
**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

**North American Electric Reliability
Corporation**

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Docket No. RR19-4-001

**REQUEST OF THE NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION
TO ADVANCE FUNDS FROM ITS OPERATING CONTINGENCY RESERVES TO
SUPPORT DISSOLUTION OF FLORIDA RELIABILITY COORDINATING COUNCIL,
INC.'S REGIONAL ENTITY DIVISION**

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May 16, 2019

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

North American Electric Reliability Corporation) Docket No. RR19-04-001

**REQUEST OF THE NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION
TO ADVANCE FUNDS FROM ITS OPERATING CONTINGENCY RESERVES TO
SUPPORT DISSOLUTION OF FLORIDA RELIABILITY COORDINATING COUNCIL,
INC.'S REGIONAL ENTITY DIVISION**

I. INTRODUCTION

In connection with the Federal Energy Regulatory Commission’s (“Commission”) April 30, 2019 order¹ approving the dissolution of the Florida Coordinating Council, Inc.’s (“FRCC”) Regional Entity division, which included approval a \$630,000 special assessment to FRCC load-serving entities (“LSEs”) to be applied towards FRCC’s wind down costs, the North American Electric Reliability Corporation (“NERC”) submits this request for Commission approval to advance FRCC up to \$1,500,000 from NERC’s operating contingency reserves. This advance will enable FRCC to complete the wind down of its Regional Entity division. This request to advance funds stems from an unanticipated change in FRCC’s cash flow projection such that FRCC may not have sufficient funds to make payments contractually required by August 31, 2019 as part of its wind down obligations. In this Petition, NERC seeks Commission approval of the following:

- (1) Issuance of an order by June 15, 2019, approving the proposed one time advance of funds from NERC's operating contingency reserves to FRCC of up to \$1,500,000 for costs that FRCC is contractually obligated to incur to accomplish the wind down and dissolution of its Regional Entity division. This one-time

¹ See N. Am. Elec. Reliability Corp., 167 FERC ¶ 61,095 (2019) (“Dissolution Order”).

advance will only be made if FRCC does not have sufficient funds on July 1, 2019, to make required payments for wind down costs due on or before August 31, 2019. This one-time advance will supplement the Commission-approved \$630,000 special assessment as a source of funding for FRCC's wind down costs.

- (2) If deemed necessary by the Commission, treatment of this advance as an expenditure of NERC's operating contingency reserves exceeding \$500,000, and therefore, in accordance with Paragraph 7(b)(ii) of the settlement agreement between NERC and the Commission in Docket No. FA11-21-000 ("Paragraph 7(b)(ii)") and NERC's Working Capital and Operating Reserve Policy ("Reserve Policy"), approval of the advance.²
- (3) Permission for NERC to replenish its operating contingency reserves up to the amount advanced to FRCC, through the use of penalty funds received on or before February 29, 2020, from FRCC registered entities, and to the extent that such collections are not sufficient to replenish the amount advanced from NERC's operating contingency reserves, through a special assessment to FRCC LSEs to be assessed by March 1, 2020.
- (4) Amendment of the NERC-FRCC Termination Agreement,³ Attachment 1 hereto, consistent with this approach.

² See *N. Am. Elec. Reliability Corp.*, 142 FERC ¶ 61,042 (2013).

³ *Joint Petition of NERC, Florida Reliability Coordinating Council, Inc. and SERC Reliability Corporation for Approvals in Connection with the Dissolution of the Florida Reliability Coordinating Council, Inc.* ("Joint Petition"), Attachment 1, *Termination Agreement for the Amended and Restated Delegation Agreement Between the North American Electric Reliability Corporation and Florida Reliability Coordinating Council, Inc.*, Docket No. RR19-4-000 (Feb. 27, 2019).

II. NOTICES AND COMMUNICATIONS

Notices and communications with respect to this filing may be addressed to the following:⁴

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III. REQUEST FOR A SHORTENED COMMENT PERIOD AND EXPEDITED COMMISSION ACTION

NERC respectfully requests that the Commission consider this Petition on an expedited basis, to allow the issuance of an order by June 15, 2019. NERC also requests a shortened comment period of no more than 14 days. The requested timeline will enable FRCC to complete its wind down by August 31, 2019 – the “Termination Effective Date” specified in the NERC-FRCC Termination Agreement approved in the Dissolution Order. The need for expedited action, including a shortened comment period, is also warranted by the following:

- (1) the Commission’s Dissolution Order approving the dissolution of the FRCC Regional Entity and recognizing the need to provide funding for FRCC’s contractual wind down costs;
- (2) the unanimous approval of the approach for which approval is requested herein by FRCC’s Corporate Compliance, Finance, and Audit Committee on April 30, 2019;
- (3) the support of the approach for which approval is requested herein by the FRCC Board; and,

⁴ *Persons to be included in Commission’s official service list.

- (4) the actions were unanimously approved by the NERC Board of Trustees, which included all members of the Finance and Audit Committee, on May 7, 2019.

IV. PROPOSED TREATMENT OF THE ADVANCE TO FRCC AS AN EXPENDITURE FROM OPERATING CONTINGENCY RESERVES

If deemed necessary by the Commission, NERC proposes and requests approval of the proposed cash advance to FRCC as an expenditure pursuant to Paragraph 7(b)(ii) of the Settlement Agreement in Docket No. FA11-21-000 and NERC's Reserve Policy. Paragraph 7(b)(ii) specifies:

NERC will file for Commission review and approval Board-of-Trustees-approved proposals to expend \$500,000 or more from operating reserves designated for "unforeseen contingencies" (as that term is defined in NERC's Working Capital and Operating Reserve Policy (Reserve Policy)). Each such filing will include supporting materials in sufficient detail to justify the proposed expenditure. The filing will be deemed approved if the Commission does not act on it or issue a tolling order extending the time for Commission action within thirty days of the filing date.

[T]his requirement for Commission review and approval is triggered if any amount allocated from the unforeseen contingencies account of operating reserves plus any amount redirected from previously budgeted funds is, in the aggregate, \$500,000 or more for any one specific project or major activity in a program area.

The NERC Reserve Policy further provides that operating contingency reserves are maintained for "contingencies that were not anticipated, assumed to be likely or the timing of which was uncertain, at the time of preparation and approval of the company's business plan and budget." For operating contingency reserve expenditures in excess of \$1 million, "approval of the Board [of Trustees] is required, after notice to and recommendation by the Finance and Audit Committee." The NERC Board of Trustees approved the proposed expenditure on May 7, 2019.

The unanticipated contingency necessitating the proposed expenditure from NERC's operating contingency reserves is the FRCC Regional Entity's dissolution (which was not known or anticipated at the time NERC's 2019 Business Plan and Budget was prepared and submitted to

the Commission in August 2018). More specifically, the unanticipated contingency is the material change in the cash flow projection underlying the amount of the special assessment requested in the Joint Petition and approved in the Dissolution Order. The special assessment amount approved in the Dissolution Order was calculated based upon a projection of the cash flow available to FRCC as of July 1, 2019. FRCC counted penalty funds received, expected penalty funds through August 2019, as well as working capital surpluses, to calculate and limit the amount of the special assessment requested. This cash flow projection has changed, creating a risk that FRCC may not have sufficient funds for its wind down costs.

In order to ensure that the FRCC Regional Entity division can wind down its operations by August 31, 2019, NERC may need to advance FRCC up to \$1,500,000 from NERC's operating contingency reserves. NERC will advance the operating contingency reserves funds to FRCC *only if* FRCC does not have required wind down funds by July 1, 2019. NERC is projected to remain well above its target operating contingency reserve of \$3.0 million even after the proposed advance to FRCC. NERC's approved 2019 Business Plan and Budget provides for operating contingency reserves of \$3.8 million by year end 2019; however, NERC's most recent projections indicate an estimated year-end 2019 operating contingency reserve of \$5.6 million. Based on the foregoing analysis, NERC management has determined that up to \$1,500,000 can be expended from the operating contingency reserve in 2019, as proposed herein, without adversely impacting NERC's operating contingency reserves position and its ability to meet other unanticipated contingencies that could require the use of funds in the operating contingency reserve.

V. REQUEST FOR APPROVAL TO REPLENISH NERC'S OPERATING CONTINGENCY RESERVES WITH FRCC RE PENALTIES, AND, TO THE EXTENT SUFFICIENT PENALTIES ARE NOT AVAILABLE, BY AN ADDITIONAL SPECIAL ASSESSMENT

NERC seeks the Commission's approval to allow NERC to replenish its operating

contingency reserves, by the amount advanced to FRCC, through penalty funds collected from current or former FRCC registered entities, and to the extent such penalty funds are insufficient, through an additional special assessment to former FRCC LSEs.

To enable NERC to replenish its reserves using penalty funds, NERC seeks the Commission's approval to deviate from any applicable rules and policies, including Section 1107 of the NERC Rules of Procedure, in order to use FRCC RE penalty funds to replenish its operating contingency reserves by the amount advanced to FRCC for wind down costs (up to \$1,500,000). Any FRCC RE penalty funds exceeding the amount NERC advances to FRCC will be reimbursed to the former FRCC LSEs on a pro rata basis based on Net Energy for Load.

This approach is consistent with the Dissolution Order. In the Dissolution Order, the Commission authorized use of penalty funds *not otherwise applied towards wind down costs*, to be reimbursed to FRCC LSEs on a pro rata basis.⁵ This authorization provided for the penalty funds to be applied towards FRCC's wind down costs, and to the extent not needed for this purpose, to benefit the FRCC LSEs. NERC now seeks Commission approval to advance up to \$1,500,000 to the FRCC Regional Entity on or shortly after July 1, 2019 to help fund the FRCC wind down costs. NERC further proposes that any FRCC RE penalty funds received on or before February 29, 2020, will go to NERC to replenish its operating contingency reserves up to the amount advanced to FRCC to complete its wind down. Any such penalty funds which are not used to replenish the operating contingency reserves (because they exceed the amount advanced to FRCC) will be reimbursed to the FRCC LSEs on a pro rata basis.

NERC also requests that the Commission approve the amendments to the NERC-FRCC Termination Agreement, shown in redline on Attachment 1 to this Petition, which are consistent

⁵ Dissolution Order at P 13.

with this approach.

NERC also requests Commission approval, pursuant to Section 1108 of the NERC Rules of Procedure, to allow NERC to replenish its operating contingency reserves using a special assessment *solely to* the former FRCC LSEs *only if* sufficient penalty funds have not been received on or before February 29, 2020 to fully replenish NERC's operating contingency reserves up to the advanced amount. In Order No. 672, the Commission stated that for "the ERO to request emergency funding," NERC may request FERC approval for special assessments "[o]n a demonstration of unforeseen and extraordinary circumstances Such filing shall include supporting materials to justify the requested funding." Section 1108 of the NERC Rules of Procedure provides that a request for a special assessment should include "any departure from the approved funding formula or method." The "unforeseen and extraordinary circumstance" warranting this request for a Special Assessment is FRCC's revised cash flow projection, which occurred well after the 2019 business plan and budget cycle. The special assessment will be issued *only if* FRCC RE penalties received on or before February 29, 2020 are not sufficient to replenish the operating contingency reserves up to the amount advanced to FRCC.

Additionally, if and to the extent deemed necessary by the Commission, NERC seeks approval for a departure from allocation requirements for funding statutory activities specified in Section 1102 of the NERC Rules of Procedure. The special assessment would only be issued to the former FRCC LSEs because the proposed advance to FRCC will have facilitated the successful wind down of FRCC Regional Entity. If the proposed additional special assessment is approved by the Commission and utilized by NERC, NERC will bill the FRCC LSEs on the same basis as they were billed for the initial special assessment authorized in the Dissolution Order. NERC will issue the special assessment, if and to the extent required, by March 1, 2020, with a payment due

date within 45 days.

NERC will submit an informational filing, on or before June 1, 2020, to the Commission documenting whether an advance from NERC's operating contingency reserves was provided to FRCC, and in what amount, with supporting information showing how the specific amount advanced was determined. NERC will also detail how and from what sources (consistent with the requests approved by the Commission) NERC replenished its operating contingency reserves. Additionally, consistent with the NERC-FRCC Termination Agreement, NERC will submit to the Commission the required reconciliations of the FRCC RE's budgeted to actual expenditures for 2019 by the required filing date for such annual reconciliations of May 30, 2020.

VI. CONCLUSION

For the reasons set forth herein, NERC respectfully requests the following:

- (1) Issuance of an order, by June 15, 2019, approving the proposed one time advance of funds from NERC's operating contingency reserves to FRCC of up to \$1,500,000 for costs that FRCC is contractually obligated to incur to accomplish the wind down and dissolution of its Regional Entity division. This one-time advance will only be made if FRCC does not have sufficient funds on July 1, 2019, to make required payments for wind down costs due on or before August 31, 2019. This one-time advance will supplement the Commission-approved \$630,000 special assessment as a source of funding for FRCC's wind down costs.
- (2) If deemed necessary by the Commission, treatment of this advance, as an expenditure of NERC's operating contingency reserves exceeding \$500,000, and therefore, in accordance with Paragraph 7(b)(ii) of the settlement agreement

between and the Commission in Docket No. FA11-21-000 and NERC's Working Capital and Operating Reserve Policy, approval of the advance.⁶

- (3) Permission for NERC to replenish its operating contingency reserves up to the amount advanced to FRCC, through the use of penalty funds received on or before February 29, 2020, from former FRCC registered entities, and to the extent that such collections are not sufficient to replenish the amount advanced from NERC's operating contingency reserves, through a special assessment to former FRCC LSEs to be assessed by March 1, 2020 if penalties are not sufficient.
- (4) Approval of the proposed amendments to the NERC-FRCC Termination Agreement, as shown in Attachment 1 hereto, consistent with this approach.

Respectfully submitted,

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⁶ See *supra* n.2.

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document upon all parties listed on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C. this 16th day of May, 2019.

/s/ Nina Johnston

Nina Johnston
*Counsel for North American Electric
Reliability Corporation*

ATTACHMENT 1

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**Amended Termination Agreement for the Amended and
Restated Delegation Agreement between the North American
Electric Reliability Corporation and Florida Reliability
Coordinating Council, Inc.**

AMENDED TERMINATION AGREEMENT FOR THE
AMENDED AND RESTATED DELEGATION AGREEMENT
BETWEEN THE
NORTH AMERICAN ELECTRIC RELIABILITY
CORPORATION
AND FLORIDA RELIABILITY
COORDINATING COUNCIL, INC.

THIS AGREEMENT (“Termination Agreement”), by and between the North American Electric Reliability Corporation (“NERC”) and Florida Reliability Coordinating Council, Inc. (“FRCC”) (collectively the “Parties”) is intended to provide for the following: (i) the termination of the *Amended and Restated Delegation Agreement between North American Electric Reliability Corporation and Florida Reliability Coordinating Council, Inc.* (“RDA”) entered into on January 1, 2016, including, without limitation, the responsibilities and obligations of NERC and FRCC thereunder, (ii) an orderly and organized wind-down and dissolution of the activities of the FRCC Regional Entity (“FRCC RE”), a division of FRCC, and, (iii) an orderly and seamless transition of FRCC’s Delegated Authority as set forth in the RDA (the “FRCC Delegated Authority”) to SERC Reliability Corporation (“SERC,” which the Parties intend to serve as the sole successor Regional Entity and sometimes referred to herein as the “Transferee Regional Entity”). Capitalized terms used in this Termination Agreement that are not defined herein shall have the same meaning as in the RDA or, if not defined in the RDA, shall have the meaning defined in Appendix 2 (*Definitions Used in the Rules of Procedure*) of the NERC Rules of Procedure.

RECITALS

- I. NERC and FRCC entered into an RDA, effective as of January 1, 2016, wherein NERC and FRCC agreed that FRCC would carry out Delegated Authority and delegation-related activities in furtherance of NERC’s responsibilities as the Electric Reliability

Organization (“ERO”) under Subtitle A of the Electricity Modernization Act of 2005 which added Section 215 to the Federal Power Act (16 U.S.C. § 824o) (the “Act”).

- II. NERC and FRCC have mutually agreed to terminate the RDA and to terminate the FRCC RE’s status and activities as the Regional Entity for the FRCC Region.
- III. The Parties desire an orderly and seamless transfer and transition of the FRCC Delegated Authority to SERC.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Termination Agreement, NERC and FRCC, intending to be bound, agree as follows:

1. The Parties propose that the terms of the Termination Agreement become effective as of the date upon which the Federal Energy Regulatory Commission (the “Commission”) approves this Termination Agreement (such date, the “Effective Date”) in substantially the form proposed.
2. FRCC RE shall cease to exist as a Regional Entity and complete wind down of its business on August 31, 2019 (the “Termination Effective Date”).
3. The Parties agree to engage in such of the activities contemplated by this Termination Agreement according to the terms specified herein, with the objective of terminating the RDA and transferring the FRCC Delegated Authority to SERC.
4. Termination of the RDA is subject to (i) the Commission’s approval of this Termination Agreement, as proposed, and (ii) NERC and FRCC completing their respective obligations that are specified in this Termination Agreement.
5. Unless otherwise specified herein, NERC must complete and document the following activities by the Termination Effective Date:
 - a. Issue a determination specifying that by July 1, 2019, SERC shall be the

Transferee Regional Entity for all Registered Entities in the FRCC Region, subject to the Commission's approval.

- b. Seek approval to amend the SERC Bylaws to include revisions to: (i) Section 6.1 Executive Committee Representatives to add three seats for integration of FRCC entities; and (ii) Section 4.7 Election of Board Officers and Executive Committee to introduce staggered terms for two groups of Board Executive Committee members.
- c. Based on the determinations made pursuant to Section 3.a of this Termination Agreement, NERC shall identify the Load-Serving Entity ("LSEs") in the FRCC Region and specify that those LSEs shall, as of the Termination Effective Date, be included as LSEs within SERC for purposes of determining, allocating, and billing NERC statutory funding assessments.
- d. Assist with the transition of all compliance and enforcement processes for Registered Entities in the FRCC Region to SERC by July 1, 2019.
- e. Request and obtain Commission approval of the following:
 - i. the funding of the wind-down costs for FRCC beyond FRCC's expected available cash¹ as of July 1, 2019, including costs associated with payments due under retention agreements for key FRCC RE employees and key shared corporate employees supporting the FRCC RE for its wind down. In addition to expected available cash, FRCC will use the following to fund its wind down costs:

¹ "Available cash" means any available working capital attributed to the RE's operations not needed for current or anticipated costs through the termination date and wind-down, including excess funds from Q1 and Q2 2019 assessments and prior year budget variances.

1. a Special Assessment,
 2. FRCC RE penalties² processed and submitted³ between July 1, 2018, and February 29, 2020, and,
 3. first and second quarter assessment funds in 2019.
- ii. a Special Assessment, with appropriate supporting budget and other information provided to NERC by FRCC.
 - iii. deviate from any applicable rules and policies, including Section 1107 of the NERC Rules of Procedure (“ROP”), as needed, to permit use of Penalty payments processed and submitted to NERC between July 1, 2018 and February 29, 2020, as follows:
 1. Penalties processed and submitted between July 1, 2018 and February 29, 2020, for FRCC to use to pay for the costs of the wind-down and dissolution of the FRCC RE;
 2. Penalties received before Feburary 29, 2020, for NERC to replenish its operating contingency reserves in the event that NERC makes a cash advance to FRCC to complete its wind-down and dissolution of the FRCC RE,
 3. Any Penalty monies processed and submitted that are not otherwise applied towards wind-down costs, or to replenish the

² FRCC penalties are defined as penalties associated with instances of noncompliance with Reliability Standards by FRCC RE entities that were part of the FRCC RE caseload prior to the date in which entities are transferred to SERC. The definition does not include any noncompliance by FRCC in its capacity as a Reliability Coordinator or Planning Authority.

³ Processed and submitted shall mean penalties for FRCC entities billed but not yet collected, penalties for FRCC entities pending Commission approval, and penalties for FRCC entities submitted to NERC and pending NERC Board of Trustees Compliance Committee approval.

NERC operating contingency reserves by the amount advanced to FRCC, to be reimbursed to FRCC entities on a pro-rata basis.

- iv. deviate from any applicable rules and policies, as needed, to permit the following treatment of assessments:

1. apply Commission-approved 2019 FRCC first and second quarter assessments towards the wind-down costs of FRCC RE; and,
 2. transfer Commission-approved 2019 FRCC third and fourth quarter assessments to SERC by August 31, 2019 and October 31, 2019, respectively, contingent upon the approval of the Special Assessment.

- v. exemption of the FRCC RE Registered Entities from compliance with *Regional Reliability Standard PRC-006-SERC-02* in favor of continued enforcement of *NERC Reliability Standard PRC-006-3 – Automatic Underfrequency Load Shedding* until such time as the Regional Reliability Standard is reaffirmed or revised through the SERC Regional Reliability Standards Development Procedure. If the FRCC entities later become subject to *SERC Reliability Standard PRC-006-SERC-02* as a result of the SERC Regional Reliability Standards Development Procedure, FRCC entities shall have three (3) years to comply.

- vi. this Termination Agreement and any other agreements, documents, or proposed actions necessary to effectuate the termination of the RDA, the transfer of Registered Entities in the FRCC Region to SERC, and the transfer and transition of the FRCC Delegated Authority to SERC.

- vii. approval of any NERC governance or internal process documents to which amendments are necessary or appropriate to account for or reflect the dissolution of the FRCC RE and the termination of the RDA.
- f. Amend the SERC bylaws to account for or to reflect the dissolution of the FRCC RE and the termination of the NERC-FRCC RDA and submit the amended SERC bylaws to the NERC Board of Trustees and the Commission for approval.
- g. Coordinate with FRCC to ensure appropriate disconnection of any internet, computer, or software interfaces and connections that FRCC or employees or contractors of FRCC or FRCC RE have with NERC and/or with any other Regional Entity by reason of the FRCC RE Delegated Authority. The requirements of this section will not extend to any internet, computer, or software interfaces and connections that FRCC or its employees or contractors maintain in connection with FRCC's status and functions as a Registered Entity.
- h. Submit an informational filing to the Commission on or before June 1, 2020 documenting whether an advance from NERC's operating contingency reserves was provided to FRCC, and in what amount, with supporting information showing how the specific amount advanced was determined, and documenting how NERC's operating contingency reserves were replenished for the amount advanced to FRCC;
- i. Subsequent to the Termination Effective Date, take any other steps required in connection with the dissolution and wind down of the FRCC RE and the termination and transfer of the FRCC RE Delegated Authority to SERC, as the Transferee Regional Entity, including, submitting to the Commission any required reconciliations of the FRCC RE's budgeted to actual expenditures per

- the annual business plan and budget process and schedule; and,
- j. Verify the completion of the steps identified in this section of the Termination Agreement through a certification signed by an officer of NERC. The certification shall be submitted to FRCC no later than one hundred and fifty (150) days following the Termination Effective Date.
6. Unless otherwise specified, by the Termination Effective Date, FRCC must complete the following activities:
- a. Assist with the transition of any relevant files, documents, records, and other information pertaining to the FRCC Delegated Authority to SERC or to NERC, in compliance with Section 12(c) of the RDA. As used in this Termination Agreement, “files, documents, records and other information” shall be construed broadly and, without limiting the foregoing, shall include all material maintained or stored in any form or format, including in paper form or in electronic media, that is still subject to regulatory retention requirements.
 - b. Without limiting the generality of this requirement, transfer to SERC, as the Transferee Regional Entity, all relevant files, documents, records, and other information relating to:
 - i. any regional reliability standards development projects in progress as of the Termination Effective Date;
 - ii. registration of Registered Entities in the FRCC Region;
 - iii. completed and in-progress certification activities for Registered Entities (Reliability Coordinators, Balancing Authorities and Transmission Operators) in the FRCC Region;
 - iv. FRCC RE’s completed or in-progress compliance monitoring and

- enforcement activities with respect to the Registered Entities in the FRCC Region;
- v. completed Technical Feasibility Exception Requests (“TFE Requests”) and Material Change Reports submitted by Registered Entities in the FRCC Region;
 - vi. in-progress reviews of TFE Requests and Material Change Reports submitted by Registered Entities in the FRCC Region; and
 - vii. FRCC RE’s monitoring of the progress of Registered Entity with approved TFE Requests in implementing compensating and mitigating measures and in achieving Strict Compliance with the Applicable Requirement;
 - viii. previously-reviewed and in-progress Bulk Electric System Exception Requests submitted by Registered Entities in the FRCC Region;
 - ix. previously-completed and in-progress reliability assessments (e.g., annual long-term reliability assessments, seasonal reliability assessments, and special reliability studies) of the FRCC Region (whether conducted as an assessment solely of the FRCC Region or as part of an assessment of a broader region, including the entire North American Bulk Power System); and
 - x. previously-completed and in-progress analyses, in which FRCC RE participated, of system events occurring in the FRCC Region.
- c. Submit to NERC detailed descriptions or estimates of the reallocation of any Commission-approved 2018 and/or 2019 assessment funds for the wind-down and dissolution of the FRCC RE and the termination and transfer of

the FRCC Delegated Authority, including completion of the obligations set forth in this Agreement and other revenue sources for the FRCC RE on April 1, 2019 and on May 1, 2019. NERC will use this information, as needed, to support any filings with the Commission necessary in connection with the termination and transfer of the FRCC Delegated Authority.

- d. Provide NERC the estimated value of FRCC penalties processed and submitted and to be applied to reduce the Special Assessment by May 1, 2019.
 - e. Use any Special Assessment authorized by the Commission to pay for wind down costs, including the above-referenced retention agreements for fourteen (14) FRCC RE staff and nine (9) key shared corporate staff upon dissolution of FRCC RE.
 - f. Submit to NERC unaudited quarterly financial reports for all 2019 quarters leading up to and including the Termination Effective Date.
 - g. Submit to NERC, by April 1, 2020, audited financial statements for the FRCC RE for 2019.
 - h. Submit to NERC, by April 1, 2020, a reconciliation of actual expenditures for the FRCC RE for 2019 as compared to the Commission-approved FRCC RE budget for 2019.
 - i. Verify the completion of the steps identified in this section of the Termination Agreement through a certification signed by an officer of FRCC no later than one hundred and fifty (150) days following the Termination Effective Date.
7. All notices, demands, requests, and other communications required or permitted by or provided for in this Termination Agreement shall be given in writing to FRCC or NERC, at the respective addresses set forth below, or at such other address as FRCC or

NERC shall designate for itself in writing in accordance with this Section 5, and shall be delivered by hand, reputable overnight courier, or e-mail which is verified as being received:

If to FRCC:

Attn: Stacy Dochoda
President and Chief Executive Officer
Florida Reliability Coordinating Council, Inc.
3000 Bayport Drive, Suite 600
Tampa, Florida 33607
sdochoda@frcc.com

If to NERC:

Attn: James B. Robb
President and Chief Executive Officer
North American Electric Reliability Corporation
3353 Peachtree Road NE, Suite 600 – North Tower
Atlanta, GA 30326
Jim.Robb@nerc.net

8. Neither this Termination Agreement nor any of the terms hereof may be amended unless such amendment is made in writing, signed by FRCC and NERC, and approved by the Commission.
9. This Termination Agreement constitutes the entire agreement on its subject matter, and supersedes all prior agreements and understanding, both written and oral, between FRCC and NERC as to the subject matter of this Termination Agreement.
10. This Termination Agreement may be executed in counterparts and each counterpart shall have the same force and effect as the original.
11. The following provisions of the RDA shall survive its termination:
 - a. Section 13 (Limitation of Liability),
 - b. Section 14 (No Third-Party Beneficiaries),
 - c. Section 15 (Confidentiality), provided, however, that FRCC or NERC may

transfer Confidential Information to SERC, as the Transferee Regional Entity,
in accordance with this Termination Agreement, and,

- d. Exhibit E (Funding) - Section 8 (NERC Review of Regional Entity Financial Records), provided, that NERC's rights under Exhibit E – Section 8 shall survive for twelve (12) months following the Termination Effective Date.

NOW, THEREFORE, FRCC and NERC have caused this Termination Agreement to be executed by their duly authorized representatives, to be effective as of the Effective Date.

ATTACHMENT 1

Redline

**Amended Termination Agreement for the Amended and
Restated Delegation Agreement between the North American
Electric Reliability Corporation and Florida Reliability
Coordinating Council, Inc.**

AMENDED TERMINATION AGREEMENT FOR THE
AMENDED AND RESTATED DELEGATION AGREEMENT
BETWEEN THE
NORTH AMERICAN ELECTRIC RELIABILITY
CORPORATION
AND FLORIDA RELIABILITY
COORDINATING COUNCIL, INC.

THIS AGREEMENT (“Termination Agreement”), by and between the North American Electric Reliability Corporation (“NERC”) and Florida Reliability Coordinating Council, Inc. (“FRCC”) (collectively the “Parties”) is intended to provide for the following: (i) the termination of the *Amended and Restated Delegation Agreement between North American Electric Reliability Corporation and Florida Reliability Coordinating Council, Inc.* (“RDA”) entered into on January 1, 2016, including, without limitation, the responsibilities and obligations of NERC and FRCC thereunder, (ii) an orderly and organized wind-down and dissolution of the activities of the FRCC Regional Entity (“FRCC RE”), a division of FRCC, and, (iii) an orderly and seamless transition of FRCC’s Delegated Authority as set forth in the RDA (the “FRCC Delegated Authority”) to SERC Reliability Corporation (“SERC,” which the Parties intend to serve as the sole successor Regional Entity and sometimes referred to herein as the “Transferee Regional Entity”). Capitalized terms used in this Termination Agreement that are not defined herein shall have the same meaning as in the RDA or, if not defined in the RDA, shall have the meaning defined in Appendix 2 (*Definitions Used in the Rules of Procedure*) of the NERC Rules of Procedure.

RECITALS

- I. NERC and FRCC entered into an RDA, effective as of January 1, 2016, wherein NERC and FRCC agreed that FRCC would carry out Delegated Authority and delegation-related activities in furtherance of NERC’s responsibilities as the Electric Reliability

Organization (“ERO”) under Subtitle A of the Electricity Modernization Act of 2005 which added Section 215 to the Federal Power Act (16 U.S.C. § 824o) (the “Act”).

- II. NERC and FRCC have mutually agreed to terminate the RDA and to terminate the FRCC RE’s status and activities as the Regional Entity for the FRCC Region.
- III. The Parties desire an orderly and seamless transfer and transition of the FRCC Delegated Authority to SERC.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Termination Agreement, NERC and FRCC, intending to be bound, agree as follows:

1. The Parties propose that the terms of the Termination Agreement become effective as of the date upon which the Federal Energy Regulatory Commission (the “Commission”) approves this Termination Agreement (such date, the “Effective Date”) in substantially the form proposed.
2. FRCC RE shall cease to exist as a Regional Entity and complete wind down of its business on August 31, 2019 (the “Termination Effective Date”).
3. The Parties agree to engage in such of the activities contemplated by this Termination Agreement according to the terms specified herein, with the objective of terminating the RDA and transferring the FRCC Delegated Authority to SERC.
4. Termination of the RDA is subject to (i) the Commission’s approval of this Termination Agreement, as proposed, and (ii) NERC and FRCC completing their respective obligations that are specified in this Termination Agreement.
5. Unless otherwise specified herein, NERC must complete and document the following activities by the Termination Effective Date:
 - a. Issue a determination specifying that by July 1, 2019, SERC shall be the

Transferee Regional Entity for all Registered Entities in the FRCC Region, subject to the Commission's approval.

- b. Seek approval to amend the SERC Bylaws to include revisions to: (i) Section 6.1 Executive Committee Representatives to add three seats for integration of FRCC entities; and (ii) Section 4.7 Election of Board Officers and Executive Committee to introduce staggered terms for two groups of Board Executive Committee members.
- c. Based on the determinations made pursuant to Section 3.a of this Termination Agreement, NERC shall identify the Load-Serving Entity ("LSEs") in the FRCC Region and specify that those LSEs shall, as of the Termination Effective Date, be included as LSEs within SERC for purposes of determining, allocating, and billing NERC statutory funding assessments.
- d. Assist with the transition of all compliance and enforcement processes for Registered Entities in the FRCC Region to SERC by July 1, 2019.
- e. Request and obtain Commission approval of ~~a petition providing for~~ the following:
 - i. the funding of the wind-down costs for FRCC beyond FRCC's expected available cash¹ as of July 1, 2019, including costs associated with payments due under retention agreements for key FRCC RE employees and key shared corporate employees supporting the FRCC RE for its wind down. In addition to expected available cash, FRCC will use the

¹ "Available cash" means any available working capital attributed to the RE's operations not needed for current or anticipated costs through the termination date and wind-down, including excess funds from Q1 and Q2 2019 assessments and prior year budget variances.

following to fund its wind down costs:

1. a Special Assessment,
2. FRCC RE penalties² processed and submitted³ between July 1, 2018, and ~~December 31, 2019~~February 29, 2020, and,
 3. first and second quarter assessment funds in 2019.
- ii. a Special Assessment, with appropriate supporting budget and other information provided to NERC by FRCC.
- iii. deviate from any applicable rules and policies, including Section 1107 of the NERC Rules of Procedure (“ROP”), as needed, to permit use of Penalty payments processed and submitted to NERC between July 1, 2018 and ~~December 31, 2019~~February 29, 2020, as follows:
 1. Penalties processed and submitted between July 1, 2018 and ~~July 1, 2019~~February 29, 2020, for FRCC to use to pay for the costs of the wind-down and dissolution of the FRCC RE;
 - 1.2. Penalties received before Febrary 29, 2020, for NERC to replenish its operating contingency reserves and in the event that NERC makes a cash advance to FRCC to complete its wind-down and dissolution of the FRCC RE,
 - 2.3. Any Penalty monies processed and submitted ~~between July 1,~~

² FRCC penalties are defined as penalties associated with instances of noncompliance with Reliability Standards by FRCC RE entities that were part of the FRCC RE caseload prior to the date in which entities are transferred to SERC. The definition does not include any noncompliance by FRCC in its capacity as a Reliability Coordinator or Planning Authority.

³ Processed and submitted shall mean penalties for FRCC entities billed but not yet collected, penalties for FRCC entities pending Commission approval, and penalties for FRCC entities submitted to NERC and pending NERC Board of Trustees Compliance Committee approval.

- ~~2019, and December 31, 2019, or that are~~ not otherwise applied towards wind-down costs, or to replenish the NERC operating contingency reserves by the amount advanced to FRCC, to be reimbursed to FRCC entities on a pro-rata basis.
- iv. deviate from any applicable rules and policies, as needed, to permit the following treatment of assessments:
1. apply Commission-approved 2019 FRCC first and second quarter assessments towards the wind-down costs of FRCC RE; and,
 2. transfer Commission-approved 2019 FRCC third and fourth quarter assessments to SERC by August 31, 2019 and October 31, 2019, respectively, contingent upon the approval of the Special Assessment.
- v. exemption of the FRCC RE Registered Entities from compliance with *Regional Reliability Standard PRC-006-SERC-02* in favor of continued enforcement of *NERC Reliability Standard PRC-006-3 – Automatic Underfrequency Load Shedding* until such time as the Regional Reliability Standard is reaffirmed or revised through the SERC Regional Reliability Standards Development Procedure. If the FRCC entities later become subject to *SERC Reliability Standard PRC-006-SERC-02* as a result of the SERC Regional Reliability Standards Development Procedure, FRCC entities shall have three (3) years to comply.
- vi. this Termination Agreement and any other agreements, documents, or proposed actions necessary to effectuate the termination of the RDA, the

- transfer of Registered Entities in the FRCC Region to SERC, and the transfer and transition of the FRCC Delegated Authority to SERC.
- vii. approval of any NERC governance or internal process documents to which amendments are necessary or appropriate to account for or reflect the dissolution of the FRCC RE and the termination of the RDA.
- f. Amend the SERC bylaws to account for or to reflect the dissolution of the FRCC RE and the termination of the NERC-FRCC RDA and submit the amended SERC bylaws to the NERC Board of Trustees and the Commission for approval.
- g. Coordinate with FRCC to ensure appropriate disconnection of any internet, computer, or software interfaces and connections that FRCC or employees or contractors of FRCC or FRCC RE have with NERC and/or with any other Regional Entity by reason of the FRCC RE Delegated Authority. The requirements of this section will not extend to any internet, computer, or software interfaces and connections that FRCC or its employees or contractors maintain in connection with FRCC's status and functions as a Registered Entity.
- h. Submit an informational filing to the Commission on or before June 1, 2020 documenting whether an advance from NERC's operating contingency reserves was provided to FRCC, and in what amount, with supporting information showing how the specific amount advanced was determined, and documenting how NERC's operating contingency reserves were replenished for the amount advanced to FRCC;

h.i. Subsequent to the Termination Effective Date, take any other steps required in connection with the dissolution and wind down of the FRCC RE and the termination and transfer of the FRCC RE Delegated Authority to SERC, as the

Transferee Regional Entity, including, submitting to the Commission any required reconciliations of the FRCC RE's budgeted to actual expenditures per the annual business plan and budget process and schedule; and,

i.j. Verify the completion of the steps identified in this section of the Termination Agreement through a certification signed by an officer of NERC. The certification shall be submitted to FRCC no later than one hundred and fifty (150) days following the Termination Effective Date.

6. Unless otherwise specified, by the Termination Effective Date, FRCC must complete the following activities:

a. Assist with the transition of any relevant files, documents, records, and other information pertaining to the FRCC Delegated Authority to SERC or to NERC, in compliance with Section 12(c) of the RDA. As used in this Termination Agreement, “files, documents, records and other information” shall be construed broadly and, without limiting the foregoing, shall include all material maintained or stored in any form or format, including in paper form or in electronic media, that is still subject to regulatory retention requirements.

b. Without limiting the generality of this requirement, transfer to SERC, as the Transferee Regional Entity, all relevant files, documents, records, and other information relating to:

- i. any regional reliability standards development projects in progress as of the Termination Effective Date;
- ii. registration of Registered Entities in the FRCC Region;
- iii. completed and in-progress certification activities for Registered Entities (Reliability Coordinators, Balancing Authorities and Transmission

- Operators) in the FRCC Region;
- iv. FRCC RE's completed or in-progress compliance monitoring and enforcement activities with respect to the Registered Entities in the FRCC Region;
 - v. completed Technical Feasibility Exception Requests ("TFE Requests") and Material Change Reports submitted by Registered Entities in the FRCC Region;
 - vi. in-progress reviews of TFE Requests and Material Change Reports submitted by Registered Entities in the FRCC Region; and
 - vii. FRCC RE's monitoring of the progress of Registered Entity with approved TFE Requests in implementing compensating and mitigating measures and in achieving Strict Compliance with the Applicable Requirement;
 - viii. previously-reviewed and in-progress Bulk Electric System Exception Requests submitted by Registered Entities in the FRCC Region;
 - ix. previously-completed and in-progress reliability assessments (e.g., annual long-term reliability assessments, seasonal reliability assessments, and special reliability studies) of the FRCC Region (whether conducted as an assessment solely of the FRCC Region or as part of an assessment of a broader region, including the entire North American Bulk Power System); and
 - x. previously-completed and in-progress analyses, in which FRCC RE participated, of system events occurring in the FRCC Region.
- c. Submit to NERC detailed descriptions or estimates of the reallocation of any

Commission-approved 2018 and/or 2019 assessment funds for the wind-down and dissolution of the FRCC RE and the termination and transfer of the FRCC Delegated Authority, including completion of the obligations set forth in this Agreement and other revenue sources for the FRCC RE on April 1, 2019 and on May 1, 2019. NERC will use this information, as needed, to support any filings with the Commission necessary in connection with the termination and transfer of the FRCC Delegated Authority.

- d. Provide NERC the estimated value of FRCC penalties processed and submitted and to be applied to reduce the Special Assessment by May 1, 2019.
 - e. Use any Special Assessment authorized by the Commission to pay for wind down costs, including the above-referenced retention agreements for fourteen (14) FRCC RE staff and nine (9) key shared corporate staff upon dissolution of FRCC RE.
 - f. Submit to NERC unaudited quarterly financial reports for all 2019 quarters leading up to and including the Termination Effective Date.
 - g. Submit to NERC, by April 1, 2020, audited financial statements for the FRCC RE for 2019.
 - h. Submit to NERC, by April 1, 2020, a reconciliation of actual expenditures for the FRCC RE for 2019 as compared to the Commission-approved FRCC RE budget for 2019.
 - i. Verify the completion of the steps identified in this section of the Termination Agreement through a certification signed by an officer of FRCC no later than one hundred and fifty (150) days following the Termination Effective Date.
7. All notices, demands, requests, and other communications required or permitted by or

provided for in this Termination Agreement shall be given in writing to FRCC or NERC, at the respective addresses set forth below, or at such other address as FRCC or NERC shall designate for itself in writing in accordance with this Section 5, and shall be delivered by hand, reputable overnight courier, or e-mail which is verified as being received:

If to FRCC:

Attn: Stacy Dochoda
President and Chief Executive Officer
Florida Reliability Coordinating Council, Inc.
3000 Bayport Drive, Suite 600
Tampa, Florida 33607
sdochoda@frcc.com

If to NERC:

Attn: James B. Robb
President and Chief Executive Officer
North American Electric Reliability Corporation
3353 Peachtree Road NE, Suite 600 – North Tower
Atlanta, GA 30326
Jim.Robb@nerc.net

8. Neither this Termination Agreement nor any of the terms hereof may be amended unless such amendment is made in writing, signed by FRCC and NERC, and approved by the Commission.
9. This Termination Agreement constitutes the entire agreement on its subject matter, and supersedes all prior agreements and understanding, both written and oral, between FRCC and NERC as to the subject matter of this Termination Agreement.
10. This Termination Agreement may be executed in counterparts and each counterpart shall have the same force and effect as the original.
11. The following provisions of the RDA shall survive its termination:
 - a. Section 13 (Limitation of Liability),

- b. Section 14 (No Third-Party Beneficiaries),
- c. Section 15 (Confidentiality), provided, however, that FRCC or NERC may transfer Confidential Information to SERC, as the Transferee Regional Entity, in accordance with this Termination Agreement, and,
- d. Exhibit E (Funding) - Section 8 (NERC Review of Regional Entity Financial Records), provided, that NERC's rights under Exhibit E – Section 8 shall survive for twelve (12) months following the Termination Effective Date.

NOW, THEREFORE, FRCC and NERC have caused this Termination Agreement to be executed by their duly authorized representatives, to be effective as of the Effective Date.