

Comments on Proposed Amendments to NERC Rules of Procedure Section 300
From Georgia System Operations Corporation

Georgia System Operations Corporation (“GSOC”) appreciates the necessity of responding to FERC’s Order that NERC amend its Rules of Procedure, despite the strenuous opposition to that Order filed by NERC, GSOC and many others and the fact that FERC has granted rehearing on that Order. GSOC compliments NERC on attempting to draft amendments that will be suitably responsive to FERC’s (or other ERO governmental authority’s) directive but that also will reflect the legal authority given to the ERO and the industry.

The proposed additions to Section 309 that mandate the application of new Section 321 under specific circumstances are a reasonable approach and well-worded. GSOC has no comment on those proposed additions.

GSOC does, however, have some suggestions and questions with respect to the proposed new Section 321. The remainder of these comments, therefore, will address specific subsections of the draft Section 321.

Subsection 1 appropriately recognizes the possibility of the Board of Trustees (“Board”) remanding to the Standards Committee (“SC”) a submitted standard that has failed to address a specific ERO governmental authority’s directive (hereafter, “Directive”). However, the section then leaves several resulting questions unanswered:

- How is the SC to proceed after such a remand? GSOC suggests that the process followed by the SC to modify a standard approved by a ballot pool but then remanded by the Board should be the same as the process followed to modify a standard approved by the Board but then remanded by an ERO governmental authority. The subsection should make that clear.
- GSOC agrees that remand in such a situation should be at the Board’s discretion rather than mandatory (the Board “may” rather than “shall”), but what alternative action(s) may the Board take? Can the Board simply ignore the failure to address the Directive, approve the standard as drafted, or reject the standard? The subsection should specify the alternatives. Whatever else, GSOC suggests that the Board should have the option to approve the proposed standard and send it to the governmental authority for approval along with an explanatory report regarding the circumstances (i.e., a report such as described in subsection 4.4 of this draft Section 321). The Board may, if it wishes, also direct the Standards Committee either to begin modifying the proposed standard to address the Directive or to begin drafting a new standard that would do so; naturally, in that case, the Board would also inform the governmental authority of that action. This would allow the Board, when appropriate, to approve and seek to make enforceable a proposed standard that would further reliability in ways unrelated to the Directive, without the delay that necessarily would result from a total remand.

Subsection 2 mandates action the Board shall take when a proposed standard that would address a Directive has failed to be approved by a ballot pool. GSOC appreciates the need for special action in such a situation, but believes the procedure as described here needs further detail on some points as well as fundamental change on others.

- GSOC suggests it would be better for the Board's action to be discretionary rather than mandatory. The Board should also have the option of sending the ERO governmental authority an explanatory report regarding the circumstances (*i.e.*, a report such as described in subsection 4.4 of this draft Section 321). The ballot pool may have had good reasons (e.g., technical infeasibility or cost prohibitiveness) to reject the standard that was drafted to address the Directive, and if so, the governmental authority should be given those reasons.
- With respect to Section 2(ii), will the proposed re-ballot be performed with the same ballot pool, or will a new ballot pool be formed? If it is the same ballot pool, will it begin with the previous votes in place as "default"? GSOC suggests that a new ballot pool be created because additional entities may have an interest in participating due to the exceptional circumstances.
- Subsection 2.1 specifies that the re-ballot will be completed within 30 days after remand, but no other details. How far in advance must members be given notice of the vote? If there is to be a new ballot pool, how long will members be given to join it? How long must the memo be posted before the close of voting? How long must balloting be open? GSOC suggests specifying the following details for the process: within five (5) days of remand, the SC shall give notice to the members to join a new ballot pool (which will be open for 30 days); the memorandum will be posted no less than ten (10) days before the ballot pool closes; and the ballot shall be open for voting for ten (10) days following the close of the ballot pool.
- With respect to Subsection 2.2, GSOC believes that ignoring any negative vote that is actually cast on the re-ballot but lacks a "substantive" comment would unfairly count unsupported "no" votes toward the quorum but not toward a decision, which, in fact, would have the same effect as arbitrarily changing such a vote from "negative" to "abstain." Paradoxically, a ballot pool member would be better able to express disapproval by not voting than by voting no without a "substantive" comment: at least then the "vote" would count against rather than in favor of achieving a quorum. This is counter to the entire concept of the ballot pool. In addition, for fairness and due process, if the concept is maintained, it would seem that the Rule must also require that affirmative votes only count if accompanied by "substantive" comments; otherwise, the Rule imposes a requirement on some voters in the ballot pool that is not imposed on all.

Finally, this exclusion also seems unnecessary given the lowered threshold and process proposed in Section 4, which should provide a sufficiently good faith response by NERC and the industry to respond meaningfully to a Directive. If NERC believes that Section 4 is not sufficient to show a good faith attempt to comply with a Directive, NERC should consider further reducing the supermajority threshold in that Section. GSOC believes the 60% that is there now is a reasonable threshold, but further lowering that threshold even to a simple majority would be less offensive to due process than would be simply not counting properly cast negative votes.

- If Subsection 2.2 were adopted as proposed, what criteria would be used to determine whether or not a comment was sufficiently substantive to support a “no” vote, and what group or individual would make that determination? At a minimum these issues must be addressed in the Rule, but GSOC does not believe it is appropriate to give any individual or group the power to discard otherwise valid votes because an associated comment has been judged to not be “substantive”.

With respect to Section 3, GSOC agrees that if the re-balloting results in an affirmative two-thirds majority counting all affirmative and negative votes, the standard can be sent to the Board for approval. Can the Board then nonetheless reject it?

Section 4 provides for additional actions that the Board may take when the re-balloting results in a smaller super-majority than the usually required two-thirds. GSOC believes this is an appropriate way for NERC to give a Directive exceptionally serious consideration. Most of Section 4, especially the concept of a technical conference, is well-designed, but a few provisions could be improved.

- This Section again is silent on what alternative action(s) the Board “may” take when a standard achieved a 60% but less than two-thirds affirmative supermajority on re-balloting. GSOC suggests that the Board should also have the option of sending the ERO governmental authority an explanatory report regarding the circumstances (*i.e.*, a report such as described in subsection 4.4 of this draft Section 321). It may be clear to the Board even before receiving additional input that the re-ballot pool had good reason to reject the standard, and if so, the Board should be able to proceed to report that to the governmental authority without the additional delay and expense of the detailed input process.
- In subsection 4.3.2, if after all the input the Board concludes that the Standard should not be adopted, the Board should not send the standard to the governmental authority, even with a recommendation that it not be approved. Rather, the Board should send the ERO governmental authority an explanatory report regarding the circumstances (*i.e.*, a report such as described in subsection 4.4 of this draft Section 321). When NERC’s Board is in agreement that the standard should not be approved, NERC should not

abdicate its legal authority and simply hand over to the governmental authority the power to unilaterally impose an undesirable (possibly even harmful) reliability standard.

- Subsection 4.4 properly should be a new Section 5. Section 4 addresses the specific situation in which a re-ballot achieved a 60% but less than two-third affirmative vote, and all of Section 4's Subsections should also address that situation. Subsection 4.4 addresses the different situation in which a re-ballot achieved less than a 60% affirmative vote, and it should therefore be in a different Section.

GSOC also notes that, depending on the form in which the proposed Standards Process Manual is ultimately put in place, some language in this Rule may need amended to match the terminology in that Manual.

Again, GSOC commends NERC on its work struggling to frame an appropriate response to FERC's troubling and problematic Order on this issue. Thank you.