

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

NORTH AMERICAN ELECTRIC) Docket No. RR10-6-000
RELIABILITY CORPORATION)

**MOTION TO INTERVENE AND COMMENTS OF
TEXAS REGIONAL ENTITY, AN INDEPENDENT DIVISION OF
ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC.**

Pursuant to Rule 212 and 214 of the Federal Energy Regulatory Commission’s (“Commission” or “FERC”) Rules of Practice and Procedure, 18 C.F.R. §§385.212 and 385.214, Texas Regional Entity (“Texas RE”), an independent division of Electric Reliability Council of Texas, Inc. hereby files this Motion to Intervene and Comments in response to the February 19, 2010 *Petition of the North American Electric Reliability Corporation for Approval of Delegation Agreement with Texas Reliability Entity, Inc. and 2010 Business Plan and Budget of Texas Reliability Entity, Inc.* (“Petition”). For the reasons set forth below, Texas RE should be granted intervenor status and permitted to file comments in this matter.

I. NOTICES AND COMMUNICATIONS

Notices and communications with respect to this filing may be addressed to the following persons and each should be included on the Commission’s official service list:

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II. BACKGROUND

Texas RE is one of the eight Regional Entities to which the North American Electric Reliability Corporation (“NERC”) in 2007 delegated certain statutory functions under Section 215 of the Federal Power Act (“FPA”).¹ Pursuant to a delegation agreement between NERC and Texas RE (“Delegation Agreement”) that was originally approved by the Commission in 2007 and which has been subsequently amended, Texas RE monitors and enforces reliability standards for the Bulk-Power System in a geographic region that covers most of Texas, known as the “ERCOT Region.”²

Texas RE is an independent division of Electric Reliability Council of Texas, Inc. (“ERCOT ISO”), which is the independent system operator for the ERCOT Region. ERCOT ISO is registered for seven NERC reliability functions: Reliability Coordinator, Balancing Authority, Transmission Operator, Transmission Service Provider, Planning Authority, Resource Planner, and Interchange Authority. Like all registered entities, ERCOT ISO is subject to monitoring and enforcement of its compliance with applicable reliability standards and may face penalties for any noncompliance. Although the Commission has approved NERC’s delegation of authority to the Texas RE to develop and enforce compliance and reliability standards in the ERCOT Region, the Commission has expressed concerns that more should be done to foster a very strong separation between Texas RE and ERCOT ISO.³

¹ Pursuant to Section 215(e)(4) of the FPA and 18 C.F.R. §39.8, the Commission originally approved a delegation agreement between NERC and Texas RE in an order issued April 19, 2007. *North American Electric Reliability Corp.*, 119 FERC ¶ 61,060 (2007). The Commission approved an amended and restated delegation agreement between NERC and Texas RE in an order issued Dec. 19, 2008. *North American Electric Reliability Corp.*, 119 FERC ¶ 61,300 (2008).

² *Id.*

³ Most recently, such concerns were expressed in a report of the Commission’s Office of Enforcement titled *Audit of Regional Entity Independence of Texas Regional Entity*, Docket No. PA09-6-000 (Dec. 10, 2009), and in the Commission’s Order approving the audit report, *Order Approving Audit Report, Determining Issue of Separation of Functions, and Directing Compliance and Other Corrective Actions*, 130 FERC ¶61,025 (2010)(noting that the audit report “identified some areas of concern that Texas RE must address to

On June 15, 2009, the Texas RE Board of Directors approved a plan to take actions necessary to completely separate Texas RE from ERCOT ISO. Texas RE conferred with NERC regarding its plans, and on January 1, 2010, a new nonprofit corporation called the Texas Reliability Entity, Inc. ("New Texas RE") was formed to act as successor to the original Texas RE. New Texas RE is not affiliated with, and is independent from, ERCOT ISO.

On February 19, 2010, NERC filed its Petition in this docket requesting Commission approval of the following: (1) an Amended and Restated Delegation Agreement between NERC and New Texas RE, delegating authority to New Texas RE to develop, and to monitor and enforce compliance with, reliability standards in the ERCOT Region; (2) termination of the existing Amended and Restated Delegation Agreement between NERC and the original Texas RE, to be effective on the date New Texas RE takes over such functions; and (3) approval of an Amended 2010 Business Plan and Budget for New Texas RE, and increased assessments to load-serving entities and their designees within the ERCOT Region.⁴

III. MOTION TO INTERVENE

Texas RE hereby moves to intervene in the above captioned-proceeding, because it has a direct and substantial interest in this matter. Pursuant to the Delegation Agreement and this Commission's Orders approving and amending it, Texas RE is the Regional Entity responsible for developing, monitoring, and enforcing NERC Reliability Standards in the ERCOT Region and no other party can properly represent the interests of Texas RE. Texas RE submits that it satisfies the Commission's rules for intervention

eliminate remaining independence concerns and foster a 'very strong' separation of Texas RE and ERCOT ISO . .").

⁴ *Petition of the North American Electric Reliability Corporation for Approval of Delegation Agreement with Texas Reliability Entity, Inc. and 2010 Business Plan and Budget of Texas Reliability Entity, Inc.*, Docket No. RR10-6-000 (Feb. 19, 2010)("Petition").

and respectfully requests that the Commission grant it intervention as a party to these proceedings and permit it to file comments in this docket.

IV. COMMENTS

Texas RE supports NERC's Petition and its request for expeditious consideration and approval of the Petition on or about May 20, 2010. In the Commission's January 2, 2010 *Order Approving Audit Report, Determining Issue of Separation of Functions, and Directing Compliance and Other Corrective Actions*⁵ ("Audit Report Order"), the Commission accepted the audit report finding that "Texas RE and ERCOT ISO operations under a shared board of directors and the ERCOT ISO CEO serving as a member on the Texas RE board raise potential conflict of interest and independence concerns"⁶ and noted that some of these concerns "would not exist if Texas RE goes forth with its plans to structurally separate from ERCOT."⁷ Expeditious approval of the Petition would facilitate a prompt complete structural separation between the delegated Regional Entity and the ERCOT ISO. The Petition calls for the existing Amended Restated Delegation Agreement with the original Texas RE to be terminated, and in its place, duties of the Regional Entity would be delegated to New Texas RE, which is not affiliated with and is structurally separate from ERCOT ISO. Although the original Texas RE has taken significant and effective steps to ensure its independence from ERCOT ISO, the complete structural separation of the two entities would ensure that ERCOT ISO could not improperly influence monitoring, compliance, or enforcement of reliability standards by the delegated Regional Entity.

⁵ 130 FERC ¶61,025 (2010).

⁶ *Id.* at P 12.

⁷ *Id.* at P 17.

Structural separation of the Regional Entity from ERCOT ISO would also help streamline compliance monitoring, audits, investigations, and any enforcement actions involving ERCOT ISO. Under current practices, NERC leads the audits, investigations, and any enforcement actions involving ERCOT ISO. With structural separation of the Regional Entity, New Texas RE could lead such audits, investigations, and enforcement actions using local Regional Entity staff, which could result in cost efficiencies. A structural separation with an effective date of July 1, 2010 would allow New Texas RE to take responsibility for a compliance audit of the ERCOT ISO that is scheduled to take place later this year.⁸

Texas RE respectfully requests that the Commission consider and approve the Petition expeditiously on or about May 20, 2010 to address time-sensitive budgeting and planning considerations. Approval by that date is necessary and would allow a sufficient amount of time for the Regional Entity to structurally separate from ERCOT ISO and transition its functions to New Texas RE by July 1, 2010. As shown in the proposed Amended 2010 Business Plan and Budget of Texas Reliability Entity, Inc., structural separation will require additional one-time start-up costs and ongoing operating expenses.⁹ Expedient approval of an amended business plan and budget would allow New Texas RE to fully implement the structural separation by July 1, 2010 and would authorize the billing of increased assessments to load-serving entities and their designees during the third and fourth quarters of the calendar year. This would allow a more appropriate matching of assessments closer in time with expenditures and allow New Texas RE to maintain its liquid cash reserve.

⁸ The on-site portion of the compliance audit of ERCOT ISO is scheduled for May 18-20, 2010, but could be rescheduled to the second half of 2010.

⁹ See Petition, Attachment 4, Amended 2010 Business Plan and Budget of Texas Reliability Entity, Inc. (Feb. 19, 2010).

A July 1, 2010 effective date would also simplify accounting and reporting of the activities of the original Texas RE and New Texas RE, because it is the first day of a calendar quarter. As part of the structural separation, New Texas RE would no longer contract with ERCOT ISO to provide certain general and administrative services such as information technology, human resources, insurance, and finance and accounting. Texas RE requests that the Commission act on the Petition on or about May 20, 2010 to allow New Texas RE sufficient time prior to July 1, 2010 to finalize plans to hire or transfer employees, and to finalize any necessary contracts for general and administrative services and equipment previously provided by ERCOT ISO. The plan year for employee benefits at Texas RE and ERCOT ISO ends on June 30, 2010. Approving the Petition, which allows for structural separation at or near July 1, 2010, would also allow New Texas RE to transition employees to any new employee benefits programs in a manner that produces the greatest cost efficiencies and least disruption.

V. CONCLUSION

For the reasons set forth in the Petition and above, Texas RE respectfully requests that the Commission expeditiously consider and approve NERC's Petition to structurally separate the Texas RE from the ERCOT ISO, approve the Amended 2010 Business Plan and Budget, and approve the requested assessments to load-serving entities and their designees.

Respectfully submitted,

/s/ Susan D. Vincent
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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: March 8, 2010

/s/ Susan D. Vincent
Susan D. Vincent