

July 22, 2020

**VIA ELECTRONIC FILING**

Mr. Neil Cunningham  
Director of Climate Change and Energy Branch  
Department of Sustainable Development  
1200-155 Carlton Street  
Winnipeg MB R3C 3H8

RE: *North American Electric Reliability Corporation*

Dear Mr. Cunningham:

The North American Electric Reliability Corporation (“NERC”) hereby submits Notice of Filing of the North American Electric Reliability Corporation of the Revised *Pro Forma* Regional Delegation Agreement and the Revised Individual Regional Delegation Agreement. NERC requests, to the extent necessary, a waiver of any applicable filing requirements with respect to this filing.

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

Respectfully submitted,

/s/ Lauren Perotti

Lauren Perotti  
*Senior Counsel for the North American Electric  
Reliability Corporation*

**BEFORE THE  
PROVINCE OF MANITOBA**

**NORTH AMERICAN ELECTRIC )  
RELIABILITY CORPORATION )**

**NOTICE OF FILING OF THE  
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION OF THE REVISED  
*PRO FORMA* REGIONAL DELEGATION AGREEMENT AND THE RELEVANT  
REVISED INDIVIDUAL REGIONAL DELEGATION AGREEMENT**

Nina Jenkins Johnston  
Senior Counsel Candice Castaneda  
Counsel  
North American Electric Reliability Corporation  
1325 G Street, N.W., Suite 600  
Washington, D.C. 20005  
(202) 400-3000  
(202) 644-8099 – facsimile  
nina.johnston@nerc.net  
candice.castaneda@nerc.net

*Counsel for the North American Electric  
Reliability Corporation*

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## ATTACHMENTS:<sup>1</sup>

- **Attachment 1:** *Pro Forma* CLEAN – Revised *Pro Forma* Regional Delegation Agreement
- **Attachment 2:** REDLINE – Revised *Pro Forma* Regional Delegation Agreement
- **Attachment 3:** CLEAN – Revised Regional Delegation Agreement with Midwest Reliability Organization
- **Attachment 4:** REDLINE – Revised Regional Delegation Agreement with Midwest Reliability Organization

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<sup>1</sup> Consistent with prior filings of regional delegation agreements (“RDA”), the redline of the Regional Entity RDA is run against the revised *Pro Forma* RDA rather than the currently effective version.

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**NORTH AMERICAN ELECTRIC** )  
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**NOTICE OF FILING OF THE  
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PRO FORMA REGIONAL DELEGATION AGREEMENT AND THE RELEVANT  
REVISED INDIVIDUAL REGIONAL DELEGATION AGREEMENT**

The North American Electric Reliability Corporation (“NERC”) hereby provides notice of the following revised *Pro Forma* Regional Delegation Agreement (“*Pro Forma* RDA”) and revised relevant Regional Entity RDAs (“Regional Entity RDA”)<sup>1</sup>:

- Revised *Pro Forma* Regional Delegation Agreement (Clean **Attachment 1** and Redline **Attachment 2**)
- Revised RDA between NERC and Midwest Reliability Organization (“MRO”) (**Attachment 3**)

The purpose of the RDAs is to delegate authority to the Regional Entities to propose Reliability Standards to the Electric Reliability Organization (“ERO”), to enforce Reliability Standards, and to perform other activities necessary or appropriate for implementing delegated functions. The term of the currently effective RDAs ends on December 31, 2020.

NERC’s proposed revisions to the RDAs will strengthen the independence and effectiveness of the ERO Enterprise. The attached agreements build upon prior versions to enhance effective and efficient administration of Bulk-Power System reliability.

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<sup>1</sup> The following six Regional Entities comprise the ERO Enterprise: Midwest Reliability Organization (“MRO”), Northeast Power Coordinating Council, Inc. (“NPCC”), ReliabilityFirst Corporation (“ReliabilityFirst”), SERC Reliability Corporation (“SERC”), Texas Reliability Entity, Inc. (“TRE”), and Western Electricity Coordinating Council (“WECC”). NERC has also made revisions to the Regional Entity RDAs for the other Regional Entities.

## I. EXECUTIVE SUMMARY

NERC's proposed revisions to the *Pro Forma* RDA reflect the ERO Enterprise's evolution over the past five years, as NERC and the Regional Entities strengthen their activities and relationships under section 215 of the United States Federal Power Act ("FPA"). In accordance with section 215 of the FPA and implementing regulation, NERC may delegate its statutory authority as the ERO to Regional Entities for the purpose of proposing and enforcing Reliability Standards.

The U.S. Federal Energy Regulatory Commission ("FERC") has previously supported rules which provide, "necessary assurance of balanced representation and independence from the users, owners and operators of the Bulk-Power System."<sup>2</sup> It is essential that each Regional Entity operates as an independent and balanced organization, capable of efficiently and effectively executing delegated functions. The primary mission of each Regional Entity is to conduct delegated functions or delegation-related activities without a conflict of interest. The governance structure of each Regional Entity ensures that appropriate safeguards are in place for Regional Entities to perform their oversight role and delegated activities with adequate independence.

Over the past five years, NERC in consultation with the Regional Entities has chosen to take steps to further strengthen its commitment to independent governance in execution of its mission in the public interest. While section 215 of the FPA and FERC regulation permits each Regional Entity to be governed by an independent board, a balanced stakeholder board, or a combination thereof (referred to hereafter as a "hybrid board"), the proposed revisions reflect NERC's determination and the Regional Entities agreement that independent and hybrid boards provide greater assurance of independence than purely stakeholder boards, particularly with

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<sup>2</sup> *N. Am. Elec. Reliability Corp.*, 116 FERC ¶ 61,062, *order on reh'g and compliance*, 117 FERC ¶ 61,126, P 545 (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) [hereinafter ERO Certification Order].

respect to oversight of the compliance and enforcement responsibilities of the Regional Entities. It is essential that the enforcement of NERC Standards be recognized as highly credible and fair, and that this perception not be undermined by any appearances of conflict of interest that may arise as a result of regional oversight of enforcement activities by board members who are employees of entities subject to Standards. The hybrid board structure provides an effective mechanism to address this risk while a purely stakeholder board structure does not.

Independence and adequate protection against potential conflicts of interest has been a critical focus in recent years as the ERO Enterprise approached the December 31, 2020 expiration of the RDAs. This commitment to independence does not detract from the importance of stakeholder engagement in the activities of the ERO Enterprise. Rather the commitment to independence provides stakeholders confidence in unbiased performance of ERO Enterprise activities. Efforts over the past five years to strengthen the ERO Enterprise independence have included:

- Dissolution of two Regional Entities that also performed registered entity functions; and
- Governance restructuring at Regional Entities renewing their RDAs through bylaw revisions and process changes.

In addition, the ERO Enterprise has developed the proposed revisions to the attached *Pro Forma* RDA and Regional Entity RDA. These proposed revisions enhance independence by:

- Permitting only independent or hybrid boards; and
- Providing for oversight of Regional Entity compliance and enforcement activities through assigning special responsibilities to the independent members of hybrid boards.

The proposed revisions also include modifications that remove language previously necessary to address Regional Entities performing registered entity functions and modifications to enhance efficiency and clarity. The proposed amendments demonstrate that the ERO Enterprise is

mindful of reputational risks and is committed to independently and effectively executing the statutory responsibilities of section 215 of the FPA. The RDAs will give greater assurance of balanced representation and independence from the users, owners, and operators of the Bulk-Power System.

## II. BACKGROUND AND DEVELOPMENT OF THE REVISED *PRO FORMA* RDA

On February 3, 2006, FERC issued Order No. 672 implementing the requirements of Section 215 of the FPA governing electric reliability and setting forth the criteria used to certify a single independent ERO. In Order No. 672, FERC established the criteria for the ERO to delegate authority to a Regional Entity, subject to ERO oversight. FERC also specified that an applicant for designation as the ERO must submit a *Pro Forma* RDA, concurrently with the ERO application, containing the core elements that would uniformly apply to all Regional Entities.<sup>3</sup>

Since the submission by NERC of the first *Pro Forma* RDA, NERC has made two sets of revisions to the RDAs in 2010 and 2015.<sup>4</sup> FERC conditionally approved NERC's 2015 proposed revisions subject to directives aimed at improving oversight and transparency. On March 23, 2016, FERC accepted NERC's compliance filing addressing these directives.<sup>5</sup> In addition to revisions made to the RDAs in anticipation of their expiration in 2009 and 2014, NERC also made modifications to regional boundaries of MRO, ReliabilityFirst, and SERC to reflect the dissolution of Southwest Power Pool, Inc. and

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<sup>3</sup> Order No. 672, *supra*, at P 712.

<sup>4</sup> In 2007, NERC entered into individual RDAs with the Regional Entities. On June 21, 2010, NERC submitted *Notice of Filing of Revised Pro Forma RDA, Relevant Regional RDAs, and Amendments to the NERC Rules of Procedure*. On July 9, 2015, NERC submitted *Notice of Filing of Revised Pro Forma RDA and Regional Entity RDAs*..

<sup>5</sup> *N. Am. Elec. Reliability Corp.*, Docket No. RR15-12-001 (letter order) (Mar. 23, 2016).



Florida Reliability Coordinating Council, Inc. Regional Entities.<sup>6</sup>

In anticipation of the December 31, 2020 expiration of the currently effective RDAs, NERC began working with Regional Entities to renew and update their RDAs. NERC posted a draft of the revised *Pro Forma* RDA for 14 days from March 25, 2020 to April 8, 2020, providing stakeholders with an opportunity to submit comments. NERC did not receive any comments on the proposed revisions to the *Pro Forma* RDA. On May 14, 2020, the NERC Board of Trustees approved the revisions to the *Pro Forma* RDA for filing and authorized NERC senior management to enter into individualized Regional Entity RDAs, adapted from the revised *pro forma* RDA, incorporating Regional Entity-specific deviations.

The governing bodies of the Regional Entities approved their respective Regional Entity RDAs on the following dates: MRO – June 25, 2020; NPCC – June 24, 2020; ReliabilityFirst – June 4, 2020; SERC – June 24, 2020; Texas RE – May 27, 2020; and WECC June 17, 2020. The *Pro Forma* RDA and resulting Regional Entity RDA for MRO are submitted in this filing.

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<sup>6</sup> See *N. Am. Elec. Reliability Corp.*, 163 FERC ¶ 61,094 (2018); and *N. Am. Elec. Reliability Corp.*, Docket No. RR19-4-000 (2019) (accepting dissolution of Southwest Power Pool, Inc. and Florida Reliability Coordinating Council, Inc. Regional Entities respectively).

### **III. OVERVIEW OF THE REVISED *PRO FORMA* RDA**

NERC's proposed revisions enhance independence and effectiveness of the ERO Enterprise. In addition, the RDAs give greater assurance of balanced representation and independence from the users, owners and operators of the Bulk-Power System. The governance of each Regional Entity ensures that appropriate safeguards are in place for Regional Entities to perform their oversight role with adequate independence from registered entities. While FERC permits each Regional Entity to be governed by an independent board, a balanced stakeholder board, or a combination thereof (hybrid boards), the ERO Enterprise has chosen to take additional steps to strengthen its commitment to independence. Independent and hybrid boards provide balance and still support stakeholder participation.

The proposed amendments to the *Pro Forma* RDA follow several efforts by the ERO Enterprise over the past five years to strengthen independence in governance. These efforts include (i) dissolving two Regional Entities that previously performed registered entity functions subject policies designed to avoid conflicts of interest in CMEP; as well as (ii) governance restructuring through bylaw revisions and process changes at several Regional Entities. Adding independence principles to Regional Entity governance demonstrates that the ERO Enterprise is mindful of reputational risks. This commitment to independence does not detract from the importance of stakeholder engagement in the activities of the ERO Enterprise.

#### **a. Recitals**

In the **recitals** and **Sections 1(c)** and **2(iv)** of the *Pro Forma* RDA, NERC clarifies that **Exhibit A – Regional Boundaries** to the *Pro Forma* RDA reflects a description of geographic boundaries. NERC proposes to eliminate geographic depictions of Regional Entity boundaries in **Exhibit A – Regional Boundaries** to the *Pro Forma* RDA. The precision of the current maps

within **Exhibit A** varies across Regional Entities and may inadvertently provide misleading information about Regional Entity boundaries. The NERC Compliance Registry reflects registered entity assignment to a specific Regional Entity, as Regional Entity assignment is more appropriately managed through the registration process. Additionally, removing the maps will eliminate the need to amend the RDAs if a registered entity is transferred to a different Regional Entity. In lieu of geographic maps, NERC proposes to only maintain descriptions of the geographic boundaries of each Regional Entity footprint in **Exhibit A – Regional Boundaries**.

**b. Representations - Independence**

Each Regional Entity renewing its RDA with NERC has taken steps to provide independent director representation on its board of directors through pending or approved revisions to its bylaws. As a result, within the **recitals** and **Section 2(a)(i)** of the *Pro Forma* RDA, NERC proposes to specify that Regional Entities may form an independent board “or a hybrid board consisting of” a combination of independent and balanced stakeholder board “members.” NERC proposes to eliminate the reference to “balanced stakeholder board” as well as regulatory references or citations to this governance structure. A parallel change is made in **Exhibit B – Governance**. The RDAs between NERC and MRO, NPCC, ReliabilityFirst, SERC, and Texas RE each reflect that these Regional Entities are governed by hybrid boards. WECC’s RDA continues to reflect its governance by an independent board. There are no stakeholder boards in the ERO Enterprise.

NERC also proposes a new provision within **Section 2(a)(ii)** of the *Pro Forma* RDA stating that each Regional Entity executing the RDA commits to maintaining independent members to perform certain oversight obligations related to governing a Regional Entity. These obligations include:

- Nominating independent board members;
- Compensating the chief executive officer;
- Implementing the compliance monitoring and enforcement program;
- Retaining fair and reasonable compensation for independent board members; and,
- Retaining appropriate conflict of interest and recusal policies for board members and staff alike.

These oversight obligations are consistent with independence principles developed by NERC, in consultation with the Regional Entities. NERC proposes to evaluate Regional Entity implementation of independence principals prior to future renewal of the RDAs.

**c. Delegation of Authority**

In **Section 4**, NERC proposes to remove language describing Regional Entities as affiliated with registered entities and/or performing registered functions. With the dissolution of the Southwest Power Pool, Inc. Regional Entity as well as the Florida Reliability Coordinating Council, Inc. Regional Entity, this language is no longer applicable.

**d. Enforcement of Compliance with Reliability Standards**

In **Section 6(e)**, NERC proposes to prohibit stakeholder representatives from leading a Regional Entity board compliance committee. The role of a compliance committee is to assist with oversight of Regional Entity decision-making within its compliance monitoring and enforcement program implementation. Each Regional Entity acts as the Compliance and Enforcement Agent for each registered entity in its footprint and A Regional Entity’s compliance and enforcement activities are conducted by staff without conflicts of interest. NERC proposes that independence measures should also be implemented in the oversight of these compliance and enforcement activities. To that end, 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. However, this proposal does not prohibit the participation of stakeholder representatives in such committees, provided there are reasonable and appropriate recusal procedures in place.

**e. Funding**

In **Section 9(j)**, NERC proposes to remove language prohibiting a Regional Entity from offsetting penalty monies it receives where the penalty monies are received “from an operational function or division or affiliate entity of a Regional Entity.” This language was previously included within the *Pro Forma* RDA to address Regional Entities affiliated with registered entities and/or that performed registered functions. Today, Regional Entities are not affiliated with any registered entity nor do they perform registered functions; as a result, this language is no longer necessary.

**f. Term**

In **Section 12(b)**, NERC proposes to clarify that the RDAs may be terminated earlier than the end of the stated five-year term so long as the terminating Party provides written notice to terminate no later than one year prior to the then effective expiration of the Term.

**IV. OVERVIEW OF REVISED RELEVANT RDA WITH REGIONAL ENTITY**

In this section, NERC provides an overview of the differences between the currently effective Regional Entity RDA and the revised Regional Entity RDA for NPCC. These differences reflect customization of the RDA as appropriate for the Regional Entity. The redlines included in **Attachments 3** incorporate the proposed changes to the *Pro Forma* RDA.

**a. MRO RDA**

**Section 2(a)(i)** of the RDA reflects that MRO is governed by a hybrid board comprised, in accordance with its bylaws, of a combination of independent and balanced stakeholder board members.

In addition, MRO modifies **Exhibit D – Compliance Monitoring and Enforcement Program** to the RDA to reflect its adoption of the ERO Enterprise Consolidated Hearing Process as provided in the NERC ROP. Consistent with the NERC ROP and MRO bylaws, MRO may modify its selection of hearing process by notifying NERC six months prior to the decision becoming effective.

**V. NOTICES AND COMMUNICATION**

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

Nina Jenkins Johnston\*  
Senior Counsel  
Candice Castaneda\*  
Counsel  
North American Electric Reliability Corporation  
1325 G Street, N.W.,  
Suite 600  
Washington, D.C. 20005  
(202) 400-3000  
(202) 644-8099 – facsimile  
[nina.johnston@nerc.net](mailto:nina.johnston@nerc.net)  
[candice.castaneda@nerc.net](mailto:candice.castaneda@nerc.net)

Respectfully submitted,

/s/ Candice Castaneda

Nina Jenkins Johnston  
Senior Counsel  
Candice Castaneda  
Counsel  
North American Electric Reliability  
Corporation 1325 G Street, N.W., Suite 600  
Washington, D.C. 20005  
(202) 400-3000  
(202) 644-8099 – facsimile  
nina.johnston@nerc.net  
candice.castaneda@nerc.net

*Counsel for the North American Electric  
Reliability Corporation*

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**ATTACHMENTS 1-4**