167 FERC ¶ 61,225
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

June 14, 2019

In Reply Refer To:
North American Electric
Reliability Corporation
Docket No. RR19-4-001

North American Electric Reliability Corporation
3353 Peachtree Road, NE,
Suite 600, North Tower
Atlanta, GA 30326

Attention: Nina Jenkins-Johnston

Dear Ms. Jenkins-Johnston:

1. On May 16, 2019, the North American Electric Reliability Corporation (NERC) submitted a petition for Commission approval: (1) for a one-time advance to the Florida Reliability Coordinating Council (FRCC) up to $1,500,000 from NERC's operating contingency reserve to assist in FRCC's wind-down costs associated with its dissolution of FRCC as a Regional Entity; (2) for NERC to deviate from its Rules of Procedure to replenish its operating contingency reserves via certain penalty funds, and to the extent such penalty funds are not sufficient, via a special assessment to former FRCC registered entities; and (3) to amend the termination agreement between NERC and FRCC in accordance with NERC's requested changes, including to submit an informational report on or before June 1, 2020. In this order, we grant the approvals and direct NERC to submit an informational report, as requested.

2. On February 27, 2019, NERC, FRCC, and SERC Reliability Corporation (SERC) (collectively, Petitioners) filed a joint petition requesting certain Commission approvals in connection with the dissolution of FRCC as a Regional Entity and the transfer of registered entities within the FRCC footprint to SERC (Joint Petition). As part of the Joint Petition, Petitioners submitted for approval a termination agreement between NERC and FRCC (Termination Agreement), providing for, among other things: (1) a special assessment of up to $630,000 to assist with the wind-down costs of FRCC as a Regional Entity, and (2) Commission approval to deviate from the application of penalty monies as

specified in section 1107 of the NERC Rules of Procedure,[1] to permit the use of penalty payments for FRCC wind-down and SERC transition costs. On April 30, 2019, the Commission granted the approvals requested in the Joint Petition.[2]

3. NERC seeks Commission approval of a one-time advance of funds from NERC's operating contingency reserves to FRCC of up to $1,500,000 to cover costs that FRCC is contractually obligated to incur to accomplish the wind-down and dissolution of FRCC as a Regional Entity. NERC explains that this 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. Therefore, NERC states that this one-time advance will supplement the Commission-approved $630,000 special assessment as a source of funding for FRCC's wind-down costs. NERC states that this request to advance funds to FRCC 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.[3] NERC states that up to $1,500,000 can be expended from its operating contingency reserves in 2019 without adversely impacting NERC's operating contingency reserves position or its ability to meet other unanticipated contingencies that could require the use of funds in the operating contingency reserve.[4]

4. NERC states that, if deemed necessary by the Commission, NERC proposes that the treatment of this cash advance should be considered an expenditure of NERC's operating contingency reserves exceeding $500,000. NERC states that approval of this advance is in accordance with Paragraph 7(b)(ii) of the Settlement Agreement between

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[1] 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.

[2] *See North American Electric Reliability Corp.*, 167 FERC ¶ 61,095 (2019) (Dissolution Order).

[3] Filing at 2-3.

[4] *Id*. at 6.

NERC and the Commission in Docket No. FA11-21-000 and NERC's Working Capital and Operating Reserve Policy (Reserve Policy).[5] NERC states that the Reserve Policy 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." NERC states that the NERC Board of Trustees approved the proposed expenditure on May 7, 2019.[6]

5. NERC also seeks permission to replenish its operating contingency reserves up to the amount advanced to FRCC for wind-down costs, through penalty funds received on or before February 29, 2020 from registered entities within the former FRCC footprint. In order to replenish its reserves using these penalty funds, NERC seeks Commission approval to deviate from any applicable rules and policies, including section 1107 of the NERC Rules of Procedure regarding the treatment of penalty monies.[7] NERC states that any penalty funds exceeding the amount NERC advances to FRCC will be reimbursed to the load-serving entities within the former FRCC footprint on a *pro rata* basis based on net energy for load.

6. If sufficient penalty funds have not been received by February 29, 2020, NERC requests approval, pursuant to section 1108 of the NERC Rules of Procedure,[8] to allow

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[5] *See North American Electric Reliability Corp.*, 142 FERC ¶ 61,042 (2013). *See* P 7(b)(ii) of the Settlement Agreement attached to the order.

[6] Filing at 3, 5-6

[7] *Id*. at 7.

[8] Section 1108 of the NERC Rules of Procedure provides that:

> On a demonstration of unforeseen and extraordinary circumstances requiring additional funds prior to the next funding cycle, NERC shall file with the [Commission]… for authorization for an amended or supplemental budget for NERC or a Regional Entity and, if necessary under the amended or supplemental budget, to collect a special or additional assessment for statutory functions of NERC or the Regional Entity. Such a filing shall include supporting materials to justify the requested funding, *including any departure from the approved funding formula or method*. (emphasis added)

NERC to replenish its operating contingency reserves up to the amount advanced to FRCC for wind-down costs using a special assessment solely to load-serving entities within the former FRCC footprint.[9] To allow such a special assessment, NERC seeks approval for a departure from the allocation requirements for funding statutory activities specified in section 1102 of the NERC Rules of Procedure.[10] NERC states that the special assessment would apply solely to the former FRCC load-serving entities because the proposed advance to FRCC will have facilitated the successful wind down of FRCC as a Regional Entity. NERC states that it would bill the FRCC load-serving entities on the same basis as they were billed for the initial special assessment authorized in the Dissolution Order. NERC states that it would issue the special assessment, if and to the extent required, by March 1, 2020, with a payment due date within 45 days.[11]

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[9] Filing at 8.

[10] Section 1102 of the NERC Rules of Procedure provides that:

> 1. In order that NERC's costs shall be fairly allocated among Interconnections and among Regional Entities, the NERC funding mechanism for all statutory functions shall be based on Net Energy for Load (NEL).
> 2. NERC's costs shall be allocated so that all Load (or, in the case of costs for an Interconnection or Regional Entity, all Load within that Interconnection or Regional Entity) bears an equitable share of such costs based on NEL.
> 3. Costs shall be equitably allocated between countries or Regional Entities thereof for which NERC has been designated or recognized as the Electric Reliability Organization.
> 4. Costs incurred to accomplish the statutory functions for one Interconnection, Regional Entity, or group of entities will be directly assigned to that Interconnection, Regional Entity, or group of entities provided that such costs are allocated equitably to end-users based on Net Energy for Load.

[11] Filing at 8.

7. In addition, NERC proposes to amend the Termination Agreement consistent with its requests and to reflect its commitment to submit an informational report to the Commission on or before June 1, 2020. NERC states that the informational report will document 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 states that it will also detail how and from what sources (consistent with the requests approved by the Commission) NERC replenished its operating contingency reserves.[12]

8. Notice of NERC's May 16, 2019 filing was published in the *Federal Register*, 84 Fed. Reg. 24,130 (2019), with interventions and protests due on or before May 28, 2019. None were filed.

9. We grant the requested approvals needed to continue the dissolution of FRCC as a Regional Entity by August 31, 2019, as previously approved by the Commission. Specifically, we approve NERC's request to make a one-time advance to FRCC of up to $1,500,000 from NERC's operating contingency reserve in order for FRCC to complete the wind-down of its role and responsibilities as a Regional Entity, subject to NERC making a future informational report on or before June 1, 2020, as NERC commits to in its petition.[13]

10. We also grant NERC's request to deviate from the requirements of section 1107 of the NERC Rules of Procedure to allow NERC to replenish its operating contingency reserves up to the amount advanced to FRCC for wind-down costs using penalty funds received from registered entities within the former FRCC footprint on or before February 29, 2020. We also grant NERC's request to reimburse any excess penalty funds to the load-serving entities within the former FRCC footprint on a *pro rata* basis based on net energy for load.

11. To the extent that any such penalty funds do not fully cover the amount advanced to FRCC, we approve NERC's request to replenish its operating contingency reserves up to the amount advanced to FRCC through a special assessment, pursuant to section 1108 of the NERC Rules of Procedure, issued by March 1, 2020 with a payment due within 45 days. Furthermore, we grant NERC's request to deviate from the requirements of section 1102 of the NERC Rules of Procedure to allow NERC to apply the special

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[12] *Id*. at 9.

[13] In approving the request, we need not determine, and we make no determination here regarding, whether Paragraph 7(b)(ii) of the Settlement Agreement applies in this case.

assessment solely to the load-serving entities in the former FRCC footprint on the same basis as they were billed for the initial special assessment authorized in the Dissolution Order.

12. Finally, we approve NERC's proposed amendments to the Termination Agreement to reflect the actions approved in this order and the proposed informational report.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.