

March 21, 2022

VIA ELECTRONIC FILING

Mr. Neil Cunningham
Director of Climate Change and Energy Branch
Department of Sustainable Development
1200-155 Carlton Street
Winnipeg MB R3C 3H8

RE: *North American Electric Reliability Corporation*

Dear Mr. Cunningham:

The North American Electric Reliability Corporation (“NERC”) hereby submits Notice of Filing of the North American Electric Reliability Corporation of Revisions to the NERC Rules of Procedure Regarding Reliability Standards. NERC requests, to the extent necessary, a waiver of any applicable filing requirements with respect to this filing.

Please contact the undersigned if you have any questions concerning this filing.

Sincerely,

/s/ Lauren Perotti

Lauren Perotti
*Senior Counsel for the North American Electric
Reliability Corporation*

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**BEFORE THE
PROVINCE OF MANITOBA**

**NORTH AMERICAN ELECTRIC)
RELIABILITY CORPORATION)**

**NOTICE OF FILING OF THE
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION OF REVISIONS TO
THE NERC RULES OF PROCEDURE REGARDING RELIABILITY STANDARDS**

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Attachments - Proposed Revisions to the NERC Rules of Procedure

Attachment 1 Section 300, Reliability Standards Development

Attachment 1-A Clean

Attachment 1-B Redline to Last Approved

Attachment 2 Appendix 3B, Procedure for Election of Members of the Standards Committee

Attachment 2-A Clean

Attachment 2-B Redline to Last Approved

Attachment 3 Appendix 3D, Development of the Registered Ballot Body

Attachment 3-A Clean

Attachment 3-B Redline to Last Approved

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NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION OF REVISIONS TO
THE NERC RULES OF PROCEDURE REGARDING RELIABILITY STANDARDS**

The North American Electric Reliability Corporation (“NERC”) hereby submits proposed revisions to the NERC Rules of Procedure (“ROP”) regarding Reliability Standards; specifically, Section 300, Reliability Standards Development; Appendix 3B, Procedure for Election of Members of the Standards Committee, and Appendix 3D, Development of the Registered Ballot Body.

As discussed herein, the proposed revisions consist of updates to staff titles, processes, and other language, clarifications to roles and responsibilities with regard to Reliability Standards, and removing unnecessary or duplicative obligations.

This amended filing supersedes the original filing submitted on August 24, 2021. In this amended filing, NERC provides additional information regarding proposed changes to Section 305.3.3 of the NERC Rules of Procedure.

The proposed revisions, as shown in Attachments 1-3, are just, reasonable, not unduly discriminatory, and in the public interest.

I. NOTICES AND COMMUNICATIONS

Notices and communications with respect to this filing may be addressed to the following:

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II. BACKGROUND

A. The NERC Rules of Procedure Regarding Reliability Standards Development

Collectively, NERC’s Rules of Procedure are designed to provide for reasonable notice and opportunity for public comment, due process, openness, and a balance of interests in developing proposed Reliability Standards. Section 300 of the NERC ROP establishes the general framework for Reliability Standards, including the obligation of NERC to develop Reliability Standards and for those Reliability Standards to meet certain essential attributes and be developed according to certain essential principles. This section also includes, among other things, provisions relating to the Registered Ballot Body (“RBB”) that votes on Reliability Standards, regional Reliability Standards development, and NERC’s obligations with regard to the applicable governmental authorities that approve Reliability Standards. NERC last revised this section of the Rules of Procedure in 2015, to be effective April 1, 2016.¹

¹ *Notice of Filing of the North American Electric Reliability Corporation of Proposed Rules of Procedure Revisions*, (Dec. 16, 2015) (including, among other revisions, revisions to Section 317 of the NERC Rules of Procedure).

Additional support and detail for Reliability Standards development is contained in three appendices to the NERC Rules of Procedure:

- Appendix 3A: Standard Processes Manual (effective March 1, 2019),² which contains the processes for developing Reliability Standards, consistent with the essential principles of openness, transparency, consensus-building, balance of interests, due process, and timeliness;
- Appendix 3B: Procedure for Election of Members of the Standards Committee (effective Oct. 4, 2013),³ which contains the procedure for electing members to the NERC Standards Committee, the committee charged under NERC's rules with oversight of NERC's processes for developing Reliability Standards; and
- Appendix 3D, Registered Ballot Body Criteria (effective March 9, 2018)⁴; which sets forth the criteria for each of the ten segments that votes on NERC Reliability Standards and establishes registration procedures and segment qualification guidelines.

In this filing, NERC proposes revisions to Section 300, Appendix 3B, and Appendix 3D, as discussed in further detail below.

B. Development and Approval of the Proposed Revisions

NERC posted the proposed revisions to Section 300, Appendix 3B, and Appendix 3D for a 45-day public comment period from May 14, 2021 to June 28, 2021. NERC received seven sets of responses, including five sets of comments. Several commenters suggested additional, minor changes for clarity and consistency. Two commenters suggested additional changes regarding Segment 10 in Appendix 3D, which were beyond the scope of this revision effort. One commenter, a registered entity, suggested retaining the requirement to notify all applicable governmental authorities when one directs a new standard. In response to the comments, NERC staff made

² *Notice of Filing of the North American Electric Reliability Corporation of Proposed Revisions to the Standard Processes Manual, Appendix 3A to the NERC Rules of Procedure*, (Nov. 29, 2018).

³ *Notice of Filing of the North American Electric Reliability Corporation of Appendixes 3B and 3D to the NERC Rules of Procedure Regarding the Election Procedure for Members of NERC Standards Committee and Registered Ballot Body Criteria*, (June 17, 2011).

⁴ *Notice of Filing of the North American Electric Reliability Corporation of Proposed Revisions to Appendix 3D to the Rules of Procedure*, (Nov. 30, 2017).

several additional clarifying revisions. The NERC Board of Trustees approved the proposed revisions on August 12, 2021.

III. PROPOSED REVISIONS TO THE NERC RULES OF PROCEDURE REGARDING RELIABILITY STANDARDS

NERC proposes a series of revisions to the standards-related provisions of its Rules of Procedure, including revisions to Section 300, Reliability Standards Development; Appendix 3B, Procedure for Election of Members of the Standards Committee; and Appendix 3D, Development of the Registered Ballot Body. The revisions consist of updating language, staff titles, and processes; removing unnecessary or duplicative obligations; and clarifying roles and responsibilities. This section includes a section-by-section summary of the proposed revisions.

A. Section 300, Reliability Standards Development

This section summarizes the proposed revisions to Section 300, Reliability Standards Development. The proposed revisions are shown in redline in Attachment 1-B.

1. Section 302

In Section 302, NERC proposes to remove the list of specific functional classes to which Reliability Standards may apply. The list presently in this section is out of date. Other sections of the Rules of Procedure specify which entities are registered with NERC for Reliability Standards compliance purposes.

2. Section 305

In Section 305, NERC proposes to clarify the obligation of entities to withdraw additional members of the RBB when a change in corporate structure (such as a merger or acquisition) results in the entity or affiliated entities having more than one representative in a particular segment.

In Section 305, NERC also proposes to revise language regarding changing segments (Section 305.3.2) and review of segment criteria (Section 305.3.3) for consistency with similar

provisions in Appendix 3D.

In Section 305.3.3 in particular, NERC proposes to adopt the more flexible of the two provisions in the present NERC Rules of Procedure regarding the timing of RBB segment criteria reviews, by revising the periodicity in Section 305.3.3 from “every three years” to “periodically”. A more flexible rule for RBB review is appropriate, in light of the stable nature of the RBB and its ongoing application in standards voting, and would promote the most efficient use of NERC and stakeholder resources.

The NERC RBB presently consists of ten interest categories representing the various groups that have an interest in the reliability of the modern Bulk-Power System (“BPS”), including the entities involved in owning, operating, maintaining, delivering, using, and overseeing the processes associated with BPS reliability. The RBB was intended to provide balance in voting on Reliability Standards, in satisfaction of both the U.S. statutory and regulatory requirements for ERO certification,⁵ as well as the essential attributes for American National Standards Institute (“ANSI”)-accredited standards developers, of which NERC is one.⁶ The general RBB segment framework has changed very little since NERC’s initial certification as the ERO in 2006 by the Federal Energy Regulatory Commission (“FERC”).⁷ Indeed, the current segment categories and criteria are very similar to those in NERC’s initial application for ANSI accreditation in 2002.⁸

⁵ See 16 U.S.C. § 824o; see also 18 C.F.R. § 39.3(b)(2)(iv).

⁶ See American National Standards Institute, *Essential Requirements: Due Process Requirements for American National Standards* (Jan. 2022) at Sections 1.3 and 2.3, available at https://share.ansi.org/Shared%20Documents/About%20ANSI/Current_Versions_Proc_Docs_for_Website/ER_Pro_current.pdf.

⁷ See *N. Am. Elec. Reliability Corp.*, 116 FERC ¶ 61,062 (2006), *order on reh’g & compliance*, 117 FERC ¶ 61,126 (2006), *aff’d sub nom. Alcoa, Inc. v. FERC*, 564 F.3d 1342 (D.C. Cir. 2009) [hereinafter ERO Certification Order].

⁸ See NERC, Initial Application to ANSI for Accreditation as a Standards Developer at attach. B – NERC Organization Standards Process Manual, app. B – Development of the Registered Ballot Body 33-37 (pdf 48-52) (2002), available at <https://www.nerc.com/pa/Stand/Pages/ANSIAccreditation.aspx>.

Over the years, changes to the RBB have consisted of changes made in connection with NERC's initial certification, including creating separate Regional Entity and Regional Transmission Organization segments at FERC's direction,⁹ making various clarifications regarding who may join the segments, and making several changes and clarifications over the years regarding the participation of contractors, agents, and trade associations in the segments.¹⁰

Although the RBB criteria have remained relatively stable over the years, NERC continually applies the criteria, and as such, assesses whether the criteria are clear and continue to provide for fair and balanced representation in standards voting. To cite several examples, NERC reviews the RBB criteria in connection with: (1) new requests to join the RBB; (2) determining segment participation and interest among various projects; and (3) determining segment participation and interest in annual and special elections for the Standards Committee, the members of which are drawn from the RBB. NERC's administration of its standards program is also subject to monitoring by the NERC Compliance and Certification Committee and NERC's internal audit program. In considering recommendations from the most recent audit, NERC determined to revise the RBB criteria to clarify member responsibilities following an organizational change; these changes are described later in this filing. In addition, NERC initiates additional reviews, on an as-needed basis, to address issues identified by staff, stakeholders, or

⁹ See ERO Certification Order at P 90 (directing NERC to create a separate segment for ISOs and RTOs and address a concern raised regarding weighting of segments with fewer than 10 members); see also *Compliance Filing of NERC in Response to January 18, 2007 Order and March 9, 2007 Order*, Docket No. RR06-1-007 (Mar. 19, 2007) (detailing NERC's responses to these ERO Certification Order directives) and *Order on Compliance Filing*, 119 FERC ¶ 61,248 (Jun. 7, 2007) (accepting the March 19, 2007 compliance filing and directing additional compliance filings on other issues).

¹⁰ See *Notice of Filing of NERC of Appendices 3B and 3D to the NERC Rules of Procedure Regarding the Election Procedure for Members of NERC Standards Committee and Registered Ballot Body Criteria*, (Jun. 17, 2011), see also n.10, *infra*. In addition, NERC has reviewed the RBB in connection with changes in defined terms used in the Rules of Procedure affecting the segment criteria (see capitalization of the term Load in 2014, in connection with changes made to the definition of Bulk Electric System approved by FERC in Order No. 773, *Revisions to Electric Reliability Organization Definition of Bulk Electric System and Rules of Procedure*, 141 FERC ¶ 61,236 (2012), *order on reh'g*, Order No. 773-A, 143 FERC ¶ 61,053 (2013)).

from ANSI in connection with their accreditation process.

The public has the opportunity to provide feedback on the RBB segment criteria through various mechanisms, both formal and informal. All proposed changes to the RBB criteria are considered proposed changes to the Rules of Procedure, and as such, are posted for public comment in accordance with Section 1400 – Amendments to the NERC Rules of Procedure. NERC also provides public forums to review any proposed RBB criteria changes or suggest additional areas for consideration, including the stakeholder standing committees, the NERC Member Representatives Committee, and the NERC Board of Trustees. The public may comment on NERC’s RBB criteria, as it relates to the criteria for NERC’s ERO certification, as part of the Five Year Performance Assessment process under U.S. 18 C.F.R. § 39.3(c). The public may also comment on RBB segment criteria outside any formal comment process or stakeholder forum. For example, in 2017, several stakeholders raised a concern with NERC staff directly regarding potential vote dilution in the ISO/RTO segment, which resulted in NERC initiating its Rules of Procedure revision process to revise the RBB criteria.¹¹

NERC proposes a more flexible review rule in Section 305.3.3 to avoid having the RBB segment review process become a perfunctory exercise to be completed in the absence of any need for revisions or substantive changes in the nature of the interests that should be represented in the RBB. In light of the continuous application of the RBB criteria and oversight activity described above, and the fact that concerns may be raised regarding the RBB at any time, it is not likely that the RBB criteria would become so out-of-date so as to no longer provide for fair and balanced representation in standards development if longer than three years were to elapse between dedicated reviews.

¹¹ See *Notice of Filing of NERC for Approval of Proposed Revisions to Appendix 3D to the Rules of Procedure*, (Nov. 30, 2017)..

Further, the proposed revision would provide needed flexibility in the event a more substantive change to the RBB criteria is determined to be in order. A significant change to the RBB, such as the removal or consolidation of one or more segments or a significant change in segment criteria, would affect the participation of current segment members and the ongoing ballot pools in which those members are participating. These types of changes would also, by extension, affect the composition of the Standards Committee. A more flexible rule would allow NERC sufficient time to develop or evaluate such proposals, prepare the necessary supporting materials and analysis, propose a reasonable timeframe for implementation, and ensure NERC's stakeholders have meaningful opportunities to provide their feedback, while also recognizing the other demands and competing priorities NERC places on their time.

3. Sections 307, 317, and 319

In Sections 307, 317, and 319, NERC proposes to remove or update references to obsolete NERC Standards staff titles as appropriate.

4. Section 309

In Section 309, NERC proposes two revisions. First, NERC proposes to remove, as redundant and unnecessary, two reporting requirements: first, the requirement that NERC submit a report to all other applicable governmental authorities when one directs a new standard; and second, that NERC submit a plan and timetable for modifying or developing remanded or new standards within 30 days. NERC has well-established, open, and transparent mechanisms for keeping all interested parties informed of the status of standards development, whether the development project has been directed by applicable governmental authority or initiated by NERC or an industry stakeholder. These mechanisms include the annual Reliability Standards Development Plan prepared and filed with each applicable governmental authority under Section 310, which includes and prioritizes new projects addressing regulatory directives. Other

mechanisms include the Standards Committee Project Management Oversight Subcommittee project status tracker,¹² which is updated and reviewed regularly in open meetings, as well as the drafting team meetings themselves, which are open to the public. These mechanisms allow NERC to prioritize projects as appropriate, meet regulatory deadlines, and incorporate feedback from all stakeholders, including the applicable governmental authorities, in an open and transparent manner. At the conclusion of the development process, NERC submits a filing to each applicable governmental authority which includes the reasons NERC developed the proposed standard that is submitted for approval and any relevant regulatory history. Second, NERC proposes to revise Section 309 to update the reference to the “expedited standards development process” in the Standard Processes Manual, Appendix 3A to the Rules of Procedure; this process is now titled “Waiver.”

5. Section 313

In Section 313, NERC proposes to eliminate the Regional Entity’s ongoing obligation to provide an updated catalog listing of Regional Criteria¹³ to NERC and replace it with an obligation to maintain a current catalog of its Regional Criteria in a publicly-available form. These revisions will help ensure transparency regarding Regional Criteria while eliminating an unnecessary reporting burden on Regional Entities.

¹² The project status tracker is available on NERC’s website here: <https://www.nerc.com/comm/SC/Project%20Management%20and%20Oversight%20Subcommittee%20DL/Project%20Tracking%20Spreadsheet.xlsx>.

¹³ As specified in Appendix 2, Definitions used in the NERC Rules of Procedure, “Regional Criteria” means reliability requirements developed by a Regional Entity that are necessary to implement, to augment, or to comply with Reliability Standards, but which are not Reliability Standards. Such Regional Criteria may be necessary to account for physical differences in the Bulk-Power System but are not inconsistent with Reliability Standards nor do they result in lesser reliability. Such Regional Criteria are not enforceable pursuant to NERC-delegated authorities, but may be enforced through other available mechanisms. Regional Criteria may include specific acceptable operating or planning parameters, guides, agreements, protocols or other documents.

B. Appendix 3B, Procedure for Election of Members of the Standards Committee

In Appendix 3B, NERC proposes to remove references to the NERC “standards process manager (SPM),” which is an obsolete NERC staff title, and replace it with “procedure manager,” the individual designated to oversee the Standards Committee election procedure described in Appendix 3B. The proposed revisions are shown in redline in Attachment 2-B.

C. Appendix 3D, Development of the Registered Ballot Body

NERC proposes several revisions in Appendix 3D, Development of the Registered Ballot Body. The revisions are summarized below; they are shown in redline in Attachment 3-B.

In the Registration Procedures section, NERC proposes revisions to clarify that the NERC General Counsel may delegate its responsibility to review applications to join the RBB to a member of the General Counsel’s legal staff. These proposed revisions, which are consistent with NERC’s current practice, would aid in the expedient and efficient processing of requests to join the RBB.

In the Segment Qualification Guidelines section, NERC proposes revisions to clarify the segment qualification guidelines as follows. First, NERC proposes revisions to clarify that NERC may remove individuals that have not completed the required annual self-selection process, following the provision of written notice. Second, NERC proposes revisions, intended to correspond to the proposed revisions in Section 305 discussed above, to clarify that entities have an obligation to withdraw additional members of the RBB when a change in corporate structure (such as a merger or acquisition) results in the entity or affiliated entities having more than the one permitted representative in a segment. The proposed language would specify that entities must complete this withdrawal prior to joining any new ballot pools or voting on any standards action as part of an existing ballot pool. These proposed revisions would provide necessary clarity to

entities regarding their RBB membership obligations and help protect the integrity of RBB actions as consistent with NERC's rules regarding segment representation.

In the Segments section, NERC proposes to remove language in Segment 10 Regional Entity that is no longer necessary following the dissolution of the Southwest Power Pool and Florida Reliability Coordinating Council Regional Entities.

Respectfully submitted,

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ATTACHMENTS 1 - 3