

128 FERC ¶ 61,244  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

North American Electric Reliability Corporation

Docket No. RR09-4-000

ORDER ACCEPTING PROPOSED AMENDMENTS TO THE BYLAWS OF  
SOUTHWEST POWER POOL, INC. AND REQUIRING COMPLIANCE FILING

(Issued September 17, 2009)

1. On May 21, 2009, the North American Electric Reliability Corporation (NERC) filed a petition requesting approval of proposed amendments to the bylaws of Southwest Power Pool, Inc. (SPP). As discussed below, pursuant to section 215(f) of the Federal Power Act (FPA) and section 39.10(a) of the Commission's regulations,<sup>1</sup> we accept the proposed amendments pertaining to the SPP Regional Entity function and direct NERC and SPP to submit a compliance filing.<sup>2</sup>

**I. Background**

2. In an April 2007 order, the Commission accepted delegation agreements between NERC, as the Commission-certified Electric Reliability Organization (ERO), and eight Regional Entities, including SPP Regional Entity.<sup>3</sup> SPP is a "hybrid" organization, which

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<sup>1</sup> 16 U.S.C. § 824o(f) (2006); 18 C.F.R. § 39.10(a) (2009).

<sup>2</sup> In a separate filing, in Docket No. ER09-1192-000, SPP requested that the Commission approve, pursuant to section 205 of the FPA, 16 U.S.C. § 824d (2006), the same bylaw amendments addressed in this proceeding, as well as other proposed amendments to the SPP bylaws that do not pertain to or affect the SPP Regional Entity function. SPP's filing made pursuant to section 205 of the FPA is addressed in a separate order issued concurrently with the immediate order, *Southwest Power Pool, Inc.*, 128 FERC ¶ 61,245 (2009).

<sup>3</sup> *N. Am. Elec. Reliability Corp.*, 119 FERC ¶ 61,060 (2007).

functions as both a Regional Entity and an operator of Bulk-Power System facilities as a regional transmission organization (RTO).

3. Pursuant to section 39.10 of the Commission's regulations, a Regional Entity must submit proposed Regional Entity Rule changes, including bylaw changes, to the ERO and, subsequently, to the Commission for approval.<sup>4</sup> SPP has one set of bylaws for both its Regional Entity functions and its activities as a RTO. While the Commission accepted this arrangement, it also required SPP to advise the ERO of all bylaw amendments (including those SPP believes are not related to Regional Entity functions), so that the ERO can determine whether such amendments have reliability impacts or would impair the SPP Regional Entity's performance of Regional Entity functions.<sup>5</sup>

## **II. Proposed Amendments to SPP's Bylaws**

4. In its petition, NERC submitted proposed SPP bylaw amendments pertaining to the SPP Regional Entity function, as well as proposed amendments not affecting this function. With respect to the SPP Regional Entity function, NERC submitted, among others, revisions to sections 9.3 (titled, "RE General Manager") and 9.7.3 (term and election of SPP Regional Entity trustees) of SPP's bylaws.<sup>6</sup> In section 9.3, SPP introduces a new position, namely, RE General Manager, which replaces the Executive Director of Compliance. Revised section 9.3 also provides that the President of SPP, Inc. shall ensure that the new RE General Manager "has adequate resources, access to information, and the full cooperation of Staff and Organization Groups for the effective execution of his/her duties."

5. SPP proposes various revisions to section 9.7.3, which addresses the term and election of Regional Entity trustees. In subsection (e), SPP proposes to amend the voting process for one and for multiple candidates or nominees to include "negative voting," i.e., the ability to cast a vote "against the nominee." Moreover, SPP proposes to require a super majority (defined in new section 3.9.1 as sixty-six percent) to determine the election where a single candidate is nominated for a single trustee position but a simple

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<sup>4</sup> *Id.* P 245 & n.135, P 404 ("bylaws are 'rules,' under our regulations").

<sup>5</sup> *See N. Am. Elec. Reliability Corp.*, 120 FERC ¶ 61,260, at P 16-20 (2007).

<sup>6</sup> SPP states that the proposed revised bylaw sections pertaining to SPP's Regional Entity functions include: 3.2, 3.8, 3.9.2, 3.14, 3.16, 4.6.1, 9.2, 9.3, 9.4, 9.6, 9.7.1, 9.7.2.3, 9.7.3, 9.7.3(a), 9.7.3(b), 9.7.3(d), 9.7.3(e)(1) and (2), 9.7.4, 9.7.5, and 9.7.6. NERC Filing, Transmittal Letter at 2. The filing also provides the proposed revisions which do not affect SPP's Regional Entity function.

majority where multiple candidates are nominated for one position. SPP also revised section 9.7 to include incorporation of stakeholder requests regarding the vetting and nomination of candidates and provisions concerning Regional Entity trustees' resignation and removal, the filling of vacancies, and procedures for adjusting Regional Entity trustee meetings. Additionally, SPP proposes revisions to section 9.7, governing the investments of Regional Entity trustees, which SPP explains will require all the Regional Entity trustees' investments to be made in accordance with the same standards that apply to SPP's board of directors.

6. SPP also proposes a revision to section 3.9.2 to indicate that when an Organizational Group<sup>7</sup> is acting as an Regional Entity Standards Development Team, voting will be conducted in accordance with the SPP Standards Development Process in order to comply with procedures for developing Regional Entity reliability standards.<sup>8</sup> Additionally, SPP proposes clean-up revisions to other reliability provisions to adopt consistent terminology and remove references to the SPP compliance staff.

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

7. Notice of the filing was published in the *Federal Register*, 74 Fed. Reg. 26,391 (2009), with interventions and protests due on or before June 11, 2009. None was filed.

### **IV. Discussion**

8. We accept the reliability-related amendments to SPP's bylaws, which are the subject of this proceeding. However, as discussed below, we have concerns regarding several of the amended provisions, and direct NERC and SPP to submit a compliance filing addressing our concerns.

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<sup>7</sup> Section 1.12 of SPP's bylaws defines an Organizational Group as "[a] group, other than the Board of Directors, comprising a committee or working group that is charged with specific responsibilities toward accomplishing SPP's mission."

<sup>8</sup> Section 9.5 of SPP's bylaws state that "[f]or purposes of a Standards Development Team, participation and voting will be open to any interested party...without regard to membership status in SPP."

**A. Amendments to Sections 9.2 and 9.3**

9. In the amended bylaws, SPP proposes to replace the position of Executive Director of Compliance with the RE General Manager.<sup>9</sup> The amended bylaw provisions further provides that the RE General Manager shall be selected by the SPP Regional Entity trustees, and the Regional Entity staff shall report to the trustees through the RE General Manager. The revised section also states that “[t]he President shall ensure that the RE General Manager has adequate resources, access to information, and the full cooperation of Staff and Organization Groups for the effective execution of his/her duties.”

10. The Commission has several concerns regarding the proposed amendment to the SPP bylaws that would institute the new position of RE General Manager. While the bylaws provide specific duties for the Regional Entity staff (section 9.4) and the Regional Entity trustees (section 9.7), the bylaws do not include a similar statement of duties for the new position of RE General Manager. In the Audit Order, the Commission required that SPP’s governance structure create a “very strong separation” of the SPP Regional Entity functions from the function of SPP as an RTO.<sup>10</sup> A description of the RE General Manager’s specific duties will further enhance the required strong separation by ensuring that the RE General Manager’s duties are well-defined, comprehensive, and enable the RE General Manager to manage the Regional Entity function independently. Further, a specific list of RE General Manager duties, similar to the lists in sections 9.4 and 9.7 of the SPP bylaws, will allow the Commission and other interested entities to understand

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<sup>9</sup> In Order No. 672, the Commission expressed concern about “hybrid” organizations that consist of both a Regional Entity and an RTO that operates Bulk-Power System facilities, such as SPP. *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 698-700, *order on reh’g*, Order No. 672-A, FERC Stats. & Regs. ¶ 31,212 (2006). Because of this concern, the Commission’s Office of Enforcement conducted an audit to determine whether SPP was in compliance with (1) its bylaws; (2) the delegation agreement between SPP and NERC, as conditioned by relevant Commission orders; and (3) other obligations and responsibilities as approved by the Commission. *Sw. Power Pool, Inc.*, 126 FERC ¶ 61,045, at P 10 (2009) (Audit Order). In its filing in the immediate proceeding, NERC states that, in early 2009, SPP created and staffed the new position of “Regional Entity (RE) General Manager,” which was endorsed by the Commission in its order approving the staff audit report.

<sup>10</sup> Audit Order, 126 FERC ¶ 61,045 at P 2 (citing Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 698-700).

who is responsible for overseeing SPP Regional Entity's ongoing activities. Accordingly, we direct NERC and SPP to submit a compliance filing that includes modifications to proposed section 9.3 of the SPP bylaws that identify the specific duties of the RE General Manager, similar to the lists of duties set forth in the SPP bylaws for Regional Entity staff and Regional Entity trustees.

11. In addition, section 9.3, as amended, provides that “[t]he President shall ensure that the RE General Manager has adequate resources, access to information, and the full cooperation of Staff and Organization Groups for the effective execution of his/her duties.” Some concerns raised in the Audit Order were that SPP Inc. management had supervisory control over SPP Regional Entity employees and that SPP Inc. management had the ability to influence the Regional Entity expenditures.<sup>11</sup> The Audit Report recommended that SPP implement processes and procedures to ensure the Regional Entity has full authority over its budgeted spending. We understand that, pursuant to SPP's proposal, the SPP President will ensure that the RE General Manager has the resources, cooperation, and access to information that the RE General Manager and his staff determine to be needed to accomplish the Regional Entity functions. Based upon this understanding, the Commission finds that this provision fosters a strong separation between the SPP RTO and SPP Regional Entity functions. Accordingly, we approve this provision as just, reasonable, not unduly discriminatory or preferential, and in the public interest, subject to the conditions discussed above.

**B. Amendments to Section 9.7.3**

12. SPP proposed to amend section 9.7.3 to address the term and election of Regional Entity trustees. SPP's proposed amendments to subsection 9.7.3(e) would allow members to vote against, as well as for, nominees for a Regional Entity trustee position. It is not clear how the votes *against* a nominee would affect the votes *for* each nominee and, consequently, what constitutes a “simple majority” in this context. Moreover, there is no provision for what happens if none of the candidates achieves a simple majority. Accordingly, we direct NERC and SPP to submit in a compliance filing a fuller explanation of the procedure in subsection 9.7.3(e), including clear examples of the “negative voting” as applied to “one candidate” and to “multiple candidates” as described in this subsection.

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<sup>11</sup> *Id.* P 14. For example, prior to the audit, neither the trustees nor any Regional Entity employee could approve an unbudgeted expenditure greater than \$10,000. *Id.*

**C. Other Matters**

13. The Commission accepts NERC's petition with regard to all other matters that are not discussed above in this order.

The Commission orders:

(A) NERC's petition to modify SPP bylaws is hereby accepted, as discussed in the body of this order.

(B) NERC and SPP are hereby directed to submit a compliance filing within 45 days of the date of this order, as discussed in the body of this order.

By the Commission. Commissioner Kelly is not participating.

( S E A L )

Kimberly D. Bose,  
Secretary.