

129 FERC ¶ 61,096  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
and Philip D. Moeller.

North American Electric Reliability Corporation

Docket No. RR09-5-000

ORDER APPROVING PETITION

(Issued November 2, 2009)

1. On June 8, 2009, the North American Electric Reliability Corporation (NERC) filed a petition requesting approval of the following Texas Regional Entity (Texas RE)<sup>1</sup> rules: (1) proposed revisions to the Standards Development Process of Texas RE, (2) Texas RE Reliability Standards Committee Procedure and (3) Registered Ballot Body Procedure. Pursuant to section 215(f) of the Federal Power Act (FPA),<sup>2</sup> the Commission approves NERC's petition, as discussed below.

**I. Background**

2. Pursuant to section 215(e)(4) of the FPA,<sup>3</sup> the Commission approved a delegation agreement for NERC, the Commission-certified electric reliability organization (ERO). Pursuant to the delegation agreement, NERC delegated certain statutory functions to Texas RE, including the development of regional Reliability Standards.<sup>4</sup> Texas RE develops regional Reliability Standards pursuant to the Commission-approved Texas Regional Entity Standards Development Process, set forth in Exhibit C to the NERC-Texas RE Delegation Agreement.

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<sup>1</sup> Texas RE is an independent division of the Electric Reliability Council of Texas, Inc. (ERCOT).

<sup>2</sup> 16 U.S.C. § 824o(f) (2006).

<sup>3</sup> 16 U.S.C. § 824o(e)(4).

<sup>4</sup> *North American Electric Reliability Corp.*, 119 FERC ¶ 61,060 (2007), *order on reh'g*, 120 FERC ¶ 61,239 (2007).

3. Changes made to Regional Entity Rules must be approved by the Commission pursuant to section 39.10(a) of the Commission's regulations which require Regional Entities to submit a Regional Entity Rule or Rule change to the ERO and for the ERO to file the proposed Regional Entity Rule or Rule change with the Commission for approval.<sup>5</sup>

4. The Texas RE Standards Development Process currently provides for a Reliability Standards Committee comprised of entities representing seven "ERCOT Market Participant Segments" with one full vote each.<sup>6</sup> When the Texas RE was originally formed, ERCOT was not authorized to be a member of the Registered Ballot Body or the Reliability Standards Committee, or to vote on regional Reliability Standards.

## **II. NERC/Texas RE Petition**

### **A. Texas RE Standards Development Process**

5. The proposed revisions to the Texas RE Standards Development Process add ERCOT as an eighth segment in the Texas RE Registered Ballot Body. The quorum for voting purposes in the Standards Development Process is revised to require at least one representative from six of the eight Texas RE Segments. Each of the seven ERCOT Market Participant Segments has one segment vote on the Reliability Standards Committee and the Registered Ballot Body; ERCOT has a one-quarter segment vote on proposed new or revised regional Reliability Standards. Also, as specified in the revised Standards Development Process, approval of an action requires a two-thirds affirmative vote, i.e., 4.83 votes of the total 7.25 segment votes, in order for the proposed regional Reliability Standard to be forwarded to the Texas RE Board of Directors for action.

6. ERCOT will also have the right under the revised Standards Development Process to vote in Reliability Standards Committee voting. The revised Standards Development Process further specifies that a Corporate Member of ERCOT is eligible to participate in the Registered Ballot Body.

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<sup>5</sup> 18 C.F.R. § 39.10 (2009).

<sup>6</sup> The seven segments are independent generators, investor-owned utilities, independent power marketers, retail electric providers, municipally-owned utilities, cooperatives, and consumers.

7. The proposed revisions to the Texas RE Standards Development Process also specify that meetings of the ERCOT Reliability and Operations Subcommittee and the Standards Drafting Teams are open to all “interested parties.” Further, a Reliability Standards Manager must post a Standards Authorization Request for public viewing and possible comment. Additionally, a Standards Drafting Team’s work plan will be submitted to the Reliability Standards Committee for concurrence “to ensure that the objectives established by the [Reliability Standards Committee] are met.”

8. The revised Standards Development Process includes language which explains that the same process will be used to obtain a Texas RE Regional Variance to a NERC Reliability Standard as is used to adopt a regional Reliability Standard. The revisions also authorize the Texas RE Board of Directors to vote to approve a proposed new or revised regional Reliability Standard following successful balloting by the Registered Ballot Pool.<sup>7</sup> Previously, this was done by the ERCOT Board of Directors.

#### **B. Other Texas RE Procedures**

9. The petition submits the Texas RE Reliability Standards Committee Procedure to the Commission for the first time as a Regional Entity Rule. This procedure details the purpose, committee structure, membership, nomination process for members and selection of a chair and vice-chair of the Reliability Standards Committee. It explains that participants in the Reliability Standards Committee are responsible for (i) the review of regional Standards Authorization Requests and subsequent recommendations for revision, deletion or development of a Texas RE regional Reliability Standard or Regional Variance; (ii) voting to recommend a proposed new or revised regional Reliability Standard to be presented for a vote to the Texas RE Registered Ballot Body; and (iii) the detailed process steps and timelines for carrying out the Reliability Standards Committee’s responsibilities in the Texas RE Standards Development Process.

10. The petition also submits the Texas RE Registered Ballot Body Procedure to the Commission for the first time as a Regional Entity Rule. The Registered Ballot Body is comprised of representatives from all Texas RE Segments to provide balanced decision-

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<sup>7</sup> A Registered Ballot Pool is established from members of the Registered Ballot Body to participate in the consensus development process and ballot the proposed action. The Registered Ballot Pool is formed pursuant to a notice sent by the Reliability Standards Manager to the entities in the Registered Ballot Body at least 30 days prior to the start of a ballot.

making on regional Reliability Standards. The Registered Ballot Body votes on proposed new or revised regional Reliability Standards and Regional Variances. The Registered Ballot Body Procedure explains the steps in establishing the Registered Ballot Body and the subsequent Registered Ballot Pool.

11. On February 16, 2009, the Texas RE Board voted to recommend approval of the revisions to the Standards Development Process, as well as the revisions to the Registered Ballot Body and Reliability Standards Committee Procedures.<sup>8</sup> On February 17, 2009, the ERCOT Board of Directors voted to formally approve the revisions to these documents. On May 6, 2009, the NERC Board of Trustees approved the proposed revised Texas RE Standards Development Process. On June 3, 2009, the NERC Board approved the Texas RE Registered Ballot Body and Reliability Standards Committee Procedures, which had not previously been approved by NERC.

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

12. Notice of NERC's petition was published in the *Federal Register*, with interventions and protests due on or before June 29, 2009.<sup>9</sup> City of Austin d/b/a Austin Energy (Austin Energy) timely filed comments. ERCOT filed a timely motion to intervene and protest. Texas RE filed an answer to ERCOT's protest. ERCOT subsequently filed an answer to Texas RE's answer.<sup>10</sup>

13. ERCOT and Austin Energy request that the Commission direct NERC to revise the proposed one-quarter vote assignment to ERCOT as the Independent System Operator (ISO) and direct NERC to further modify the proposed revisions to provide ERCOT a full vote in the Texas RE Standards Development Process. ERCOT and

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<sup>8</sup> The Texas RE Board and ERCOT approved certain revisions to these procedures. Although the Registered Ballot Body and Reliability Standards Committee procedures have been revised, they were not previously filed with the Commission and the Commission is acting on these Regional Entity Rules, as revised, for the first time.

<sup>9</sup> 74 FR 29201 (Jun. 19, 2009).

<sup>10</sup> The answer of Texas RE was filed with the Commission on July 1, 2009 in a document that was styled "Motion to Intervene Out of Time and Comments of Texas Regional Entity, an Independent Division of Electric Reliability Council of Texas, Inc." and ERCOT's answer to that answer was filed on July 8 and styled "Amendment to the Protest of Electric Reliability Council of Texas, Inc."

Austin Energy assert that the revised process undermines the input of the ISO and marginalizes ERCOT's effect in the regional Reliability Standards process.

14. ERCOT and Austin Energy state that, in other Regional Entities voting structures, the ISO segment or the reliability coordinator segment is given a full vote on par with all other segments. ERCOT and Austin Energy believe the one-quarter vote assignment undermines the input of the entity charged with maintaining system reliability. Austin Energy adds that the one-quarter vote is inconsistent with "the general principle of parity between segments in the ISO/RTO voting structures" and that the ISO is the only independent entity in the voting process with no financial interests that could be impacted by proposed regional standards.

15. Texas RE responds that the ERCOT ISO voting rights were fully vetted by a Texas RE drafting team. The revisions, including the one-quarter vote assignment for the ERCOT ISO segment, were affirmatively voted on by the Regional Ballot Body, followed by the Texas RE Board of Directors recommendation to approve the revisions to the ERCOT Board. Texas RE explains that, at the February 2009 ERCOT Board of Directors meeting, the ERCOT Board unanimously voted to approve the revisions to the Texas RE Standards Development Process. According to Texas RE, the ERCOT Board at the same meeting also instructed ERCOT staff to initiate a new Standards Authorization Request before the Texas RE to request a full vote instead of the one-quarter vote.<sup>11</sup> Texas RE believes that because the Texas RE Standards Development Process was appropriately followed, the approval of the revisions should be upheld. Texas RE also observes that ISO's voting rights vary among the Regional Entities, and that ERCOT is unique in that it has its own voting segment with no other members.

#### **IV. Discussion**

##### **A. Procedural Matters**

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

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<sup>11</sup> Texas RE initiated these revisions by the preparation of a Standards Authorization Request and followed the procedure set forth in the Texas RE Standards Development Process for the adoption or revision of a Regional Standard, as set forth in Appendix B, Section III of the current Standards Development Process.

17. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits answers to protests and answers to answers unless otherwise ordered by the decisional authority. We will accept Texas RE's July 1, 2009 Answer and ERCOT's July 8, 2009 Answer as they have provided information that has assisted us in our decision-making process.

**B. Commission Determination**

18. The Commission accepts Texas RE's proposed revisions to the Texas RE Reliability Standards Development Process, and accepts the Texas RE Reliability Standards Committee Procedure and Registered Ballot Body Procedure.

19. Consistent with section 215(c) of the FPA, a Regional Entity's Reliability Standards development procedure must provide for reasonable notice and opportunity for public comment, due process, openness, and a balance of interests in developing standards.<sup>12</sup> Further, the Commission requires that appropriate ERO and Regional Entity organizational structures provide that no two stakeholder sectors should be able to control the vote on any matter, and no single sector should be able to defeat a matter.<sup>13</sup> Texas RE's proposed revisions to its Standards Development Procedure, which provides for eight voting segments, provides for a balance of interests in developing standards, consistent with section 215(c) of the FPA and Commission precedent. Further, Texas RE's revised Standards Development Procedure comports with the specific control requirements mentioned above. Accordingly, the Commission approves Texas RE's revised Standards Development Procedure as just, reasonable, not unduly discriminatory or preferential, and in the public interest.

20. ERCOT and Austin Energy protest that the one-quarter vote provided to the ERCOT segment (1) marginalizes ERCOT ISO in the development of regional Reliability Standards, and (2) is inconsistent with voting procedures in other regions. ERCOT and Austin Energy have not provided a persuasive explanation how the one-quarter vote marginalizes the ISO in the development of regional Reliability Standards.

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<sup>12</sup> *North American Electric Reliability Corp.*, 119 FERC ¶ 61,060, at P 17 (2007).

<sup>13</sup> *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards*, Order No. 672, FERC Stats. & Regs. ¶ 31,204, at P 153, *order on reh'g*, Order No. 672-A, FERC Stats. & Regs. ¶ 31,212 (2006).

While assigning a fractional (one-quarter) vote to a segment may be novel, it is also rare if not unique to have a voting segment populated by one entity, ERCOT. It is possible that one compensates for the other. ERCOT has not provided us with satisfactory evidence that it is marginalized through this arrangement.

21. We also disagree with ERCOT and Austin Energy that the one-quarter vote for the ISO segment is inconsistent with voting procedures in other regions. As noted by Texas RE in its comments, Southwest Power Pool Regional Entity does not include an ISO voting segment, and Southwest Power Pool Inc. is not a part of a voting segment. Also, the SERC Reliability Corporation's regional Reliability Standards voting procedure includes an ISO/Customer voting segment that provides an ISO one vote amongst many within the segment. Further, SERC applies different weighting factors to its voting segments, which in effect provides a "weighted fractional affirmative vote" for a given sector.<sup>14</sup> There appears to be significant variation among Regional Entity voting methodologies, and the assignment of fractional weights to a voting segment in appropriate circumstances, as here, is just and reasonable.

22. The Commission accepts the proposal to give ERCOT a one-quarter segment vote in the Reliability Standards Committee and Regional Ballot Body and denies ERCOT's request to direct NERC to revise the Proposal to give the ISO segment a full vote.

23. The Commission accepts Texas RE's petition with regard to all other matters that are not explicitly addressed above.<sup>15</sup>

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<sup>14</sup> *North American Electric Reliability Corp.*, 119 FERC ¶61,060, at P 368-372.

<sup>15</sup> We note that for purposes of approving the revisions, we approve the text as provided in the clean version in Attachment B of NERC's petition due to discrepancies in the text of Attachment A's redlined version as compared to the text of Attachment B's clean version. The Commission advises that strong attention to detail be taken when editing documents with redlined and clean text so that language matches accordingly.

The Commission orders:

NERC's petition is hereby approved, as discussed in this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.