



**To:** rdacomment@nerc.net  
The ISO-RTO Council's Standards Review Committee (SRC):

**From:** Ben Li – IESO (Chair), Patrick Brown – PJM, James Castle – NYISO, Lourdes Estrada-Salinero – CAISO, Matt Goldberg (ISO-NE), Steve Myers – ERCOT, Bill Phillips – MISO, Mark Thompson – AESO, Charles Yeung (SPP)

**Date:** June 4, 2010

**Subject:** Request for Comments on Proposed Amendments to NERC's Rules of Procedure Section 300

In response to the above request, the ISO/RTO Council's Standards Review Committee (SRC) offers the following comments:

1. *There is a need for clarity regarding the use of the term "addresses", in the context of "a standard that addresses a specific matter that is contained in a directive issued by an applicable ERO governmental authority". [emphasis added]*

It is not clear in the proposed amendment whether "addresses" is to be interpreted as referring to a standards action that:

1. *conforms* with the specific matter in the directive; or,
2. includes in addition the case where the standards action results in an *alternative* to the specific matter in the directive.

This is an important distinction that is fundamental to the ERO model. NERC has an obligation to fully "address" a directive, in the common sense of the term "address", namely of applying oneself to something, such as a problem, question or request. NERC, however, must judge any specific matter regarding a standard on its own merit, and this judgment may not conform with specific matters contained in the directive. This distinction is well documented and accepted, for example, in FERC Order No. 693.<sup>1</sup>

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<sup>1</sup> In Order No. 693, FERC provided guidance as to how NERC and the standard drafting teams should view the FERC directives: "185. With regard to the many commenters that raise concerns about the prescriptive nature of the Commission's proposed modifications, the Commission agrees that a direction for modification should not be so overly prescriptive as to preclude the consideration of viable alternatives in the ERO's Reliability Standards development process...."

Regardless of which of interpretations 1 and 2 above is intended, the amendment should explicitly address the two cases, i.e., where a proposed standards action conforms with, or represents an alternative to, a specific matter contained in a directive.

The need to address the two cases separately is illustrated in the case where a directive calls for a new standard, but NERC subsequently decides that the new standard is not required, for example, if the underlying reliability matter is addressed in an existing standard, or if the specific matter in the directive is flawed technically. In such cases there will be no standard to be balloted, but there will be a need to document and report on NERC's consideration of the directive.

2. ***The requirement in section 321.2.2 for a comment that is "substantive" to be provided under re-balloting, in order for a negative vote to count as being cast, is not appropriate, given the complexity that would be created in defining the term "substantive" and administering its application.***

***However, it would be appropriate to require all negative votes in re-ballots, to be accompanied by "comments related to the proposal",<sup>2</sup> in order for the votes to count as being cast. The primary purpose of such comments would be to inform the subsequent decision of the NERC board in the event the re-balloted standard achieves between 60% and 67% affirmative votes. The comments would not be required to meet a test of being "substantive", i.e., their function would be purely informational.***

Establishing criteria to determine whether a comment is substantive would not be straightforward. Moreover, the application of such criteria raises additional matters, such as who would make the determination, whether the determinations would be appealable, and if so, what process would be used. The incremental effort, complexity and potential for delays through appeals, renders the proposed requirement inappropriate.

However, the value of reasons for negative votes is clear. The process for responding to a directive could be improved by having more, better, and more timely information available to the ballot body, standards drafting teams and the board.

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“186. Thus, in some instances, while we provide specific details regarding the Commission’s expectations, we intend by doing so to provide useful guidance to assist in the Reliability Standards development process, not to impede it.<sup>90</sup> We find that this is consistent with statutory language that authorizes the Commission to order the ERO to submit a modification “that addresses a specific matter” if the Commission considers it appropriate to carry out section 215 of the FPA. In the Final Rule, we have considered commenters’ concerns and, where a directive for modification appears to be determinative of the outcome, the Commission provides flexibility by directing the ERO to address the underlying issue through the Reliability Standards development process without mandating a specific change to the Reliability Standard. Further, the Commission clarifies that, where the Final Rule identifies a concern and offers a specific approach to address the concern, we will consider an equivalent alternative approach provided that the ERO demonstrates that the alternative will address the Commission’s underlying concern or goal as efficiently and effectively as the Commission’s proposal.”

<sup>2</sup> This term is used in the ANSI Essential Requirements. See footnote 3.

It is not unreasonable to require "comments related to the proposal" with negative votes, since this would ensure that balloters' concerns are readily understood and considered during the subsequent review. Moreover, as a matter outside the scope of the present question, it would seem appropriate to consider extending the requirement to all ballot body votes, not only those responding to a directive.

It is noted that requiring comments related to the proposal for negative votes is allowed for in the ANSI Essential Requirements - where a standards developer specifies a requirement for comments, negative votes without comments related to the proposal would count in establishing a quorum but not towards establishing consensus.<sup>3</sup>

- 3. The provision for the NERC board to make a determination in the special case of re-balloting that results in between 60% and 67% affirmative votes, as given in section 321.4, is appropriate.***

***Technical conferences are a preferred means of clarifying technical matters after a failed re-ballot. Specific mention should be added to section 321 affirming the NERC board's discretion to establish a technical conference.***

This proposed provision for a board determination gives adequate opportunity for the ballot body and NERC staff to provide input to the board before the board makes its final determination.

The importance of NERC's relationship with ERO governmental authorities justifies an extraordinary response, namely the direct involvement by the board, the ultimate NERC authority, subject to stakeholders having the ability to provide technical input.

It is noted that the board may or may not approve a standard receiving between 60% and 67% affirmative votes on re-ballot. The board's determination would be informed in part by a review of the comments on the negative votes and on subsequent input from stakeholders. In this latter regard, a technical conference is seen as the most effective way to solicit such input in cases where balloting indicates there are outstanding technical issues within the ballot body. Specific mention should be added to section 321 affirming the NERC board's discretion to establish a technical conference.

The proposed 60% threshold is judged to be reasonable based on current information. It remains to be seen whether experience will validate this level. However, approving the current proposal at this time does not preclude consideration being given at a later time to

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<sup>3</sup> The ANSI Essential Requirements: Due process requirements for American National Standards, dated January 2009, states in section 2.7.3: "If clear instruction is provided on the ballot [for requiring comments], and a negative vote unaccompanied by comments related to the proposal is received notwithstanding, the vote may be counted as a "negative without comment" for the purposes of establishing a quorum and reporting to ANSI. However, such votes (i.e., negative vote without comment or negative vote accompanied by comments not related to the proposal) shall not be factored into the numerical requirements for consensus, unless the ASD's procedures state otherwise."

alternatives to the 60% threshold. Moreover, it is suggested that NERC review the need for section 321 following FERC's ruling on the rehearing proceeding.

It is suggested further that in its filing with governmental authorities of a standard approved under section 321, NERC make explicit reference to the fact that the standard failed the initial ballot, and on re-ballot received less than a 2/3 majority of affirmative votes cast, but more than 60%. If NERC supports technical arguments against the standard, it should also make those points clear in the filings.

It appears that NERC would be required to submit the amended approval process to ANSI for approval. While the provision to approve a standard receiving less than 67% of weighted segment votes cast may not meet ANSI Essential Requirements *per se*, these requirements allow for an alternative methodology, upon application.<sup>4</sup>

Finally, two editorial suggestions are offered:

- *Section 321.1 should be split into two sections.*

The first part concerns the authority of the Standards Committee; and is appropriate as written. The second part concerns a separate matter, namely, the board's response to specific circumstances respecting a directive. For improved clarity, it should be reworded to the effect: "The Board of Trustees, upon receipt of a standard proposed for approval, shall determine whether the proposed standard is responsive to the specific matters. If the board determines that the proposed standard is not response, the board may remand, with instructions, said proposed standard to the Standards Committee."

- *The two instances of "are" in section 309.3.1 should be replaced by "is" ("each" being singular).*

The SRC appreciates the opportunity to provide these comments.

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<sup>4</sup> The ANSI Essential Requirements states:

2.7 Evidence of consensus and consensus body vote

Evidence of consensus in accordance with these procedures and the accredited procedures of the standards developer shall be documented. Consensus is demonstrated, in part, by a vote of the consensus body. The developer's procedures shall state specifically how consensus will be determined.

An example of the criteria for consensus includes a requirement that a majority of the consensus body cast a vote (counting abstentions) and at least two-thirds of those voting approve (not counting abstentions). The developer may submit for approval an alternative methodology for determining consensus. *[emphasis added]*