

Duke Energy Comments on the Proposed Amendments to NERC's Rules of Procedure in Response to FERC's March 18, 2010 Order

Duke Energy supports NERC's request for rehearing of the Commission's March 18, 2010 Order Directing NERC to Propose Modification of Electric Reliability Organization Rules of Procedure. We agree with NERC that the Commission's directive that NERC modify the standards development process such that the Commission may issue an order requiring Commission-directed content to be included in the final reliability standard is inconsistent with the requirements for developing Reliability Standards set forth in Section 215 of the Federal Power Act. We also agree with NERC that the Commission's order appears to undermine the deference to the technical expertise of NERC that is mandated under Section 215 of the Federal Power Act. Duke Energy also supports NERC's Motion for Stay in order to hold a technical conference to provide parties with the opportunity to discuss the issues underlying the March 18 Order and explore ways that the industry can work more constructively with the Commission to ensure the reliability of the bulk electric system.

In the event that the Commission does not act on NERC's motion for stay prior to the compliance filing deadline of June 16, 2010, Duke Energy offers the following comments on the proposed amendments to NERC's Rules of Procedure.

Discretion in Counting Negative Votes: Paragraph 2.2 of the proposed new section 321 states "In any such re-ballot, negative votes without substantive comments shall be counted for purposes of establishing a quorum, but only affirmative votes and negative votes with substantive comments shall be counted for purposes of determining the number of votes cast and whether the proposed standard passes." The qualifier "substantive" is inappropriately subjective. The application of this judgment could result in further delaying the Standards Development Process if appeals are made in cases where the "quality" of whether the comment is "substantive" is open to debate. Furthermore, it is not clear where the responsibility lies in making this judgment. For these reasons, the word "substantive" should be struck from section 321, so that any negative vote with a comment will be counted.

Difference in Treatment of Negative Votes: As quoted in the preceding paragraph, the revisions propose counting negative votes without substantive comments for the purpose of establishing a quorum but not for determining the number of votes cast and whether the proposed standard passes. There is not a legitimate reason for the difference in the treatment of negative votes for these different purposes. Negative votes without comments should be treated consistently. Negative votes without comments should not be counted for establishing a quorum if they are not counted for determining whether the proposed standard passes – to do so incorrectly implies that those negative votes that are counted in the quorum were substantively reflected in the outcome of the vote.

Clarification: Paragraph 4.4 should not be a sub paragraph of 4. Paragraph 4 describes actions that may be taken if the affirmative vote on a re-balloted proposed reliability standard falls between sixty percent and a two-thirds majority, but paragraph 4.4 described actions to take if the affirmative vote fails to achieve even sixty percent (or a quorum). This should be a new paragraph 5, with the current paragraph 5 renumbered paragraph 6.