

172 FERC ¶ 61,006  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

North American Electric Reliability Corporation

Docket No. RR20-2-000

ORDER ACCEPTING BYLAW REVISIONS

(Issued July 1, 2020)

1. On December 20, 2019, North American Electric Reliability Corporation (NERC) and SERC Reliability Corporation (SERC) (collectively, Joint Petitioners) submitted a joint petition requesting approval of revisions to the SERC bylaws. Pursuant to section 215 of the Federal Power Act (FPA), we accept the proposed revisions, as discussed below.<sup>1</sup>

**I. Proposed Amendments to SERC Bylaws**

2. Joint Petitioners contend that the proposed amendments to the SERC bylaws will result in a more strategic, efficient, and effective governance body in several ways. First, the proposed amendments transition the existing SERC board of directors (Board) away from a sector representative board and into a hybrid board made up of both sector representatives and independent directors.<sup>2</sup> Second, the proposed amendments add at least three, to a maximum of five, independent directors to the SERC Board, require that a majority of directors and a majority of independent directors be present to have quorum for meetings, and eliminate the use of alternates and proxies for the directors and

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<sup>1</sup> 16 U.S.C § 824o (2018).

<sup>2</sup> The Joint Petition explains that an independent director is a person who is not an officer, director, or employee of SERC or any of its members, or of any entity that “would reasonably be perceived as having a direct financial interest in the outcome of the [board]’s decisions”, nor a person with a “relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.” Joint Petition at Attachment 1, article V, section 5.3(d).

independent directors.<sup>3</sup> Third, the proposed amendments formalize the SERC membership body by transitioning the existing sector representative board structure into a members group that will include a representative from each member company and meet at least annually to advise the newly-proposed Board on the business plan and budget, elect the independent board directors, and approve bylaw changes, as needed.<sup>4</sup> Finally, the proposed amendments revamp SERC's Board committees, specifically transitioning the current Board Compliance Committee into a Board Risk Committee, and including a Human Resources and Compensation Committee, Nominating and Governance Committee, and a Finance and Audit Committee.<sup>5</sup>

3. Joint Petitioners explain that SERC evaluated the proposed amendments to its bylaws by benchmarking governance best practices of other Regional Entities and then developing and tailoring a model that best fit its unique region, which consists of a large number of vertically-integrated utilities and markets.<sup>6</sup>

4. Joint Petitioners request expedited consideration of the proposed amendments and issuance of a Commission order by July 1, 2020. Joint Petitioners state that this will allow SERC to perform a search for qualified independent director candidates to fill the initial three seats and to conduct other transition activities to implement the governance changes described herein prior to the anticipated effective date of January 1, 2021. Joint Petitioners explain that the effective date of January 1, 2021 is also the anticipated effective date of the renewal of SERC's Regional Delegation Agreement with NERC.<sup>7</sup>

## **II. Notice of Filing, Intervention and Responsive Pleadings**

5. Notice of the Joint Petitioners' filing was published in the *Federal Register*,<sup>8</sup> with interventions and protests due on or before January 10, 2020. On December 31, 2019 and January 10, 2020, Public Citizen, Inc. (Public Citizen) filed a timely intervention and

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<sup>3</sup> Joint Petition at 7-8.

<sup>4</sup> *Id.* at 2.

<sup>5</sup> *Id.* at 1-2.

<sup>6</sup> *Id.* at 2.

<sup>7</sup> *Id.* at 3.

<sup>8</sup> 84 Fed. Reg. 72,349 (Dec. 31, 2019).

protest, respectively. On January 24, 2020, Joint Petitioners filed a joint reply responding to Public Citizen's protest (Joint Reply).

6. Public Citizen states that it is a research and advocacy organization representing the interests of household consumers<sup>9</sup> and requests revisions to the SERC bylaws to: (1) reserve at least one Board seat for a household consumer advocate; and (2) include household consumer advocates in its membership body and include at least one household consumer advocate to serve on the new members group to provide advice to the Board.<sup>10</sup> In support of its request, Public Citizen contends that the "reliability and security of our electric power system directly impacts household consumers, and consumer advocates provide unique and important perspective and expertise."<sup>11</sup>

7. In response to the Public Citizen Protest, the Joint Reply observes that in Order No. 672 the Commission determined that it would "neither require nor preclude a particular membership structure."<sup>12</sup> The Joint Reply asserts that SERC's proposed amended bylaws are consistent with Order No. 672 and section 215 of the FPA because "SERC's proposed Board would include sector representatives from entities that directly impact the reliability and security of the bulk power system, balanced with truly Independent Directors" and because "SERC's membership body . . . includes a broader group than the sector representatives."<sup>13</sup> The Joint Reply further notes that consumer advocates have other opportunities to participate in SERC outside of the membership body. Specifically, the Joint Reply notes that consumer advocates can take part in the development of Reliability Standards through drafting teams and as potential ballot participants, engage in SERC's various training and outreach efforts, and participate in technical committees.<sup>14</sup>

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<sup>9</sup> Public Citizen Protest at 1.

<sup>10</sup> *Id.* at 2.

<sup>11</sup> *Id.*

<sup>12</sup> Joint Reply at 2 (citing *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 PP 170, 173, *order on reh'g*, Order No. 672-A, 114 FERC ¶ 61,328 (2006)).

<sup>13</sup> Joint Reply at 2.

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

### III. Discussion

#### A. Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), Public Citizen's timely, unopposed motion to intervene serves to make Public Citizen a party to this proceeding.

9. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2019), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the joint NERC and SERC answer because it provided information that assisted us in our decision-making process.

#### B. Substantive Matters

10. The Commission finds that the proposed revisions are consistent with section 215 of the FPA and the requirements for board and membership structure in Order No. 672.<sup>15</sup> Accordingly, the Commission approves the proposed revisions to the SERC bylaws. We therefore decline Public Citizen's request to require the addition of a role for a consumer advocate as we find the proposed SERC bylaws, as filed, meet the statutory requirement that a Regional Entity be governed by an independent board, a balanced stakeholder board, or, as proposed here, a combination independent and balanced stakeholder board, and that there be fair stakeholder representation in the selection of board members and balanced decision-making in any committee or subordinate organizational structure.<sup>16</sup>

11. As noted in the Joint Reply, in Order No. 672, the Commission determined that it would "neither require nor preclude a particular membership structure."<sup>17</sup> Upon certifying NERC as the ERO, the Commission again declined to "prescribe limits on board composition, representation of industry segments or otherwise ensure adequate representation beyond the requirements already provided in Order No. 672 and section 215 of the FPA."<sup>18</sup> Moreover, as the Joint Reply points out, consumer advocates

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<sup>15</sup> Order No. 672, 114 FERC ¶ 61,104 at P 170.

<sup>16</sup> 16 U.S.C. §§ 824o(e)(4)(A)(iii) and 824o(c)(2)(A).

<sup>17</sup> Order No. 672, 114 FERC ¶ 61,104 at P 170.

<sup>18</sup> *North American Electric Reliability Corp.*, 116 FERC ¶ 61,062 at P 544, *order on reh'g and compliance*, 117 FERC ¶ 61,126 (2006), *order on compliance*, 118 FERC ¶ 61,030, *order on compliance*, 118 FERC ¶ 61,190, *order on reh'g*, 119 FERC ¶ 61,046 (2007), *aff'd sub nom. Alcoa Inc. v. FERC*, 564 F.3d 1342 (D.C. Cir 2009).

can participate in SERC activities without the changes requested by Public Citizen. The Joint Reply explains that consumer advocates may participate in the Reliability Standards development process, training and outreach efforts, and technical committees, provided they have the required technical knowledge and expertise.<sup>19</sup>

The Commission orders:

The Commission hereby approves the revisions to the SERC bylaws, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>19</sup> Joint Reply at 2.

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