

§ 39.4 Funding of the Electric Reliability Organization.

(a) Any person who submits an application for certification as the Electric Reliability Organization shall include in its application a formula or method for the allocation and assessment of Electric Reliability Organization dues, fees and charges. The certified Electric Reliability Organization may subsequently file with the Commission a request to modify the formula or method.

(b) The Electric Reliability Organization shall file with the Commission its proposed entire annual budget for statutory and any non-statutory activities, including the entire annual budget for statutory and any non-statutory activities of each Regional Entity, with supporting materials, including the ERO's and each Regional Entity's complete business plan and organization chart, explaining the proposed collection of all dues, fees and charges and the proposed expenditure of funds collected in sufficient detail to justify the requested funding collection and budget expenditures 130 days in advance of the beginning of each Electric Reliability Organization fiscal year. The annual Electric Reliability Organization budget shall include line item budgets for the activities of each Regional Entity that are delegated or assigned to each Regional Entity pursuant to § 39.8.

(c) The Commission, after public notice and opportunity for hearing, will issue an order either accepting, rejecting, remanding or modifying the proposed Electric Reliability Organization budget and business plan no later than sixty (60) days in advance of the beginning of the Electric Reliability Organization's fiscal year.

(d) On a demonstration of unforeseen and extraordinary circumstances requiring additional funds prior to the next Electric Reliability Organization fiscal year, the Electric Reliability Organization may file with the Commission for authorization to collect a special assessment. Such filing shall include supporting materials explaining the proposed collection in sufficient detail to justify the requested funding, including any departure from the approved funding formula or method. After notice and an opportunity for

hearing, the Commission will approve, disapprove, remand or modify such request.

(e) All entities within the Commission's jurisdiction as set forth in section 215(b) of the Federal Power Act shall pay any Electric Reliability Organization assessment of dues, fees and charges as approved by the Commission, in a timely manner reasonably as designated by the Electric Reliability Organization.

(f) Any person who submits an application for certification as the Electric Reliability Organization may include in the application a plan for a transitional funding mechanism that would allow such person, if certified as the Electric Reliability Organization, to continue existing operations without interruption as it transitions from one method of funding to another. Any proposed transitional funding plan should terminate no later than eighteen (18) months from the date of Electric Reliability Organization certification.

(g) The Electric Reliability Organization or a Regional Entity may not engage in any activity or receive revenues from any person that, in the judgment of the Commission represents a significant distraction from, or a conflict of interest with, its responsibilities under this part.

§ 39.5 Reliability Standards.

(a) The Electric Reliability Organization shall file each Reliability Standard or modification to a Reliability Standard that it proposes to be made effective under this part with the Commission. The filing shall include a concise statement of the basis and purpose of the proposed Reliability Standard, either a summary of the Reliability Standard development proceedings conducted by the Electric Reliability Organization or a summary of the Reliability Standard development proceedings conducted by a Regional Entity together with a summary of the Reliability Standard review proceedings of the Electric Reliability Organization, and a demonstration that the proposed Reliability Standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest.

(b) The Electric Reliability Organization shall rebuttably presume that a

proposal for a Reliability Standard or a modification to a Reliability Standard to be applicable on an Interconnection-wide basis is just, reasonable, not unduly discriminatory or preferential, and in the public interest, if such proposal is from a Regional Entity organized on an Interconnection-wide basis.

(c) The Commission may approve by rule or order a proposed Reliability Standard or a proposed modification to a Reliability Standard if, after notice and opportunity for public hearing, it determines that the proposed Reliability Standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest.

(1) The Commission will give due weight to the technical expertise of the Electric Reliability Organization with respect to the content of a proposed Reliability Standard or a proposed modification to a Reliability Standard.

(2) The Commission will give due weight to the technical expertise of a Regional Entity organized on an Interconnection-wide basis with respect to a proposed Reliability Standard or a proposed modification to a Reliability Standard to be applicable within that Interconnection, and

(3) The Commission will not defer to the Electric Reliability Organization or a Regional Entity with respect to the effect of a proposed Reliability Standard or a proposed modification to a Reliability Standard on competition.

(d) An approved Reliability Standard or modification to a Reliability Standard shall take effect as approved by the Commission.

(e) The Commission will remand to the Electric Reliability Organization for further consideration a proposed Reliability Standard or modification to a Reliability Standard that the Commission disapproves in whole or in part.

(f) The Commission may, upon its own motion or a complaint, order the Electric Reliability Organization to submit a proposed Reliability Standard or modification to a Reliability Standard that addresses a specific matter if the Commission considers such a new or modified Reliability Standard appropriate to carry out section 215 of the Federal Power Act.

(g) The Commission, when remanding a Reliability Standard to the Electric Reliability Organization or ordering the Electric Reliability Organization to submit to the Commission a proposed Reliability Standard or proposed modification to a Reliability Standard that addresses a specific matter may order a deadline by which the Electric Reliability Organization must submit a proposed or modified Reliability Standard.

§ 39.6 Conflict of a Reliability Standard with a Commission Order.

(a) If a user, owner or operator of the transmission facilities of a Transmission Organization determines that a Reliability Standard may conflict with a function, rule, order, tariff, rate schedule, or agreement accepted, approved, or ordered by the Commission with respect to such Transmission Organization, the Transmission Organization shall expeditiously notify the Commission, the Electric Reliability Organization and the relevant Regional Entity of the possible conflict.

(b) After notice and opportunity for hearing, within sixty (60) days of the date that a notice was filed under paragraph (a) of this section, unless the Commission orders otherwise, the Commission will issue an order determining whether a conflict exists and, if so, resolve the conflict by directing:

(1) The Transmission Organization to file a modification of the conflicting function, rule, order, tariff, rate schedule, or agreement pursuant to section 206 of the Federal Power Act, as appropriate, or

(2) The Electric Reliability Organization to propose a modification to the conflicting Reliability Standard pursuant to § 39.5 of the Commission's regulations.

(c) The Transmission Organization shall continue to comply with the function, rule, order, tariff, rate schedule, or agreement accepted, approved, or ordered by the Commission until the Commission finds that a conflict exists, the Commission orders a change to such provision pursuant to section