forma* Regional Delegation Agreement, Clean Version, Section 2(iv) at 4.

<sup>22</sup> *Id.* at 9.

<sup>23</sup> *Id.* at 9-10.

<sup>24</sup> *Id.* at 10.

15. In addition to the changes to the *pro forma* Delegation Agreement, NERC also outlined amendments to the Delegation Agreements with specific Regional Entities. Section 2(a)(i) of the MRO Delegation Agreement has been amended to reflect that MRO is governed by a hybrid board, and Exhibit D – Compliance Monitoring and Enforcement Program has been modified to reflect MRO’s adoption of the ERO Enterprise Consolidated Hearing Process as provided in the NERC Rules of Procedure. MRO may modify its selection of hearing process by notifying NERC six months prior to the decision becoming effective.<sup>25</sup>

16. NERC states that section 2(a)(i) of the NPCC Delegation Agreement has been amended to reflect that NPCC is governed by a hybrid board, and Exhibit D – Compliance Monitoring and Enforcement Program has been modified to reflect NPCC’s adoption of the ERO Enterprise Consolidated Hearing Process as provided in the NERC Rules or Procedure. NERC notes that, consistent with the NERC Rules of Procedure and NPCC bylaws, NPCC may modify its selection of hearing process by notifying NERC six months prior to the decision becoming effective. NERC states that NPCC’s compliance committee is not a board committee but is comprised of NPCC technical expert members. NPCC also modified Exhibit A to remove potential compliance monitoring and enforcement activities outside of the NPCC region.<sup>26</sup>

17. NERC states that section 2(a)(i) of the ReliabilityFirst Delegation Agreement has been amended to reflect that ReliabilityFirst is governed by a hybrid board, and Exhibit D – Compliance Monitoring and Enforcement Program has been modified to reflect ReliabilityFirst’s adoption of the ERO Enterprise Consolidated Hearing Process as provided in the NERC Rules of Procedure. ReliabilityFirst may modify its selection of hearing process by notifying NERC six months prior to the decision becoming effective.<sup>27</sup>

18. NERC states that section 2(a)(i) of the SERC Delegation Agreement has been amended to reflect that SERC is governed by a hybrid board, and Exhibit D – Compliance Monitoring and Enforcement Program has been modified to reflect SERC’s adoption of the ERO Enterprise Consolidated Hearing Process as provided in the NERC Rules of Procedure. SERC may modify its selection of hearing process by notifying NERC six months prior to the decision becoming effective. SERC also

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<sup>25</sup> *Id.* at 10-11.

<sup>26</sup> *Id.* at 11-12.

<sup>27</sup> *Id.* at 12.

modified Exhibit A to remove potential compliance monitoring and enforcement activities outside of the SERC region.<sup>28</sup>

19. NERC states that section 2(a)(i) of the Texas RE Delegation Agreement has been amended to reflect that Texas RE is governed by a hybrid board, and updates Exhibit E – Funding to reflect current accounting, time record, and expense management for statutory and non-statutory activities.<sup>29</sup>

20. NERC states that Exhibit D – Compliance Monitoring and Enforcement Program of the WECC Delegation Agreement has been modified to remove prior references to the Compliance Hearing Body in order to reflect WECC’s adoption of the ERO Enterprise Consolidated Hearing Process as provided in the NERC Rules of Procedure. NERC also explains that Exhibit E – Funding of the WECC Delegation Agreement has been revised to eliminate registered-entity-related functions from the scope of its statutory Situation Awareness activities.<sup>30</sup>

21. NERC and the Regional Entities request the Commission approve the revised *pro forma* Delegation Agreement and the revised Delegation Agreements for each of the six Regional Entities, effective January 1, 2021, replacing the currently-effective Delegation Agreements that expire on December 31, 2020.<sup>31</sup>

### **III. Notice and Responsive Pleadings**

22. Notice of NERC’s filing was published in the *Federal Register*, 85 Fed. Reg. 41,027 (July 8, 2020), with interventions and protests due before July 20, 2020. None were filed.

### **IV. Discussion**

23. Except as otherwise described below, we approve the proposed *pro forma* Delegation Agreement and the revised Delegation Agreements between NERC and each of the six Regional Entities. As indicated in the Joint Petition, the revised *pro forma* Delegation Agreement and revised Delegation Agreements are the product of

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<sup>28</sup> *Id.* at 12-13.

<sup>29</sup> *Id.* at 13.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 4-5.

negotiations between NERC and each of the six Regional Entities, reflecting learned experiences operating under section 215 of the FPA and prior Delegation Agreements.

24. In approving the *pro forma* Delegation Agreements to become effective January 1, 2021, we also identify areas of concern and, where necessary to provide greater uniformity and clarity, direct modifications to the *pro forma* and individual Delegation Agreements, as discussed below. These modifications must be implemented by NERC and the Regional Entities in a filing to be made within 120 days from the date of this order.<sup>32</sup>

**A. Changes to Description of Geographic Boundaries**

**1. Joint Petition**

25. The Joint Petition explains that the *pro forma* Delegation Agreement and each Delegation Agreement between NERC and each of the individual Regional Entities have been amended to clarify that Exhibit A (Regional Boundaries) reflects a description, not a map, of the Regional Entity's geographic boundaries.

**2. Commission Determination**

26. We agree with NERC that describing the boundaries of each of the Regional Entities instead of using a map is more accurate and precise. We also agree that amending the Delegation Agreements to replace the term "identified" with the term "described" when referencing the geographic boundaries relays a more accurate depiction of Exhibit A.

27. However, while the proposed *pro forma* Delegation Agreement updates the recitals and section 1(c) by replacing the term "identified" with "described," we note that this revision was not applied consistently throughout the *pro forma* Delegation Agreement or the revised individual Delegation Agreements. For instance, section 4(c) of the *pro forma* Delegation Agreement still states "[for] Cross-Border Regional Entities, the authority delegated by this agreement shall extend only to the portion of the region *identified* in Exhibit A" (emphasis added). Similarly, the individual Delegation Agreements between NERC and each of the Regional Entities do not reflect the change from "identified" to "described" in sections 1(c) or 4(c).

28. This revision should be applied consistently throughout the *pro forma* Delegation Agreement and individual Delegation Agreements between NERC and each of the

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<sup>32</sup> See 16 U.S.C. § 824o(b)(1) and (e)(5). Section 215 of the FPA provides that Regional Entities are subject to the Commission's jurisdiction and responsible for compliance with a Commission order affecting Regional Entities.

Regional Entities. Therefore, we direct NERC and the Regional Entities to make the necessary conforming changes.

**B. Revisions to Exhibit D**

**1. Joint Petition**

29. NERC states that apart from Texas RE, which will continue to use its Regional Hearing Process, each Regional Entity has adopted the Consolidated Hearing Process as provided in the NERC Rules of Procedure. Accordingly, the proposed revisions to Exhibit D, section 2 (Regional Hearing of Compliance Matters) of the Delegation Agreements of MRO, NPCC, ReliabilityFirst, and SERC specifically indicate the Regional Entities' adoption of the Consolidated Hearing Process, and state that consistent with the NERC Rules of Procedure and the bylaws of the individual Regional Entities, the Regional Entity may modify its selection of hearing process by notifying NERC six months prior to the decision becoming effective.

30. NERC has indicated in its transmittal letter that WECC has also adopted the Consolidated Hearing Process.<sup>33</sup> Accordingly, the WECC Delegation Agreement proposes to remove prior references to WECC's previous Compliance Hearing Body from Exhibit D, section 2. However, the revisions do not specifically indicate that WECC has adopted the Consolidated Hearing Process or provide language indicating that, consistent with the NERC Rules of Procedure, WECC may modify its selection of hearing process by giving NERC six months prior notice. The WECC Delegation Agreement states:

WECC, to the extent required in the Rules of Procedure, shall establish and maintain a hearing body with authority to conduct and render decisions in compliance hearings in which a Registered Entity may contest a finding of alleged violation, proposed penalty or sanction, or a proposed mitigation plan, which shall be either WECC's board, a committee of the board, a balanced compliance panel reporting directly to WECC's board or an independent hearing panel.

To the extent required in the Rules of Procedure, WECC shall conduct all compliance hearings in which a Registered Entity may contest a finding of alleged violation, proposed penalty or sanction, proposed Mitigation Plan, or a proposed Remedial Action Directive, in accordance with Attachment 2, Hearing Procedures, to the NERC Compliance Monitoring and Enforcement Program, subject to the following deviations, if any: None.

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<sup>33</sup> Joint Petition at 13.

## 2. Commission Determination

31. Section 215(e)(4)(C) of the FPA requires that the Delegation Agreements between NERC and the Regional Entities promote effective and efficient administration of Bulk-Power System reliability.<sup>34</sup> This is achieved by implementing Delegation Agreements that include unambiguous language that makes clear the intent of the included provisions. We find that the proposed revisions to Exhibit D, section 2 of the WECC Delegation Agreement do not meet this standard because the section is not specific enough to indicate which hearing process WECC has selected in accordance with the NERC Rules of Procedure and could cause confusion as to which hearing process applies to registered entities. Therefore, we direct NERC to revise Exhibit D, section 2 of the WECC Delegation Agreement to clearly indicate that WECC has selected the Consolidated Hearing Process in accordance with the NERC Rules of Procedure and to submit the amended WECC Delegation Agreement in the compliance filing.

32. Additionally, we note that section 403.15 of the NERC Rules of Procedure states that a Regional Entity may modify its selection of hearing process by giving notice to NERC six months prior to such modification becoming effective. We also note that NERC proposes to revise the Delegation Agreements of MRO, NPCC, ReliabilityFirst, and SERC to include this provision in Exhibit D, section 2 of these Delegation Agreements. Notwithstanding the addition of this provision in the Delegation Agreements, it is our expectation that, if a Regional Entity modifies its selection of a hearing process, NERC will amend the Delegation Agreements and file such amendments with the Commission. This will ensure that the Delegation Agreements promote effective and efficient administration of the Bulk-Power System reliability by promoting transparency in the hearing process selection of each of the Regional Entities.

### The Commission orders:

(A) NERC's revised *pro forma* Delegation Agreement and revised Delegation Agreements with the six Regional Entities are hereby conditionally approved to become effective January 1, 2021, as discussed in the body of this order.

(B) NERC and the Regional Entities are hereby directed to submit a compliance filing within 120 days of the date of this order to revise the *pro forma* Delegation Agreement, as discussed in the body of this order.

(C) NERC and the Regional Entities are hereby directed to include in its compliance filing, to be submitted within 120 days of the date of this order, revised

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<sup>34</sup> 16 U.S.C. § 824o(e)(4)(c).

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individual Delegation Agreements with each Regional Entity reflecting the changes to the *pro forma* Delegation Agreement directed herein.

By the Commission. Commissioner Clements is not participating.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

Document Content(s)

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