

**To: Catherine Sills**

**From: NERC Compliance and Certification Committee**

**Re: Recently Proposed Changes to Rules of Procedure**

**Date: 10/17/11**

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At its September meeting, the Compliance and Certification Committee (CCC) discussed various changes NERC has recently proposed to the Rules of Procedure (ROP). Herein, the CCC respectfully submits the following comments. In summary:

- With regard to changes to the proposed definitions, the CCC requests more information about why NERC has proposed re-creating definitions within Appendix 2 and suggests an alternative approach to collecting definitions in the ROP, Glossary, Code of Federal Regulations & Statute. In short, the CCC is concerned that the approach of copying terms from other documents into the ROP can create conflicts when there is a future effort to change these terms.
- With regard to the proposal to modify Section 1400 to require that fifty (50) members from three (3) Sectors present proposed ROP changes to the Board of Trustees (BOT), the CCC requests that NERC file changes to the Bylaws to make the Bylaws consistent with the way Section 1400 is currently written such that ten (10) members from three (3) Sectors are authorized to present ROP changes to the BOT.

**I. Proposed changes to Definitions (available at: <http://www.nerc.com/page.php?cid=1|8|169>)**

NERC has proposed revisions to the ROP in order : “(1) to place all definitions of defined terms used anywhere in the Rules of Procedure in a single, readily-accessible location (proposed Appendix 2); (2) to capitalize defined terms throughout the Rules of Procedure where they are intended to be used in their defined meanings; and (3) to lower-case other terms that are currently capitalized in the Rules of Procedure but are not defined terms.”

In summarizing the proposed changes, NERC explains that “the sources of the defined terms listed in proposed Appendix 2 are: (1) definitions currently found throughout the existing Rules of Procedure, including, among other places, in Section 200, Section 1500, and Appendices 4C, 4D, 5B and 6, (2) the NERC *Glossary of Terms Used in Reliability Standards*, (3) definitions in the NERC Bylaws, (4) definitions in Section 215 of the Federal Power Act, and (5) definitions in FERC regulations at 18 C.F.R. Parts 39 and 388.”

**A. Issues with Appendix 2**

As a general matter, the CCC assumes that the purpose of these changes, and specifically establishing Appendix 2, is to create one document for ease of reference. NERC’s suggested approach, however, raises governance implications, because the development of changes to Standards and

Glossary (and of course FERC regulations and the Federal Power Act) are subject to different rules than the development of changes to Rules of Procedure. There are, therefore, two main concerns with copying Glossary definitions into the ROP: (a) if Glossary terms are changed per the Standards Development Process, then the NERC must file changes to the ROP as well; and (b) if NERC changes a Glossary term definition per its authority under the Bylaws, there could be a conflict in those terms if NERC and the Industry do not agree to change the Glossary as per the rules laid out in the Standards Process Manual.

Given that there is no obvious benefit to “copying” Glossary terms into the ROP, the CCC recommends a different approach to utilizing Glossary, Statutory or Regulatory definitions in the ROP. NERC should incorporate the definitions of such Terms into the ROP **by reference, by hyper-linking to these other documents, or by referring to the originating governing document (e.g., “as defined in the Glossary” or “as defined in the Bylaws”)**. Alternatively, NERC could create a **separate Summary document** simply listing all the terms that have been otherwise established through various processes (Standards Process Manual (Glossary), FERC rulemaking (C.F.R.) or Congress lawmaking (Federal Power Act) without creating the potential for future conflicts in terms.

Because the Glossary, C.F.R., ROP and Statutes all use different processes to change their defined terms, either of the approaches described above would avoid potential conflicts in defined Terms that are utilized in multiple documents.

#### **B. Question with Definition of “Adequate Level of Reliability”**

The CCC requests additional information from NERC about the substance and purpose of the proposed definition of “Adequate Level of Reliability”. The proposed definition appears to have been lifted from the Planning Committee’s 2008 work to define the term.<sup>1</sup>

However, the CCC understands that the NERC Adequate Level of Reliability Task Force is currently convened to review and determine if the existing definition and characteristics of “adequate level of reliability” (ALR) needs enhancement in coordination with the Member Representative Committee’s Bulk Electric System/Adequate Level of Reliability Policy Group which is addressing ALR.

Because there is a process in place to change the definition, the CCC requests that NERC explain the value of filing the current definition in the Rules of Procedure. The ALRTF has explained that the current work plan is to finalize its work recommending enhancements to the definition in *February 2012*. Therefore, it would seem prudent for NERC to hold off on filing the current ALR definition for FERC approval until the results of the ALRTF work-effort are known.<sup>2</sup>

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<sup>1</sup> See <http://www.nerc.com/docs/pc/Definition-of-ALR-approved-at-Dec-07-OC-PC-mtgs.pdf>

<sup>2</sup> See <http://www.nerc.com/docs/standards/ALRTF%20Agenda%20Package-October%204-5,%202011.pdf> (at page 5)

## II. Section 1400 – Amendments to the NERC Rules of Procedure

**The CCC recommends that NERC retain the current wording in ROP 1401, which allows ten (10) Members from three (3) sectors to present proposed changes to the ROP for Board of Trustees approval.** The CCC recognizes, of course, that the NERC Bylaws establishes a rule that fifty (50) Members from three (3) sectors present changes, but believes that the Bylaws should be revised to comport with the way ROP 1401 is currently drafted. While the NERC membership will retain rights to present the BOT with proposed ROP changes through the MRC and NERC Committees, the CCC believes that NERC and its membership will benefit from rules that would continue to facilitate the ability of NERC Members to present changes to the BOT.

Establishing a rule that *ten* (10) members from three (3) sectors promote a proposed change to the ROP ensures that the proposal is supported by a diversity of industry while also facilitating industry involvement in the development of the ROP. Additionally, this rule ensures a balanced approach to future changes to the ROP. As discussed at the August MRC/BOT meeting, there is a concern about the way in which NERC has proposed ROP changes – i.e., without first consulting with its Members (*see, e.g.,* administrative penalties levied through the ROP, which raised significant concerns for the MRC, Trade Associations and specifically Canadian associations).

In short, there is no compelling reason to mandate that fifty (50) members from three (3) Sectors be required to present proposed ROP changes to the BOT. To date, the NERC BOT has not been inundated with specious, member-sponsored proposals to change the ROP, and there is no reason to think retention of the 10 member rule would cause this to change in the future.