

Rules of Procedure Revisions - Consolidated Hearing Process

Action

Approve the proposed revisions to Section 400, and Appendices 2 and 4C to the NERC Rules of Procedure (ROP) and direct staff to file the revised ROP with the appropriate regulatory authorities for approval.

Attachment 1 [Redline Changes to Section 400](#)

Attachment 2 [Redline Changes to Appendix 2](#)

Attachment 3 [Redline Changes to Appendix 4C](#)

Attachment 4 [Consideration of Comments](#)

Background

On July 26, 2016, NERC posted the introduction of a Consolidated Hearing Process for a 45-day public comment period. After the comment period ended, the NERC Board of Trustees approved the proposed hearing process. NERC then filed a petition on December 9, 2016 with the Federal Energy Regulatory Commission (“FERC”) for approval of the applicable ROP revisions. FERC staff raised concerns related to the proposal to give the Hearing Officer the ability to cast the deciding vote in the event that any Hearing Body vote results in a tie. To address FERC staff’s concerns, NERC proposes to modify the composition of the consolidated Hearing Body by increasing the number of members by one. The proposed Hearing Body would be composed of five members, instead of four, to prevent a tie. The Hearing Officer would not have a vote on any matter brought before the Hearing Body for decision.

FERC staff also recognized that the current ROP uses the terms “segment” and “sector” inconsistently. As discussed in the Summary of Proposed Revisions below, NERC proposes to delete the term “segment” and replace it with “sector” in the provisions pending before FERC regarding the Consolidated Hearing Process.

Upon approval by the Board of Trustees, NERC would amend the filing currently pending at FERC to propose the modifications described above.

Proposed Consolidated Hearing Process Summary

The currently effective NERC ROP contemplate that hearings to resolve contested noncompliance, mitigation plans, remedial action directives, penalties may be held at each Regional Entity (RE). NERC’s proposed Consolidated Hearing Process would allow REs the *option* to move the hearing process to NERC. The July 26, 2016 posting, available [here](#), provides a summary of the benefits of the proposed Consolidated Hearing Process and addresses each proposed change to the ROP to incorporate the hearing process.

Under the updated proposed revisions to ROP Section 403.15B, for which approval is now being sought, the consolidated Hearing Body would generally be composed of five members and would choose a Hearing Officer to administer the proceedings. As previously contemplated, up to two members of the Hearing Body may be appointed by the RE from which the case originates. The NERC Board of Trustees Compliance Committee (BOTCC) will appoint two members chosen among NERC trustees not serving on the BOTCC at the time of the request for hearing.

To address the concerns raised by FERC staff with respect to a possible tie, the updated proposed revisions now contemplate that these members so appointed to the Hearing Body would then appoint an additional member. The additional member may be chosen among NERC trustees not serving on the BOTCC at the time of the request for hearing or from the RE which the case originates (provided all qualifications applying to Hearing Body members are met). If the Hearing Body does not select a NERC trustee or a regional representative, the Hearing Body may appoint the additional member in accordance with the criteria specified in Appendix 4C, Attachment 2, Section 1.4.3(a). In the event a RE chooses not to appoint members to the Hearing Body and there are not five NERC trustees available to participate on the Hearing Body, as determined by the BOTCC, the Hearing Body may be composed of three members (three NERC trustees not serving on the BOTCC).

NERC also proposes changes to the provisions in ROP Section 400 and Appendix 4C pending before FERC regarding the Consolidated Hearing Process that use the terms “segment” and “sector” to align with the Appendix 2 definitions and the Regional Delegation Agreements between NERC and each RE. The term “segment” is used in the context of NERC’s Reliability Standards development process. The term “sector” refers to members of NERC that are Bulk Power System owners, operators, or users or other persons and entities with substantially similar interests, including governmental entities. The membership “sectors” are defined in Article II, Section 4 of the NERC Bylaws. To align the use of terminology with the appropriate context, NERC proposes to delete the term “segment” and replace it with the term “sector” in the ROP provisions related to the proposed hearing process.

Public Comment Period

NERC posted its proposed revisions publicly on November 30, 2017 for a comment period ending on January 14, 2018. NERC received limited comments from industry stakeholders. One commenter suggested that the Appendix 2 definition of Hearing Officer should be modified to clarify that the Hearing Officer is not a member of the Hearing Body. NERC modified the Hearing Officer definition to state that the Hearing Officer is not a member of the Hearing Body.

All the comments received are described and addressed in Attachment 4, through the hyperlink provided above. The actual submittals are also posted on the ROP page of the NERC website. Lastly, this agenda item and accompanying materials were posted on the NERC website on January 24, 2018, at least 15 days prior to consideration of these revisions by the Board of Trustees, as contemplated in NERC’s process for proposed ROP revisions.