

167 FERC ¶ 61,095
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

April 30, 2019

In Reply Refer To:
North American Electric Reliability
Corporation
Florida Reliability Coordinating Council, Inc.
SERC Reliability Corporation
Docket No. RR19-4-000

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Attention: Nina H. Jenkins-Johnston, Morvarid M. Jones, and Holly A. Hawkins

Dear Ms. Jenkins-Johnston, Ms. Jones, and Ms. Hawkins:

1. On February, 27, 2019, the North American Electric Reliability Corporation (NERC), Florida Reliability Coordinating Council, Inc. (FRCC), and SERC Reliability Corporation (SERC) (collectively, Petitioners) filed a joint petition requesting certain Commission approvals in connection with the dissolution of FRCC as a Regional Entity

and the transfer of registered entities within the FRCC footprint to SERC (Joint Petition).¹ In this order, we grant the requested approvals, as discussed below.

2. In their Joint Petition, Petitioners state that NERC and FRCC mutually agreed in October 2018 to terminate the responsibilities of FRCC as a Regional Entity.² Petitioners explain that the decision to dissolve FRCC as a Regional Entity stemmed from a review of FRCC's governance structure in response to NERC's determination that Regional Entities should be separate corporate entities from NERC registered entities. Petitioners explain that NERC and FRCC entered into a Termination Agreement setting forth each party's obligations in support of the termination of the Regional Delegation Agreement between NERC and FRCC and the transition of FRCC's delegated authority in a manner that maintains reliability and enhances the efficiency of the ERO Enterprise.³

3. Petitioners state that, under the Termination Agreement, NERC would be responsible for, *inter alia*, issuing a determination specifying that, by July 1, 2019, SERC shall be the transferee Regional Entity for all registered entities in the FRCC region. They state that FRCC would be responsible for transferring relevant files and documents pertaining to delegation-related activities to the transferee Regional Entity and for submitting certain financial information to NERC following termination of its Regional Entity activities.⁴ Petitioners request that FRCC cease to exist as a Regional Entity and complete the wind down of its business on August 31, 2019.

4. Petitioners propose changes to the existing Regional Delegation Agreement between NERC and SERC to reflect the new, regional boundaries for SERC due to the transfers of FRCC registered entities. Petitioners state that the proposed transfers of registered entities are consistent with the Commission's general guidance regarding changes in a Regional Entity's boundary, in which the Commission has noted that such changes "should be carefully considered and should serve to improve the effectiveness or

¹ FRCC's governance structure includes a NERC Regional Entity division and a Member Services division. Petitioners seek approval to dissolve FRCC as a Regional Entity, but not FRCC Member Services. FRCC is a registered entity registered as a reliability coordinator and planning authority, and these functions are not affected by this filing.

² NERC filed an errata to its original submission on March 1, 2019, to correct Attachment 4 of the Joint Petition with a correct list of registered entities that NERC proposed to transfer from FRCC to SERC.

³ Joint Petition at 4-5.

⁴ *Id.* at 7, 9-10.

efficiency of the Regional Entity's and NERC's administration of reliability, and should not merely benefit an individual registered entity."⁵ Petitioners indicate that NERC relied upon the criteria in section 1208 of its Rules of Procedure in developing the revised boundaries for SERC.

5. Petitioners also seek approval of amendments to the SERC bylaws related to SERC's executive committee representatives.⁶ Among other things, Petitioners propose to increase the number of representatives on SERC's board executive committee (BEC) from 12 to 15 to ensure that FRCC entities will be able to engage fully in SERC board of directors activities.⁷ Petitioners also propose to amend the SERC bylaws to divide the BEC members into two groups and introduce staggered, two-year terms (i.e., alternating terms for Group 1 and Group 2) to avoid having the entire BEC membership turn over at the same time.⁸

6. Petitioners request the Commission's approval to provide for the funding of transitional and wind-down costs.⁹ As a first step to fund wind-down costs, Petitioners state that they will use FRCC's expected available cash as of July 1, 2019. Petitioners indicate that SERC expects an increase in costs to integrate the transferred FRCC entities for 2019 and beyond, including the addition of 17 to 21 full-time equivalent staff members. Petitioners request that SERC apply the FRCC third and fourth quarter assessments in 2019 toward the costs of assuming FRCC's delegated authority.¹⁰

7. In addition, Petitioners request approval of a special assessment of up to \$630,000 to assist with wind-down costs. Petitioners state that additional assessment funding may be needed if, during the course of the fiscal year, FRCC determines it does not or will not have sufficient funds to carry out its delegated functions and related activities.¹¹ Petitioners assert that they satisfy the "unforeseen and extraordinary circumstances"

⁵ *Id.* at 8 (quoting *North American Electric Reliability Corp.*, 133 FERC ¶ 61,061, at P 72 (2010)).

⁶ *Id.* at 4.

⁷ *Id.* at 15-16.

⁸ *Id.* at 16.

⁹ *Id.* at 4.

¹⁰ *Id.* at 13.

¹¹ *Id.* at 9-10.

criteria established in Order No. 672 for requesting emergency funding.¹² Petitioners state that the circumstance warranting this request for a special assessment was the October 30, 2018 FRCC board of trustees vote to wind down FRCC as a Regional Entity, which accelerated the maturation of FRCC's obligation to make retention agreement payments to 14 FRCC staff and nine key shared corporate staff upon dissolution of FRCC.¹³

8. Lastly, to the extent required, Petitioners request the Commission's approval to deviate from the application of penalty monies as specified in section 1107 of the NERC Rules of Procedure,¹⁴ to permit the use of penalty payments for FRCC wind-down and SERC transition costs. As part of this request, Petitioners state that penalty monies processed and submitted to NERC between July 1, 2018 and July 1, 2019 would apply towards wind-down costs. Petitioners state that penalty monies processed and submitted between July 1, 2019, and December 31, 2019, or not otherwise applied towards wind-down costs, would be reimbursed to FRCC entities on a *pro rata* basis.¹⁵

9. Notice of Petitioners' February 27, 2019 filing was published in the *Federal Register*, 84 Fed. Reg. 8328 (2019), with interventions and protests due on or before March 20, 2019. Notice of the Errata to the Petitioners' February 27, 2019 filing was

¹² See *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, at P 37, *order on reh'g*, Order No. 672-A, 114 FERC ¶ 61,328 (2006) and 18 C.F.R. § 39.4(d) (2018) ("On a demonstration of unforeseen and extraordinary circumstances requiring additional funds prior to the next [ERO] fiscal year, the [ERO] may file with the Commission for authorization to collect a special assessment.").

¹³ Joint Petition at 10-11, 13.

¹⁴ Section 1107.2 of the NERC Rules of Procedure provides that:

All funds from financial Penalties assessed in the United States received by the entity initiating the compliance monitoring and enforcement process shall be applied as a general offset to the entity's budget requirement for the subsequent fiscal year, if received by July 1, or for the second subsequent fiscal year, if received on or after July 1. Funds from financial Penalties shall not be directly applied to any program maintained by the entity conducting the compliance monitoring and enforcement process.

¹⁵ Joint Petition at 5, 11-12.

published in the *Federal Register*, 84 Fed. Reg. 9320 (2019), with interventions and protests due on or before March 20, 2019. None were filed.

10. We grant the requested approvals needed for the dissolution of FRCC as a Regional Entity by August 31, 2019 and the transfer of its registered entities to SERC by July 1, 2019. We find that Petitioners have demonstrated that the proposal, including changes to the Regional Delegation Agreement between NERC and SERC to reflect the transfers of all FRCC registered entities to SERC, will “promote effective and efficient administration of bulk-power system reliability,” in accordance with FPA section 215(e)(4).¹⁶

11. We find NERC’s approach of transferring to SERC all FRCC registered entities is consistent with the criteria in section 1208 of NERC’s Rules of Procedure governing individual requests to change a Regional Entity boundary, and with applicable Commission precedent. The Commission has previously found that “it is clear that the [s]ection 1208 criteria are designed to promote effective and efficient administration of Bulk-Power System reliability.”¹⁷ When approving the dissolution of the Southwest Power Pool Regional Entity and related registered entity transfers to Midwest Reliability Organization and SERC, the Commission determined that applying the section 1208 criteria was appropriate.¹⁸ Therefore, we find that the use of the section 1208 criteria is also appropriate here in evaluating the transfer of FRCC registered entities to SERC.

12. Accordingly, we approve the Joint Petition’s proposal to terminate the Regional Delegation Agreement between NERC and FRCC in accordance with the terms of the Termination Agreement, and to transfer the registered entities within FRCC to SERC. We also approve the proposed revisions to the Regional Delegation Agreement between NERC and SERC to reflect the change in regional boundaries due to the transfer of FRCC registered entities to SERC. Further, we find that Petitioners’ proposed amendments to SERC’s bylaws are appropriate to facilitate the transfer of FRCC registered entities to SERC.

13. In addition, we approve Petitioners’ requests related to the funding of transitional and wind-down costs. In particular, we approve NERC’s request to deviate from the requirements of section 1107 of the NERC Rules of Procedure to allow FRCC to apply

¹⁶ See 16 U.S.C. § 824o(e)(4) (2012) (the ERO may enter into an agreement to delegate authority to a regional entity if, *inter alia*, ... “the agreement promotes effective and efficient administration of bulk-power system reliability”).

¹⁷ *North American Electric Reliability Corp.*, 134 FERC ¶ 61,179, at P 9 (2011).

¹⁸ *North American Electric Reliability Corp.*, 163 FERC ¶ 61,094, at P 17 (2018).

certain penalty funds received on or after July 1, 2018 for its wind-down activities, and to allow SERC to apply penalty monies toward the costs of assuming delegated authority over FRCC's registered entities.¹⁹ We find that NERC's request is appropriate, in light of the dissolution of FRCC as a Regional Entity, and is consistent with section 1107.4 of the NERC Rules of Procedure, which allows Regional Entities to obtain a waiver of this requirement, if approved.²⁰ We also approve FRCC's request to make a special assessment of up to \$630,000. We find that FRCC's request is appropriate, in light of the dissolution of its role as a Regional Entity and its contractual obligations to its employees, resulting in what we find to be an "unforeseen and extraordinary circumstance."²¹

By direction of the Commission.

Kimberly D. Bose,
Secretary.

¹⁹ Joint Petition at 10-12.

²⁰ Section 1107.4 of the NERC Rules of Procedure provides that "[e]xceptions or alternatives to the foregoing provisions will be allowed if approved by NERC and by [the Commission]."

²¹ *See* 18 C.F.R. § 39.4(d).

Document Content(s)

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