

163 FERC ¶ 61,094  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Kevin J. McIntyre, Chairman;  
Cheryl A. LaFleur, Neil Chatterjee,  
Robert F. Powelson, and Richard Glick.

North American Electric Reliability Corporation,  
Midwest Reliability Organization, and  
SERC Reliability Corporation

Docket No. RR18-3-000

ORDER GRANTING APPROVALS IN CONNECTION WITH THE DISSOLUTION  
OF THE SOUTHWEST POWER POOL REGIONAL ENTITY

(Issued May 4, 2018)

1. On March 5, 2018, the North American Electric Reliability Corporation (NERC), Midwest Reliability Organization (MRO), and SERC Reliability Corporation (SERC) (collectively, Petitioners) filed a joint petition requesting certain Commission approvals in connection with the dissolution of the Southwest Power Pool Regional Entity (SPP RE) and the transfer of registered entities within the SPP RE footprint to MRO and SERC (Joint Petition). Specifically, Petitioners seek Commission approval, in accordance with section 215(e)(4) of the Federal Power Act (FPA) and section 39.8 of the Commission's regulations, of (1) the termination of the Amended and Restated Delegation Agreement (Regional Delegation Agreement) between NERC and Southwest Power Pool, Inc. (SPP),<sup>1</sup> pursuant to the terms of a proposed Termination Agreement (Termination Agreement); (2) a proposal to transfer the registered entities within SPP RE to MRO and SERC; and (3) revisions to the Regional Delegation Agreements between NERC and MRO and between NERC and SERC to reflect the changed geographic footprints of MRO and SERC. In this order, we grant the requested approvals to reflect the dissolution of the SPP RE and the transfer of its registered entities to MRO and SERC, as discussed below.

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<sup>1</sup> The proposed Termination Agreement provides that SPP RE is a division of SPP, a regional transmission organization (RTO). The Regional Delegation Agreement between NERC and SPP provides that SPP RE is an organization established to develop and enforce Reliability Standards within the geographic boundaries of SPP.

## I. Background

2. On February 3, 2006, the Commission issued Order No. 672 as a first step in implementing the requirements of section 215 of the FPA governing electric reliability.<sup>2</sup> Among other things, Order No. 672 codified the criteria that an entity must satisfy to be certified as the Electric Reliability Organization (ERO), as well as the criteria under which the ERO may enter into an agreement to delegate authority to a Regional Entity.<sup>3</sup> On July 20, 2006, the Commission certified NERC as the ERO pursuant to FPA section 215(c), and accepted NERC's proposed *pro forma* delegation of certain ERO functions to its designated Regional Entities with the understanding that the document would undergo further modification as NERC entered into negotiations with candidate Regional Entities.<sup>4</sup>

3. In April 2007, NERC entered into separate Regional Delegation Agreements with eight Regional Entities, including the three Regional Entities at issue in this proceeding, SPP RE, MRO and SERC.<sup>5</sup> In those agreements, NERC delegated certain ERO functions to the Regional Entities, including the authority to audit, investigate, and otherwise ensure that users, owners, and operators of the Bulk-Power System comply with NERC's mandatory Reliability Standards, all subject to ERO oversight. Since then, the Commission has approved revised Regional Delegation Agreements between NERC and the Regional Entities, including with SPP RE, MRO and SERC.<sup>6</sup>

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<sup>2</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, *order on reh'g*, Order No. 672-A, FERC Stats. & Regs. ¶ 31,212 (2006).

<sup>3</sup> See 18 C.F.R. §§ 39.3, 39.8 (2017).

<sup>4</sup> *North American Electric Reliability Corp.*, 116 FERC ¶ 61,062, (ERO Certification Order), *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).

<sup>5</sup> See *North American Electric Reliability Corp.*, 119 FERC ¶ 61,060, *order on reh'g*, 120 FERC ¶ 61,260 (2007).

<sup>6</sup> See *North American Electric Reliability Corp.*, 153 FERC ¶ 61,135 (2015); see also *North American Electric Reliability Corp.*, 133 FERC ¶ 61,061 (2010), *order denying reh'g*, 134 FERC ¶ 61,179 (2011) (March 2011 Order).

## II. Joint Petition

4. In the March 5, 2018 Joint Petition, Petitioners state that NERC and SPP mutually agreed in July 2017 to terminate the responsibilities of the SPP RE as a NERC Regional Entity. Petitioners state that SPP's decision to dissolve the SPP RE function stemmed from the diverging footprints of SPP RE and SPP, and the strategic decision for SPP to focus on its core registered entity functions of reliability coordination, markets, and transmission planning. Petitioners explain that NERC and SPP entered into a Termination Agreement designed to set forth each party's obligations in support of the termination of the Regional Delegation Agreement between NERC and SPP and the transition of SPP's Delegated Authority in a manner that maintains reliability and enhances the efficiency of the ERO Enterprise.<sup>7</sup>

5. Under the Termination Agreement, NERC is responsible for, *inter alia*, identifying a transferee Regional Entity for each registered entity in the SPP RE footprint. SPP is responsible for transferring relevant files and documents pertaining to delegation-related activities to the transferee Regional Entities. SPP is also responsible for submitting certain financial information to NERC following termination of its Regional Entity activities, including a description of the re-allocation of monies from SPP RE's Commission-approved statutory budget towards the costs of the wind-down and dissolution of the SPP RE. Further, SPP must submit to NERC a reconciliation of SPP RE's actual expenses with its budgeted expenses for 2018.

6. Petitioners state that SPP RE anticipates that it can address transitional and wind-down costs using its approved 2018 statutory assessment funding. Petitioners state that, following the termination of the Regional Delegation Agreement between NERC and SPP, any funds in excess of SPP RE's statutory assessments over statutory expenditures and reserves will be transferred to MRO and SERC, and will be allocated on the basis of the relative net energy for load (NEL) of the load-serving entities (LSEs) transferred to each of MRO and SERC. To the extent required, NERC requests the Commission's approval to deviate from the application of penalty monies as specified in Rule 1107 of the NERC Rules of Procedure, in order to allow SPP RE to apply any penalty funds it

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<sup>7</sup> The Termination Agreement defines "SPP Delegated Authority" as SPP RE's "responsibilities and activities as a Regional Entity set forth in the [Regional Delegation Agreement]." Joint Petition, Att. 1 at 1.

received or receives on or after July 1, 2017 to its wind-down activities, or to transfer any remaining unused penalty collections to MRO and SERC.<sup>8</sup>

7. Petitioners state that the NERC Rules of Procedure do not contain specific criteria for the transfer to other Regional Entities of multiple registered entities in the event of a Regional Entity dissolution. However, Petitioners indicate that NERC was informed by the criteria in section 1208 of its Rules of Procedure in proposing revised boundaries for MRO and SERC. Petitioners state that those criteria call for the evaluation of the location of relevant facilities in relation to the geographic and electric boundaries of the transferee Regional Entity, the impact of the proposed transfer on other owners, operators, and users of the Bulk-Power System, and the impact of the proposed transfer on the current and future staffing, resources, budgets, and assessments of the transferee Regional Entity. Petitioners state that the proposed transfers of registered entities are consistent with the Commission's general guidance regarding changes in a Regional Entity's boundary, in which the Commission has noted that such changes "should be carefully considered and should serve to improve the effectiveness or efficiency of the Regional Entity's and NERC's administration of reliability, and should not merely benefit an individual registered entity."<sup>9</sup>

8. In evaluating where each registered entity should be assigned, NERC determined that the effectiveness and efficiency of the ERO Enterprise's administration of reliability would be best served by placing transmission paths within common Regional Entity boundaries. NERC excluded two of the four Regional Entities with which SPP RE has a geographic boundary, Western Electricity Coordinating Council and Texas Reliability Entity, because they are in different interconnections than the entities in SPP RE, leaving MRO and SERC as potential transferee Registered Entities. Ultimately, after performing a transmission corridor analysis and considering the functional relationships between registered entities, NERC proposed to transfer 109 SPP RE registered entities to MRO

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<sup>8</sup> Section 1107.2 of the NERC Rules of Procedure provides that:

All funds from financial Penalties assessed in the United States received by the entity initiating the compliance monitoring and enforcement process shall be applied as a general offset to the entity's budget requirement for the subsequent fiscal year, if received by July 1, or for the second subsequent fiscal year, if received on or after July 1. Funds from financial Penalties shall not be directly applied to any program maintained by the entity conducting the compliance monitoring and enforcement process.

<sup>9</sup> Joint Petition at 12 (quoting *North American Electric Reliability Corp.*, 133 FERC ¶ 61,061 at P 72).

and 14 to SERC, with one entity to be registered in both MRO and SERC. NERC posted the proposed transfer assignments for stakeholder comment.

9. Petitioners indicate that both MRO and SERC expect to be able to integrate the transferred SPP RE entities with limited increases in administrative (indirect) costs. With respect to additional program resources (*e.g.* Compliance Monitoring and Enforcement, Reliability Assessment, Event Analysis and Training and Education), MRO expects to add up to 12 full-time equivalent staff members (FTEs) and SERC expects to add up to 4 FTEs, both by 2019. Neither MRO nor SERC anticipate the need for additional assessment funding for 2018, with any additional funds needed expected to come from existing working capital, operating reserves, or existing lines of credit. NERC projects that the existing LSEs in MRO will see a decrease in assessments in 2019 on a per-MWh of NEL basis, and that SERC LSEs will see little or no impact in assessments in 2019 as a result of the addition of the SPP RE registered entities.

10. With respect to the transfer of compliance monitoring and enforcement activities, NERC indicates that it believes the risk of any material gaps in oversight due to the transfer has been mitigated, in part, due to the transfer to MRO and SERC of compliance history data and the planned increases in FTEs.

11. Petitioners state that the only changes being proposed to the existing Regional Delegation Agreements between NERC and MRO and between NERC and SERC are to their respective Exhibit As, which describe the regional boundaries of MRO and SERC, to reflect the transfers of the SPP RE registered entities.

12. Petitioners note that SERC is currently the Compliance Enforcement Authority responsible for compliance monitoring and enforcement with respect to SPP's registered functions as an RTO. Petitioners state that, as part of the dissolution of SPP RE and related transfers described in the Joint Petition, NERC will act as the Compliance Enforcement Authority for SPP for two years following the termination of the Regional Delegation Agreement between NERC and SPP in order to facilitate the transition from SERC as the Compliance Enforcement Authority for the registered functions of SPP.<sup>10</sup>

13. Petitioners request that the transfers of registered entities to MRO and SERC become effective as of July 1, 2018. To allow time for additional wind-down activities by SPP RE, including the transfer of files, documents, and other accounting related matters, Petitioners request that the termination of the Regional Delegation Agreement between NERC and SPP become effective as of August 31, 2018.

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<sup>10</sup> In addition, SPP, which is currently registered in MRO, WECC and SERC, will be deregistered in SERC as of the termination of the Compliance Monitoring and Enforcement Program Agreement between SERC and SPP (SERC-SPP CMEP Agreement).

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

14. Notice of Petitioners' March 5, 2018 filing was published in the *Federal Register*, 83 Fed. Reg. 10,715 (2018), with interventions and protests due on or before March 26, 2018. SPP, Westar Energy, Inc., American Public Power Association, and Golden Spread Electric Cooperative, Inc. filed timely motions to intervene. AE Power Services, LLC, Flat Ridge Wind Energy, LLC, and Flat Ridge 2 Wind Energy LLC filed a timely joint motion to intervene. Southwestern Power Administration filed an out-of-time motion to intervene. Sunflower Electric Power Corporation and Mid-Kansas Electric Company, Inc. filed an out-of-time joint motion to intervene. No comments or protests were filed.

15. The timely, unopposed motions to intervene are granted pursuant to the operation of Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2018). Given the early stage of this proceeding, we also grant the untimely motions to intervene.

### **IV. Discussion**

16. As discussed below, we grant the requested approvals to reflect the dissolution of the SPP RE and the transfer of its registered entities to MRO and SERC. We find that Petitioners have demonstrated that the proposal, including changes to the MRO and SERC Delegation Agreements to reflect the transfers of registered entities, will "promote effective and efficient administration of bulk-power system reliability," in accordance with FPA section 215(e)(4).<sup>11</sup>

17. We find that NERC's approach applying the criteria in section 1208 of NERC's Rules of Procedure is appropriate for evaluating the proposed dissolution. NERC's assessment of how to allocate the registered entities amongst the two Regional Entities is consistent with the criteria in section 1208 governing individual requests to change a Regional Entity boundary, and with applicable Commission precedent. In particular, in the March 2011 Order, the Commission found that "it is clear that the [s]ection 1208 criteria are designed to promote effective and efficient administration of Bulk-Power System reliability,"<sup>12</sup> and we find that NERC appropriately considered these criteria to determine that the registered entities within SPP RE should be transferred to MRO and SERC. Among other things, NERC found that it was appropriate to assign the entities amongst MRO and SERC, given that they are the only two Regional Entities within the same interconnection that share a geographic boundary with SPP RE. We are satisfied

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<sup>11</sup> See 16 U.S.C. § 824o(e)(4) (2012) (the ERO may enter into an agreement to delegate authority to a regional entity if, *inter alia*, "the agreement promotes effective and efficient administration of bulk-power system reliability").

<sup>12</sup> March 2011 Order, 134 FERC ¶ 61,179 at P 9.

that Petitioners and SPP have considered and established mechanisms to mitigate against the risk of material gaps in oversight of compliance and enforcement activities due to the transfer of registered entities, including (1) adding FTEs to accommodate increased workload, (2) assessing that MRO and SERC have sufficient funds available through existing working capital and operating reserves and respective lines of credit, (3) taking measures to ensure a seamless transfer of compliance history from SPP RE to MRO and SERC, (4) ensuring that certain previously-scheduled audits are performed, and (5) reviewing the audit schedule for other SPP RE registered entities to assess and to identify any areas of risks that would warrant audits in 2018.<sup>13</sup> Accordingly, we approve the Joint Petition's proposal to terminate the Regional Delegation Agreement between NERC and SPP, effective August 31, 2018, in accordance with the terms of the Termination Agreement, and to transfer the registered entities within SPP RE to MRO and SERC, effective July 1, 2018, as requested. We also approve the proposed revisions to the Regional Delegation Agreements between NERC and MRO and between NERC and SERC to reflect the change in regional boundaries due to the transfer of SPP RE registered entities to MRO and SERC.

18. Petitioners state that, in 2010, the Commission approved SERC as the Compliance Enforcement Authority for the registered functions of SPP in the SPP RE footprint in accordance with the SERC-SPP CMEP Agreement.<sup>14</sup> Petitioners state that to facilitate the transition from SERC as the Compliance Enforcement Authority for the registered functions of SPP, NERC will act as the Compliance Enforcement Authority for SPP for two years following the termination of the Regional Delegation Agreement between NERC and SPP.<sup>15</sup> We find that NERC's transition plan is reasonable and consistent with NERC's enforcement authority and expect NERC to notify the Commission prior to the end of the two-year period to explain if NERC will continue its role as Compliance Enforcement Authority, or if another entity will assume that role.<sup>16</sup>

19. NERC also requests Commission approval to deviate from the requirements of Section 1107 of the NERC Rules of Procedure to allow SPP RE to apply any penalty funds to its wind-down activities, or to transfer any remaining unused penalties to MRO

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<sup>13</sup> See Joint Petition at 16-19.

<sup>14</sup> Joint Petition at 22 (*citing North American Electric Reliability Corp.*, 132 FERC ¶ 61,024; *order granting reh'g*, 133 FERC ¶ 61,190 (2010)).

<sup>15</sup> Joint Petition at 22.

<sup>16</sup> NERC, as the ERO, retains authority under FPA section 215(e) to act as the Compliance Enforcement Authority over any user, owner, or operator of the Bulk-Power System. *See, e.g.*, Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 654.

and SERC, rather than using such funds to offset SPP RE's budget for the next year.<sup>17</sup> We find that NERC's request is appropriate, in light of the dissolution of SPP RE, and is consistent with section 1107.4 of the NERC Rules of Procedure, which allows Regional Entities to obtain a waiver of this requirement, if approved.<sup>18</sup> Accordingly, we approve the request to deviate from section 1107 of the NERC Rules of Procedure, to the extent necessary, to allow SPP to use penalty funds received on or after July 1, 2017 for its wind-down activities and to transfer any remaining unused penalty funds to MRO and SERC in accordance with the Termination Agreement.

The Commission orders:

(A) Petitioners' proposal to terminate the Regional Delegation Agreement between NERC and SPP and to transfer the registered entities within SPP RE to MRO and SERC, both in accordance with the terms of the Termination Agreement, are hereby approved, as discussed in the body of this order.

(B) Petitioners' proposed revisions to the Regional Delegation Agreement between NERC and MRO and to the Regional Delegation Agreement between NERC and SERC are hereby approved, as discussed in the body of this order.

(C) NERC's request to deviate from section 1107 of the NERC Rules of Procedure is hereby approved, 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>17</sup> Joint Petition at 10-11.

<sup>18</sup> Section 1107.4 of the NERC Rules of Procedure provides that “[e]xceptions or alternatives to the foregoing provisions will be allowed if approved by NERC and by [the Commission].”