

**COMMENTS OF THE AMERICAN PUBLIC POWER ASSOCIATION, EDISON  
ELECTRIC INSTITUTE, ELECTRICITY CONSUMERS RESOURCE COUNCIL,  
ELECTRIC POWER SUPPLY ASSOCIATION, LARGE PUBLIC POWER COUNCIL,  
NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION AND THE  
TRANSMISSION ACCESS POLICY STUDY GROUP  
ON THE  
PROPOSED AMENDMENTS TO NERC RULES OF PROCEDURE SECTION 300**

The American Public Power Association, the Edison Electric Institute, the Electricity Consumers Resource Council, the Electric Power Supply Association, the Large Public Power Council, the National Rural Electric Cooperative Association, and the Transmission Access Policy Study Group (collectively “the Trade Associations”) are pleased to provide these joint comments on Proposed Amendments to NERC Rules of Procedure Section 300.<sup>1</sup> The Trade Associations support the overall approach taken by NERC in the Proposed Amendments. We have a few suggested comments, which we believe will improve the Proposed Amendments. We set forth those changes in a redline version (attached) and explain those suggestions below.

Sections 309.2, 309.3, 321.1 and 321.2 – The Trade Associations suggest that the word “identified” as used in Section 321.4.1 is a better term than “contained” in phrases such as “address a specific matter that is contained in a directive.” We recommend conforming changes to sections 309.2, 309.3, 321.1 and 321.2 so that consistent terminology is used.

Section 321.1 – New text has been added to 321.1 and 321.2 to make clear that the Board of Trustees (“BOT”) is responding to two different circumstances. In 321.1, the BOT may remand a proposed standard if the Standards Committee (“SC”) and the Standards Drafting Team (“SDT”) have not fully responded to a directive. In contrast, section 321.2 addresses circumstances where the proposed standard in fact addresses the directive, but the ballot pool has failed to approve the standard.

Section 321.2 – As drafted, the procedure set forth in the Proposed Amendments does not allow remand in a way that would allow any modifications to the draft standard to gain greater consensus. The Trade Associations suggest language that would require the SC to determine whether further changes to the proposed reliability standard are unlikely to result in approval and if so, to advise the BOT.

The language in proposed subsection 321.2(i) that instructs the SC to “prepare a memorandum describing the issues surrounding the regulatory directive” is acceptable. However, the Trade Associations suggest that the SC should work with NERC Standards staff,

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<sup>1</sup> See May 18, 2010 [Notice of Proposed Amendments to NERC Rules of Procedure Section 300 and Request for Comments](http://www.nerc.com/page.php?cid=1|8|169) available at: <http://www.nerc.com/page.php?cid=1|8|169>

the NERC General Counsel and the SDT to delineate the regulatory context and options as part of the description of the issues.

Section 321.2.2 – The Trade Associations believe that the word “substantive” is too imprecise to inform commenters on the criteria the NERC Standards staff and SC will use to determine whether the commenter has submitted relevant comments. Instead, the Trade Associations suggest language that we believe more accurately conveys the idea that in order to be counted other than for purposes of a quorum, a negative vote must be accompanied by the reasons explaining the “no” vote. This language is also consistent with the ANSI Essential Requirements, section 2.7.

Section 321.4.1 – The Trade Associations suggest that “public comment” rather than “input” better describes the process contemplated in this section.

Section 321.4.2 – The Trade Associations suggest that it is appropriate to provide notice to stakeholders and to allow interested entities to submit oral or written comments for consideration by the BOT.

Section 321.4.3.2 – The Trade Associations believe it is important that the development record associated with the proposed standard, not just the standard, be filed with the ERO governmental authority. This is important to make sure that the governmental authority has the necessary information to inform its review of the filing. We also suggest that the ROP clarify that the filing is for informational purposes only.

Section 321.4.4 – To give NERC flexibility, the Trades Associations suggest language clarifying that NERC may request appropriate relief from the regulatory directive, if applicable.

In addition to the changes to the Rules of Procedure (“ROP”), the Trade Associations also urge NERC to ensure that the right to challenge a directive is preserved. Whenever FERC issues an order that identifies a directive, NERC should immediately undertake a review of the order to determine whether a request for rehearing or clarification is appropriate, and if so, file it.

**Trade Association Proposed Edits to NERC ROP 309 and new 321**

**Revise Rule 309 in the following manner (new language is underscored):**

**309. Filing of Reliability Standards for Approval by ERO Governmental Authorities**

**1. Filing of Reliability Standards for Approval** — Where authorized by applicable legislation or agreement, NERC shall file with the applicable ERO governmental authorities each reliability standard, modification to a reliability standard, or withdrawal of a standard that is approved by the board. Each filing shall be in the format required by the ERO governmental authority and shall include: a concise statement of the basis and purpose of the standard; the text of the standard; the implementation plan for the reliability standard; a demonstration that the standard meets the essential attributes of reliability standards as stated in Section 302; the drafting team roster; the ballot pool and final ballot results; and a discussion of public comments received during the development of the reliability standard and the consideration of those comments.

**2. Remanded Reliability Standards and Directives to Develop Standards** — If an ERO governmental authority remands a reliability standard to NERC or directs NERC to develop a reliability standard, NERC shall within five (5) business days notify all other applicable ERO governmental authorities, and shall within thirty (30) calendar days report to all ERO governmental authorities a plan and timetable for modification or development of the reliability standard. Standards that are remanded or directed by an ERO governmental authority shall be modified or developed using the *Reliability Standards Development Procedure*. NERC shall, during the development of a modification for the remanded standard or directed standard, consult with other ERO governmental authorities to coordinate any impacts of the proposed standards in those other jurisdictions. The urgent approval action procedure may be applied if necessary to meet a timetable for action required by the ERO governmental authorities, respecting to the extent possible the provisions in the standards development process for reasonable notice and opportunity for public comment, due process, openness, and a balance of interest in developing reliability standards. If the standards process fails to produce a standard that addresses a specific matter ~~that is contained~~ identified in a directive issued by an applicable ERO governmental authority, then Rule 321 of these Rules of Procedure shall apply.

**3. Directives to Develop Standards under Extraordinary Circumstances** — An ERO governmental authority may, on its own initiative, determine that extraordinary circumstances exist requiring expedited development of a reliability standard. In such a case, the applicable agency may direct the development of a standard within a certain deadline. NERC staff shall prepare the standards authorization request and seek a stakeholder sponsor for the request. If NERC is unable to find a sponsor for the proposed standard, NERC will be designated as the requestor. The proposed standard will then proceed through the standards development process, using the urgent and

emergency action procedures described in the *Reliability Standards Development Procedure* as necessary to meet the specified deadline. The timeline will be developed to respect, to the extent possible, the provisions in the standards development process for reasonable notice and opportunity for public comment, due 2 process, openness, and a balance of interests in developing reliability standards. If the standards process fails to produce a standard that addresses a specific matter ~~that is contained~~ identified in a directive issued by an applicable ERO governmental authority, then Rule 321 of these Rules of Procedure shall apply, with appropriate modification of the timeline.

3.1 Consistent with all reliability standards developed under the urgent or emergency action process, each of the three possible follow-up actions as documented in the *Reliability Standards Development Procedure* are to be completed through the standards development process and are subject to approval by the ERO governmental authorities in the U.S. and Canada.

**B. Add a new rule to Section 300 of the Rules of Procedure, as follows (*this entire section is new; the Trade Associations' proposed edits are shown in redline/strikeout; for ease of reading, underscoring has been eliminated*) ~~new language is underscored~~:**

### **321. Special Rule to Address Certain Regulatory Directives**

1. The Standards Committee shall have the responsibility to ensure that standards drafting teams address specific matters that are ~~contained~~ identified in directives issued by applicable ERO governmental authorities. If the ~~The~~ Board of Trustees is presented with a proposed standard that fails to address such directives, the Board of Trustees may remand, with instructions, ~~a~~ the proposed reliability standard ~~that fails to address such directives~~ to the Standards Committee.

2. ~~Upon a written finding by the Board of Trustees that~~ If a ballot pool ~~has failed~~ to approve a proposed reliability standard that contains a provision to address a specific matter ~~identified~~ as in a directive issued by an ERO governmental authority, and the Standards Committee determines that further changes to the proposed reliability standard are unlikely to result in industry approval, then the proposed reliability standard shall be presented to the Board of Trustees. Upon a written finding, the Board of Trustees shall remand the proposed reliability standard to the Standards Committee, with instructions to (i) prepare a memorandum describing the issues surrounding the regulatory directive, and (ii) re-ballot the proposed reliability standard one additional time.

2.1 Such a re-ballot shall be completed within thirty days of the remand. The Standards Committee memorandum shall be included in the materials made available to the ballot pool in connection with the re-ballot.

2.2 In any such re-ballot, negative votes without ~~substantive~~ comments shall only be counted for purposes of establishing a quorum, but only (i) affirmative votes and (ii) negative votes ~~with substantive e~~accompanied by comments explaining the reason(s) for voting against approval, shall be counted for purposes of determining the number of votes cast and whether the proposed standard has been approvedpasses.

3. If the re-balloted proposed reliability standard achieves at least an affirmative two-thirds majority vote of the weighted segment votes cast, with a quorum ~~3~~established, then the proposed reliability standard shall be deemed approved by the ballot pool and shall be submitted to the Board of Trustees for approval.

4. If the re-balloted proposed reliability standard fails to achieve at least an affirmative two-thirds majority vote of the weighted segment votes cast, but does achieve at least a sixty percent affirmative majority of the weighted segment votes cast, with a quorum established, then the Board of Trustees may consider the proposed reliability standard for approval under the following procedures:

4.1 The Board of Trustees shall issue notice of its intent to consider the proposed reliability standard and shall solicit public comments~~input~~ particularly focused on the technical aspects of the provisions of the proposed reliability standard that address the specific matter identified in the regulatory directive.

4.2 The Board of Trustees may, in its discretion and after reasonable notice to stakeholders, convene a technical conference to receive additional stakeholder input and consider written comments on the matter.

4.3 After considering the developmental record, the comments received during balloting and the additional input received under subsections 4.1 and 4.2 of this rule, the Board of Trustees may act on the proposed reliability standard.

4.3.1 If the Board of Trustees concludes that the proposed reliability standard should be adopted, then it shall approve the proposed reliability standard and direct that it be filed with applicable ERO governmental authorities with a request that it be made effective.

4.3.2 If the Board of Trustees concludes that the proposed reliability standard should not be adopted, then it shall direct that the development record associated with the proposed reliability standard be filed for informational purposes with the applicable ERO governmental authorities in response to the order giving rise to the regulatory directive, along with a recommendation that the standard not be made effective and an explanation of the basis for its conclusion.

4.4 If the re-balloted proposed reliability standard that contains a provision to address a specific matter identified in a directive issued by ~~as directed by~~ an ERO governmental authority fails to achieve at least a sixty percent affirmative majority of the weighted segment votes cast, or the re-ballot fails to achieve a quorum, then NERC shall, within thirty days of the failed re-ballot, file a report with the applicable ERO governmental authority regarding the circumstances of the matter and, if applicable, requesting appropriate relief.

5. NERC shall on March 31<sup>st</sup> of each year file a report with applicable ERO governmental authorities on the status and timetable for addressing each outstanding directive to address a specific matter received from an applicable ERO governmental authority.