

131 FERC ¶ 61,112
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

May 6, 2010

In Reply Refer To:
North American Electric Reliability
Corporation
Docket No. RR10-6-000

North American Electric Reliability Corporation
Rebecca J. Michael, Assistant General Counsel
1120 G Street, NW, Suite 990
Washington, DC 20005-3801

Dear Ms. Michael:

1. On February 19, 2010, the North American Electric Reliability Corporation (NERC), pursuant to sections 39.4 and 39.8 of the Commission's regulations,¹ filed a petition seeking approval to delegate authority to the newly-formed, independent Texas Reliability Entity, Inc. (New Texas RE) as the Regional Entity for the ERCOT region, as successor to Texas Regional Entity (Original Texas RE), a division of Electric Reliability Council of Texas, Inc. Specifically, NERC requests approval of: (i) an Amended and Restated Delegation Agreement (RDA) between NERC and New Texas RE; and (ii) a 2010 Business Plan and Budget for New Texas RE. Last, NERC requests approval to terminate the existing delegation agreement between NERC and the Original Texas RE.

2. The proposed RDA is substantially unchanged from the existing delegation agreement with Original Texas RE. The most significant change is the addition of bylaws for New Texas RE in RDA, Exhibit B – Governance, which reflects the fact that New Texas RE is an independent entity legally separated from ERCOT. The governance of New Texas RE is controlled by the newly-adopted bylaws, whereas Original Texas RE did not have a separate set of bylaws, a function of Original Texas RE being a division of ERCOT.

¹ 18 C.F.R. §§ 39.4, 39.8 (2009).

3. The amendments to the 2010 Business Plan and Budget reflect approximately \$2.5 million in additional costs arising from the formation of New Texas RE. New Texas RE breaks these costs down into two primary categories: one-time start-up costs and additional, recurring operating costs. The one-time costs reflect expenses such as acquiring office and IT equipment and recruiting. The additional operating costs reflect increased expenses such as personnel, rent, and third-party professional services including human resources and information technology. To accommodate the \$2.5 million increase, New Texas RE proposes a corresponding \$2.5 million increase in statutory assessments to load serving entities in the ERCOT region.

4. Notice of NERC's February 19, 2010 filing was published in the *Federal Register*, 75 Fed. Reg. 9891 (2010), with interventions and protests due on or before March 12, 2010. ERCOT and Original Texas RE filed timely motions to intervene. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,² the timely, unopposed motions to intervene serve to make ERCOT and Original Texas RE parties to this proceeding. Original Texas RE also filed comments supporting NERC's petition and echoing NERC's request for expedited consideration of the petition.

5. On April 12, 2010, NERC filed additional information in support of its petition clarifying the timing and manner for potential future allocation of penalty monies between NERC and New Texas RE. On April 13, 2010, the Commission issued notice of NERC's supplemental filing, setting April 19, 2010 as the comment date. No comments were filed.

6. NERC notes in its petition that the delegation of authority to New Texas RE to monitor and enforce compliance with reliability standards in the ERCOT region will eliminate existing structural concerns about lack of independence of Original Texas RE in monitoring and enforcing compliance with reliability standards. The Commission supports NERC and the regional entity for proactively addressing, through structural separation, the independence concerns identified in the December 10, 2009 audit report on the independence of Original Texas RE.³

7. The Commission finds that, with respect to NERC's RDA with New Texas RE, NERC has demonstrated that: (1) New Texas RE is governed by a "combination

² *Id.* § 385.214.

³ See *Texas Regional Entity*, 130 FERC ¶ 61,025 (2010) (order approving December 10, 2009 audit report on Original Texas RE).

independent and balanced stakeholder board;”⁴ (2) New Texas RE satisfies the criteria required for certification under section 215(c) of the Federal Power Act;⁵ and (3) the RDA promotes effective and efficient management of the Bulk-Power System. The Commission further determines that the amended 2010 Business Plan and Budget demonstrates extraordinary circumstances that require additional funds prior to the next ERO fiscal year.⁶ Accordingly, the Commission approves: (i) the RDA between NERC and New Texas RE, thereby approving the delegation of authority to New Texas RE as the regional entity for the ERCOT region, (ii) termination of the existing delegation agreement between NERC and Original Texas RE, and (iii) the amended 2010 Business Plan and Budget of New Texas RE, including the additional 2010 assessment of \$2,483,964, to be effective on the date of issuance of this order.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

⁴ 18 C.F.R. § 39.8(c)(1) (2009) (requiring a regional entity to be governed by an independent board, a balanced stakeholder board, or a combination independent and balanced stakeholder board).

⁵ 16 U.S.C. § 824o(c) (2006).

⁶ Section 39.4(d) provides that, upon demonstration of unforeseen and extraordinary circumstances requiring additional funds prior to the next Electric Reliability Organization fiscal year, the Electric Reliability Organization may seek Commission authorization to collect a special assessment. 18 C.F.R. § 39.4(d) (2009).