

177 FERC ¶ 61,015
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;
James P. Danly, Allison Clements,
and Mark C. Christie.

North American Electric Reliability Corporation and Texas Reliability Entity, Inc. Docket No. RR21-3-000

ORDER CONDITIONALLY APPROVING REGIONAL ENTITY BYLAWS

(Issued October 7, 2021)

1. On February 25, 2021, the North American Electric Reliability Corporation (NERC) and Texas Reliability Entity, Inc. (Texas RE) jointly petitioned the Commission pursuant to section 215(e)(4) of the Federal Power Act (FPA) and 18 C.F.R. § 39.1 to approve revisions to the Texas RE bylaws that: (1) allow more flexibility in the scheduling of its annual meeting; and (2) specify governance procedures during an emergency. As discussed below, we direct NERC and Texas RE to modify the revised bylaws and submit a compliance filing to address these modifications within 30 days of the date of this order.

I. Joint Petition

2. NERC and Texas RE state that the proposed revisions to the Texas RE bylaws adopt best practices, increase efficiencies, and better align Texas RE's governance with Texas RE's mission to reduce risks to the reliability and security of the grid.¹

3. The proposed revisions to the Texas RE bylaws introduce language to allow the annual member meeting to be "held annually at a time and place determined by the Board," rather than require the annual meeting to be held in December of each year. The revisions related to the annual meeting also include that the Board may "conduct any necessary corporate business" generally, as opposed to electing Directors and announcing electronic election results.² Furthermore, NERC and Texas RE propose to revise the

¹ Joint Petition at 2.

² *Id.* at attach. 1, art. V, § 1.

bylaws to clarify that voting to elect Directors and to revise the bylaws may be conducted electronically.³

4. NERC and Texas RE also propose to add an Emergency Governance Provisions section to the bylaws that allows for a smaller quorum of voting Directors to approve actions during an emergency. NERC and Texas RE maintain that the section facilitates action when there is a “catastrophic event that results in a majority of the voting Directors unable to readily participate in a meeting to conduct business necessary to ensure the continuity of the Corporation (an “Emergency”).”⁴ As such, NERC and Texas RE propose to provide an exception to Texas RE’s normal quorum requirement from “a majority of the voting Directors of which at least three must be Independent,”⁵ to “three voting Directors, of which at least two shall be Independent Directors.”⁶ NERC and Texas RE explain that any actions of the Board in an Emergency would be approved “by a simple majority vote.”⁷

5. As part of this Emergency Governance Provisions section, NERC and Texas RE propose alternate notice and posting requirements to “ensure business continuity of the Corporation.”⁸ NERC and Texas RE explain that meetings called under these provisions would not be subject to the requirements for notice and posting included in article VI, section 4 of its bylaws, which require that, under normal non-emergency situations, Texas RE provide at least five business days public notice and post any related materials on its website prior to a scheduled board meeting.⁹ Instead, Texas RE would post the results of any action taken under the Emergency Governance Provisions on its website.¹⁰ Finally, NERC and Texas RE state that the “emergency governance provisions cease to

³ *Id.* at attach. 1, art. V, § 2.

⁴ *Id.* at 3 (quoting attach. 1, art. VI, § 8).

⁵ *Id.* at 3 (quoting attach. 1, art. VI, § 3).

⁶ *Id.* at 3 (quoting attach. 1, art. VI, § 8(a)).

⁷ *Id.* at 3 (quoting attach. 1, art. VI, § 8(a)).

⁸ *Id.* at 3-4 (quoting attach. 1, art. VI, § 8(b)).

⁹ *See Id.* at attach. 1, art. VI, § 4 (requiring notices and materials to be posted on Texas RE’s website at the same time the directors receive the material and five business days prior to the scheduled meeting).

¹⁰ *Id.* at 4 (quoting attach. 1, art. VI, § 8(b)).

be effective once the Emergency ends,” and procedures for notice and posting, quorum, and action approval will return to standard requirements.¹¹

II. Notice and Responsive Pleadings

6. The Commission issued public notice of the filing on February 26, 2021, with interventions and protests due before March 18, 2021. Public Citizen, Inc. (Public Citizen) filed a timely motion to intervene on March 1, 2021.

III. Discussion

A. Procedural Matters

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

B. Substantive Matters

8. Pursuant to section 215 of the FPA, subject to the modifications ordered below, we approve the proposed revisions to the Texas RE bylaws. Except as modified, we agree with the Joint Petition that the proposed revisions to the Texas RE bylaws increase efficiencies and better align Texas RE’s governance with Texas RE’s mission to reduce risks to the reliability and security of the grid.

9. We also identify one area of concern and, to ensure consistency with section 215 of the FPA, direct modifications to the bylaws, as discussed below. NERC and Texas RE must propose these changes in a filing to the Commission within 30 days from the date of this order.

1. Public Notice of Emergency Governance Meetings

a. Joint Petition

10. NERC and Texas RE propose revisions to the bylaws to allow a smaller number of voting directors to approve actions during a “catastrophic emergency” to ensure business continuity. In particular, NERC and Texas RE propose that such meetings called under the Emergency Governance Provisions are not subject to requirements for notices and materials to be posted on Texas RE’s website at least five business days prior to the

¹¹ *Id.* at 4 (quoting attach. 1, art. VI, § 8(c)).

scheduled meeting. Instead, Texas RE would post the results of any action taken at meetings called under the Emergency Governance Provisions on its website.¹²

b. Commission Determination

11. We find that the proposed absence of any public notice for emergency meetings of the Texas RE Board conducted under the Emergency Governance Provisions is not consistent with the transparency requirements in section 215 of the FPA. While it is reasonable to hold emergency meetings with little notice under extraordinary circumstances, the lack of any notice conflicts with the requirement in section 215(c)(2)(D) and (e)(4)(B) of the FPA that the Electric Reliability Organization and Regional Entities have rules that “provide for reasonable notice and opportunity for public comment, due process, openness, and balance of interests in exercising its duties.”¹³ Accordingly, we find that the proposed revisions in article VI, section 8(b) of the Texas RE bylaws do not meet this requirement.¹⁴

12. Therefore, we direct on compliance that NERC and Texas RE propose language in the Texas RE bylaws that affords some degree of public notice of such emergency meetings. For example, we note that article VI, section 7 in the Texas RE bylaws provides for a 2-hour public notice for meetings held under emergency but non-catastrophic situations.¹⁵ NERC and Texas RE should address on compliance whether this timeline could reasonably be adopted to provide notice when holding a Board meeting under the Emergency Governance Provisions of article VI, section 8, or justify an alternative proposed notice period.

¹² *Id.* at attach. 1, art. VI, § 8.

¹³ 16 U.S.C. 824o(c)(2)(d), (e)(4)(B).

¹⁴ Joint Petition at attach. 1, art. VI, § 8.

¹⁵ *Id.* at attach. 1, art. VI, § 7.

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The Commission orders:

(A) Texas RE's bylaws are hereby conditionally approved to become effective as of the date of this order, as discussed in the body of this order.

(B) NERC and Texas RE are hereby directed to submit a compliance filing within 30 days of the date of this order proposing to revise Texas RE's bylaws, as discussed in the body of this order.

By the Commission.

(S E A L)

Debbie-Anne A. Reese,
Deputy Secretary.

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