

Date: June 7, 2010
To: Texas Regional Entity Board of Directors
From: Larry D. Grimm, Chief Executive Officer & Chief Compliance Officer
Subject: Termination of Delegation Agreement between NERC and Texas Regional Entity, a division of ERCOT

Texas RE Board of Directors Meeting Date: June 14, 2010
Agenda Item No.: 6

Issue:

Approval of *Agreement between North American Electric Reliability Corporation (NERC) and Texas Regional Entity (Texas RE), a division of Electric Reliability Council of Texas, Inc. (ERCOT) to Terminate Delegation Agreement*, a copy of which is attached hereto as Exhibit A and incorporated herein for all purposes.

Background/History:

The Amended and Restated Delegation Agreement between Texas RE and NERC expires by its terms, as approved by FERC, on May 2, 2011. In December 2009, the Texas RE Board of Directors approved the Texas Reliability Entity, Inc. Amended and Restated Delegation Agreement and Amended Business Plan and Budget, by which Texas Reliability Entity, Inc. will take over as the Regional Entity for the ERCOT region. In February 2010, NERC requested approval of the Texas Reliability Entity, Inc. Amended and Restated Delegation Agreement and Amended 2010 Business Plan and Budget from the Federal Energy Regulatory Commission (FERC).

On May 6, 2010, FERC approved Texas Reliability Entity, Inc. Amended and Restated Delegation Agreement and Amended 2010 Business Plan and Budget, authorizing Texas Reliability Entity, Inc. to become the Regional Entity for the ERCOT region on July 1, 2010. A copy of the FERC Order approving this Amended and Restated Delegation Agreement and authorizing is attached hereto and incorporated herein as Exhibit B.

Because the Texas Reliability Entity, Inc. Amended and Restated Delegation Agreement is effective on July 1, 2010, the Texas RE Board needs to approve the *Agreement between NERC and Texas RE, a Division of ERCOT, to Terminate Delegation Agreement*, which is attached as Exhibit B and is effective on June 30, 2010.

Key Factors Influencing Issue:

- FERC has approved the new Texas Reliability Entity, Inc. Amended and Restated Delegation Agreement with NERC.
- The *Agreement between NERC and Texas RE, a Division of ERCOT, to Terminate Delegation Agreement* confirms that Texas RE will have no additional duties as Regional Entity after June 30, 2010.

Conclusion/Recommendation:

Texas RE respectfully requests that the Board approve the *Agreement between North American Electric Reliability Corporation and Texas Regional Entity, a division of Electric Reliability Council of Texas, Inc. to Terminate Delegation Agreement*, which is attached hereto as Exhibit A.

RESOLUTION OF THE BOARD OF DIRECTORS OF
TEXAS REGIONAL ENTITY, A DIVISION OF
ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC.

June 14, 2010

WHEREAS, the Board of Directors (Board) of Texas Regional Entity, a division of Electric Reliability Council of Texas, Inc., a Texas non-profit corporation, deems it desirable and in the best interest of Texas Regional Entity to terminate the Amended and Restated Delegation Agreement between North American Electric Reliability Corporation and Texas RE, effective June 30, 2010; and

WHEREAS the Board deems it desirable to approve the *Agreement between North American Electric Reliability Corporation and Texas Regional Entity, a division of Electric Reliability Corporation, Inc. to Terminate Delegation Agreement*, which is attached hereto as Exhibit A and incorporated herein for all purposes;

NOW, THEREFORE be it RESOLVED, that the Board hereby approves *Agreement between North American Electric Reliability Corporation and Texas Regional Entity, a division of Electric Reliability Corporation, Inc. to Terminate Delegation Agreement*, which is attached hereto as Exhibit A and incorporated herein for all purposes.

CORPORATE SECRETARY'S CERTIFICATE

I, Susan Vincent, Corporate Secretary of Texas Regional Entity, do hereby certify that, at the June 14, 2010 Texas Regional Entity Board of Directors Meeting, the Board of Directors of Texas Regional Entity approved the above referenced resolution. The motion passed by

_____.

IN WITNESS WHEREOF, I have hereunto set my hand this 14th day of June, 2010.

Susan Vincent
Corporate Secretary

Exhibit A

AGREEMENT BETWEEN THE NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION AND TEXAS REGIONAL ENTITY, A DIVISION OF ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC. TO TERMINATE DELEGATION AGREEMENT

This Agreement (the "Agreement") is entered into as of this 30th day of June, 2010 (the "Effective Date"), between the North American Electric Reliability Corporation, a New Jersey non-profit corporation ("NERC") and Texas Regional Entity, a Division of Electric Reliability Council of Texas, Inc. ("Texas Regional Entity"; the Electric Reliability Council of Texas, Inc. is hereinafter referred to as "ERCOT").

RECITALS

A. NERC is authorized by Section 215 of the Federal Power Act, 18 C.F.R. §39.8, and Section 1200 of the NERC Rules of Procedure, to enter into, subject to approval of the Federal Energy Regulatory Commission ("Commission"), agreements to delegate NERC's authority as the Electric Reliability Organization to regional entities for the purpose of proposing reliability standards to NERC and enforcing compliance with reliability standards.

B. NERC has entered into an Amended and Restated Delegation Agreement with Texas Regional Entity (the "Texas Regional Entity Delegation Agreement") by which NERC has delegated to Texas Regional Entity authority as the regional entity for the region described in Exhibit A to the Texas Regional Entity Delegation Agreement (the "ERCOT Region"); the Texas Regional Entity Delegation Agreement, as amended from time to time, has been approved by the Commission and is presently in effect.

C. The initial term of the Texas Regional Entity Delegation Agreement, by its terms as approved by the Commission, expires May 2, 2011.

D. With the consent and approval of Texas Regional Entity, a new corporation, Texas Reliability Entity, Inc. ("Texas Reliability Entity"), has been formed for the purpose of accepting a delegation of authority from NERC as the regional entity for the ERCOT Region, as successor to Texas Regional Entity, subject to approval of the Commission.

E. Texas Regional Entity has made known to NERC its willingness to terminate the Texas Regional Entity Delegation Agreement, effective on the date that the delegation of authority to Texas Reliability Entity as the regional entity for the ERCOT Region becomes effective.

F. NERC and Texas Reliability Entity have negotiated an agreement (the "Texas Reliability Entity Delegation Agreement") by which NERC has delegated to Texas Reliability Entity authority as the regional entity for the ERCOT Region; the Texas Reliability Entity Delegation Agreement has been approved by the Boards of NERC and of Texas Reliability Entity and by the Commission.

G. The Boards of NERC and of Texas Regional Entity, and the Commission, have approved the termination of the Texas Regional Entity Delegation Agreement, with such termination to be effective on the effective date of the Texas Reliability Entity Delegation Agreement.

H. ERCOT and Texas Reliability Entity have entered into a certain Assignment and Assumption Agreement, effective as of the Effective Date of this Agreement (the "Assignment and Assumption Agreement"), pursuant to which, among other things, ERCOT will transfer certain tangible and intangible assets to Texas Reliability Entity and Texas Reliability Entity will assume certain liabilities from ERCOT, relating to the activities of Texas Regional Entity.

THEREFORE, for an in consideration of the premises and mutual representations and agreements contained herein, NERC and Texas Regional Entity hereby agree as follows:

AGREEMENT

1. The Texas Regional Entity Delegation Agreement is terminated as of the Effective Date of this Agreement, subject to survival of certain provisions of the Texas Regional Entity Delegation Agreement as set forth in Section 11(d) thereof.

2. Following the Effective Date, Texas Regional Entity will cooperate with and assist NERC and Texas Reliability Entity in preparing, for filing with the Commission within ninety (90) days following the Effective Date, a reconciliation of the approved 2010 budget and funding of Texas Regional Entity to the actual revenues and expenditures of Texas Regional Entity from January 1, 2010 to the Effective Date, which reconciliation shall demonstrate that all unspent revenues, and all cash reserves and other fund balances, of Texas Regional Entity have been appropriately transferred to Texas Reliability Entity.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

NORTH AMERICAN ELECTRIC
RELIABILITY CORPORATION

TEXAS REGIONAL ENTITY, A DIVISION
OF ELECTRIC RELIABILITY COUNCIL
OF TEXAS, INC.

By _____
[Signature]

By _____
[Signature]

Gerry W. Cauley

Larry D. Grimm

President and Chief Executive Officer

President and Chief Executive Officer

Exhibit B

131 FERC ¶ 61,112
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

May 6, 2010

In Reply Refer To:
North American Electric Reliability
Corporation
Docket No. RR10-6-000

North American Electric Reliability Corporation
Rebecca J. Michael, Assistant General Counsel
1120 G Street, NW, Suite 990
Washington, DC 20005-3801

Dear Ms. Michael:

1. On February 19, 2010, the North American Electric Reliability Corporation (NERC), pursuant to sections 39.4 and 39.8 of the Commission's regulations,¹ filed a petition seeking approval to delegate authority to the newly-formed, independent Texas Reliability Entity, Inc. (New Texas RE) as the Regional Entity for the ERCOT region, as successor to Texas Regional Entity (Original Texas RE), a division of Electric Reliability Council of Texas, Inc. Specifically, NERC requests approval of: (i) an Amended and Restated Delegation Agreement (RDA) between NERC and New Texas RE; and (ii) a 2010 Business Plan and Budget for New Texas RE. Last, NERC requests approval to terminate the existing delegation agreement between NERC and the Original Texas RE.

2. The proposed RDA is substantially unchanged from the existing delegation agreement with Original Texas RE. The most significant change is the addition of bylaws for New Texas RE in RDA, Exhibit B – Governance, which reflects the fact that New Texas RE is an independent entity legally separated from ERCOT. The governance of New Texas RE is controlled by the newly-adopted bylaws, whereas Original Texas RE did not have a separate set of bylaws, a function of Original Texas RE being a division of ERCOT.

¹ 18 C.F.R. §§ 39.4, 39.8 (2009).

3. The amendments to the 2010 Business Plan and Budget reflect approximately \$2.5 million in additional costs arising from the formation of New Texas RE. New Texas RE breaks these costs down into two primary categories: one-time start-up costs and additional, recurring operating costs. The one-time costs reflect expenses such as acquiring office and IT equipment and recruiting. The additional operating costs reflect increased expenses such as personnel, rent, and third-party professional services including human resources and information technology. To accommodate the \$2.5 million increase, New Texas RE proposes a corresponding \$2.5 million increase in statutory assessments to load serving entities in the ERCOT region.

4. Notice of NERC's February 19, 2010 filing was published in the *Federal Register*, 75 Fed. Reg. 9891 (2010), with interventions and protests due on or before March 12, 2010. ERCOT and Original Texas RE filed timely motions to intervene. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,² the timely, unopposed motions to intervene serve to make ERCOT and Original Texas RE parties to this proceeding. Original Texas RE also filed comments supporting NERC's petition and echoing NERC's request for expedited consideration of the petition.

5. On April 12, 2010, NERC filed additional information in support of its petition clarifying the timing and manner for potential future allocation of penalty monies between NERC and New Texas RE. On April 13, 2010, the Commission issued notice of NERC's supplemental filing, setting April 19, 2010 as the comment date. No comments were filed.

6. NERC notes in its petition that the delegation of authority to New Texas RE to monitor and enforce compliance with reliability standards in the ERCOT region will eliminate existing structural concerns about lack of independence of Original Texas RE in monitoring and enforcing compliance with reliability standards. The Commission supports NERC and the regional entity for proactively addressing, through structural separation, the independence concerns identified in the December 10, 2009 audit report on the independence of Original Texas RE.³

7. The Commission finds that, with respect to NERC's RDA with New Texas RE, NERC has demonstrated that: (1) New Texas RE is governed by a "combination

² *Id.* § 385.214.

³ See *Texas Regional Entity*, 130 FERC ¶ 61,025 (2010) (order approving December 10, 2009 audit report on Original Texas RE).

independent and balanced stakeholder board;”⁴ (2) New Texas RE satisfies the criteria required for certification under section 215(c) of the Federal Power Act;⁵ and (3) the RDA promotes effective and efficient management of the Bulk-Power System. The Commission further determines that the amended 2010 Business Plan and Budget demonstrates extraordinary circumstances that require additional funds prior to the next ERO fiscal year.⁶ Accordingly, the Commission approves: (i) the RDA between NERC and New Texas RE, thereby approving the delegation of authority to New Texas RE as the regional entity for the ERCOT region, (ii) termination of the existing delegation agreement between NERC and Original Texas RE, and (iii) the amended 2010 Business Plan and Budget of New Texas RE, including the additional 2010 assessment of \$2,483,964, to be effective on the date of issuance of this order.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

⁴ 18 C.F.R. § 39.8(c)(1) (2009) (requiring a regional entity to be governed by an independent board, a balanced stakeholder board, or a combination independent and balanced stakeholder board).

⁵ 16 U.S.C. § 824o(c) (2006).

⁶ Section 39.4(d) provides that, upon demonstration of unforeseen and extraordinary circumstances requiring additional funds prior to the next Electric Reliability Organization fiscal year, the Electric Reliability Organization may seek Commission authorization to collect a special assessment. 18 C.F.R. § 39.4(d) (2009).

Exhibit B

Document Content(s)

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