

## Supplemental Request for Comments on Proposed Amendments to NERC's Rules of Procedure

### Comments Due December 2, 2010

**On October 18, 2010, NERC posted for comment two proposed alternatives (Alternative A and Alternative B) to Section 321 of the NERC Rules of Procedure. NERC is supplementing the October 18 posting with the proposed Alternative C posted herein for comment. Alternative C combines certain elements of Alternatives A and B. NERC's Board of Trustees will consider the proposed amendments and comments received to finalize NERC's compliance filing due December 13, 2010.**

Submit comments to [rdacomment@nerc.net](mailto:rdacomment@nerc.net).

On March 18, 2010, the Federal Energy Regulatory Commission issued an Order directing NERC to file proposed modifications to the NERC Rules of Procedure to address what FERC stated is a conflict between NERC's Reliability Standards Development Procedure and NERC's obligation to comply with FERC directives pursuant to Section 215(d)(5) of the Federal Power Act (FPA). FERC stated that the basis of the directive is a "growing concern that the current voting process in the ERO rules of procedure can be used to prevent compliance with Commission directives to address particular reliability matters." FERC therefore directed NERC to modify its Rules of Procedure to (1) assure that standards drafting teams comply with Commission directives by developing new or revised Reliability Standards that satisfy applicable Commission directives, and (2) assure that a negative vote of the ballot body cannot block NERC's ability to file new or modified Reliability Standards that satisfy applicable Commission directives with the Commission.<sup>1</sup>

NERC requested rehearing of the March 18 Order, requested a stay, and requested a public conference to provide an opportunity for NERC, stakeholders, and the Commission to discuss the issues underlying the March 18 Order. On September 16, 2010, FERC issued an Order denying all of NERC's requests and determined that its directives do not conflict with Section 215(d)(5) of the FPA. The Commission stated that when a directive offers a specific approach, NERC has the flexibility to develop an equally efficient and effective alternative. However, the Commission noted that the ERO has discretion in how it responds to a Commission directive to submit a new or modified Reliability Standard, but the discretion exists in *how* NERC chooses to respond, not in *whether* NERC will affirmatively respond. That is, NERC does *not* have the discretion to disregard a final Commission directive because the FPA provides that the

<sup>1</sup> *Order Directing NERC to Propose Modification of Electric Reliability Organization Rules of Procedure*, 130 FERC 61,203 (March 18, 2010) ("March 18 Order").

Commission may direct the ERO to submit a new or modified Reliability Standard that addresses a specific matter if the Commission considers such a new or modified Reliability Standard appropriate to carry out Section 215 of the FPA. The Commission noted, however, that “when the Commission issues a specific directive pursuant to Section 215(d)(5), it should be supported by a clear technical rationale that explains how the directive is related to Bulk-Power System reliability.”

### **December 13 Compliance Filing**

NERC must make a compliance filing responding to the Commission’s March 18 directive to modify the standards process no later than December 13, 2010. NERC is seeking comments on proposed amendments to its Rules of Procedure to address the issues raised in the March 18 Order. So that the Board of Trustees has a full range of approaches to consider for the December 13, 2010 compliance filing, NERC has developed three alternative approaches.

#### **ALTERNATIVE A**

The first approach, designated Alternative A, involves a proposed new Rule 321 of the Rules of Procedure. Alternative A was posted for comment in May 2010 and approved by the NERC Board of Trustees on June 11, 2010. NERC withheld filing proposed Rule 321 at the request of senior Commission staff in conjunction with the extension of the compliance deadline and the anticipated discussions to be held at the July 6, 2010 Reliability Standards Technical Conference.<sup>2</sup> Alternative A has these features:

- The proposed rule states it is the Standards Committee’s responsibility to ensure that regulatory directives are addressed in the standards developed or modified through the standards development procedure.
- The proposed rule gives the NERC Board of Trustees the authority to remand a standard back to the industry via the Standards Committee, with instructions, if a proposed standard fails to address a regulatory directive.
- Section 2 of the rule states that if a ballot pool fails to approve a proposed Reliability Standard that contains a provision addressing a regulatory directive, the board may direct the Standards Committee to prepare a memorandum describing the issues surrounding the regulatory directive and conduct one additional re-ballot, with that re-ballot to be completed within 45 days. In any such re-ballot, negative votes without comment would be considered for purposes of establishing a quorum, but only affirmative votes and negative votes with comments would be counted in determining the approval percentage for the ballot.

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<sup>2</sup> *Reliability Standards Development and NERC and Regional Entity Enforcement*, Notice of Technical Conference, Docket No. AD10-14-000 (June 15, 2010).

- Section 3 states that if the re-balloted standard achieves a two-thirds affirmative vote, then the standard shall be deemed approved by the registered ballot pool and shall be submitted to the board for approval.
- Section 4 states that if the standard fails to achieve a two-thirds affirmative vote, but does achieve at least a 60 percent affirmative vote, then the board may proceed to consider the standard for approval.
- Section 5 states that if the re-balloted standard fails to achieve at least a 60% affirmative vote, then NERC shall file a report of the entire circumstances with the ERO regulatory authority issuing the directive.
- Section 6 provides that NERC will file an annual report with all ERO governmental authorities giving the status of all regulatory directives.

#### **ALTERNATIVE B**

Alternative B, which was posted on October 18 for comment and is included herein, would involve a new but different Rule 321. Under Alternative B, if the Board of Trustees finds that a ballot pool has failed to approve a standard that addresses a specific regulatory directive, then the board itself could direct that a draft standard addressing the directive be prepared. The board would solicit comment on the draft standard. Thereafter, the board itself would decide whether or not to approve the standard and submit it to ERO governmental authorities. Alternative B would have the following features:

- Like Alternative A, Alternative B would state it is the Standards Committee's responsibility to ensure that regulatory directives are addressed in the standards developed or modified through the standards development procedure. The proposed rule would also give the NERC Board of Trustees the authority to remand a standard back to the industry via the Standards Committee, with instructions, if a standard fails to address a regulatory directive.
- Under Alternative B, upon a written determination by the NERC Board that a ballot pool has failed to approve a standard that addresses a specific regulatory directive, the board would direct the Standards Committee (in the first instance) or NERC management (in the alternative) to develop a proposed standard that does address the regulatory directive, taking account of the entire developmental record.
- Under Alternative B, upon a written determination by the NERC Board that a ballot pool has failed to approve a standard that addresses a specific regulatory directive, the board would direct the Standards Committee (in the first instance) or NERC management (in the alternative) to develop a proposed standard that

does address the regulatory directive, taking account of the entire developmental record.

- The draft Reliability Standard would thereafter be posted for a 45-day public comment period.
  - If, after considering the entire developmental record, the Board of Trustees finds that the draft Reliability Standard, with such modifications as the Board of Trustees determines are appropriate in light of the comments received, is just, reasonable, in the public interest, practical, technically sound, technically feasible, cost-justified and serves the best interests of reliability of the bulk power system, then the Board of Trustees could approve the draft standard and direct that the draft standard be filed with ERO governmental authorities with a request that the draft standard be made effective.
  - If, after considering the entire developmental record, the Board of Trustees is unable to find that the draft Reliability Standard, even with modifications, is just, reasonable, in the public interest, practical, technically sound, technically feasible, cost-justified and serves the best interests of reliability of the bulk power system, then the Board of Trustees could approve the draft standard as a compliance filing in response to the regulatory directive and direct that the standard be filed with the ERO governmental authority issuing the regulatory directive with a recommendation that the draft standard not be made effective.
- The filing of the draft Reliability Standard under either paragraph would include an explanation of the basis for the decision by the Board of Trustees.
  - Section 3 would provide that NERC will file an annual report with all ERO governmental authorities giving the status of all regulatory directives.
  - Alternative B also contains an option (designated “Option 2”) for the board not to approve the draft standard but simply direct that the draft standard be filed with the appropriate ERO governmental authorities.

### **ALTERNATIVE C**

Alternative C combines certain elements of Alternatives A and B. In Alternative C, rather than saying that the Board shall do certain things, it states in several places that the Board “has the

authority” to take certain actions. The Alternative C retains the deadline for action on the single additional ballot. Alternative C would have the following features:

- The proposed rule states it is the Standards Committee’s responsibility to ensure that regulatory directives are addressed in the standards developed or modified through the standards development procedure.
- The proposed rule gives the NERC Board of Trustees the authority to remand a standard back to the industry via the Standards Committee, with instructions, if a standard fails to address a regulatory directive.
- Section 2 of the rule states that if a ballot pool fails to approve a proposed reliability standard that contains a provision addressing a regulatory directive, the board may direct the Standards Committee to prepare a memorandum describing the issues surrounding the regulatory directive and conduct one additional re-ballot, with that re-ballot to be completed within 45 days. In any such re-ballot, negative votes without comment would be considered for purposes of establishing a quorum, but only affirmative votes and negative votes with comments would be counted in determining the approval percentage for the ballot.
- Section 3 states that if the re-balloted standard achieves a two-thirds affirmative vote, then the standard shall be deemed approved by the registered ballot pool and shall be submitted to the board for approval.
- Section 4 states that if the standard fails to achieve a two-thirds affirmative vote, but does achieve at least a 60 percent affirmative vote, then the board may proceed to consider the standard for approval.
- Section 5 states that upon a written determination by the NERC Board that a standards drafting team has not developed, or a ballot pool has failed to approve, a standard that addresses a specific regulatory directive, the board has authority to direct the Standards Committee (in the first instance) or NERC management (in the alternative) to develop, taking account of the entire developmental record, a proposed standard that does address the regulatory directive.
  - The draft reliability standard shall thereafter be posted for a 45-day public comment period.
  - If, after considering the entire developmental record, the Board of Trustees finds that the draft reliability standard, with such modifications as the Board of Trustees determines are appropriate in light of the comments received, is just, reasonable, in the public interest, practical, technically sound, technically feasible, cost-justified and serves the best interests of reliability of the bulk

power system, then the Board of Trustees has authority to approve the draft standard and direct that the draft standard be filed with ERO governmental authorities with a request that the draft standard be made effective.

- If, after considering the entire developmental record, the Board of Trustees is unable to find that the draft reliability standard, even with modifications, is just, reasonable, in the public interest, practical, technically sound, technically feasible, cost-justified and serves the best interests of reliability of the bulk power system, then the Board of Trustees has authority to approve the draft standard as a compliance filing in response to the regulatory directive and direct that the standard be filed with the ERO governmental authority issuing the regulatory directive with a recommendation that the draft standard not be made effective.
- The filing of the draft reliability standard under either paragraph e shall include an explanation of the basis for the decision by the Board of Trustees.
- Section 6 provides that NERC will file an annual report with all ERO governmental authorities giving the status of all regulatory directives.

# **ALTERNATIVE A**

A. **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 does not result in a standard that addresses a specific matter that is 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 process, openness, and a balance of interests in developing reliability standards. If the standards process does not result in a standard that addresses a specific matter that is 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 (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 identified in directives issued by applicable ERO governmental authorities, including equivalent alternatives. If the Board of Trustees is presented with a proposed standard that fails to address such directives, the Board of Trustees may remand, with instructions, the proposed reliability standard to the Standards Committee.
2. Upon a written finding by the Board of Trustees that a ballot pool has failed to approve a proposed reliability standard that contains a provision to address a specific matter identified in a directive issued by an ERO governmental authority, the Board of Trustees shall remand the proposed reliability standard to the Standards Committee, with instructions to (i) convene a public technical conference to discuss the issues surrounding the regulatory directive, including whether or not the proposed standard is just, reasonable, in the public interest, helpful to reliability, practical, technically sound, technically feasible, and cost-justified; (ii) working with NERC staff, prepare a memorandum discussing the issues, an analysis of the alternatives considered and other appropriate matters; and (iii) re-ballot the proposed reliability standard one additional time, with such adjustments in the schedule as are necessary to meet the deadline contained in paragraph 2.1 of this Rule.

- 2.1 Such a re-ballot shall be completed within forty-five (45) 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 comments related to the proposal shall be counted for purposes of establishing a quorum, but only affirmative votes, and negative votes with comments related to the proposal, shall be counted for purposes of determining the number of votes cast and whether the proposed standard has been approved.
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 established, then the proposed reliability standard shall be deemed approved by the ballot pool and shall be considered by 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 written public comment particularly focused on the technical aspects of the provisions of the proposed reliability standard that address the specific matter identified in the regulatory directive, including whether or not the proposed standard is just, reasonable, in the public interest, helpful to reliability, practical, technically sound, technically feasible, and cost-justified.
  - 4.2 The Board of Trustees may, in its discretion, convene a public technical conference to receive additional input 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 proposed reliability standard and complete developmental record, including the additional input received under subsections 4.1 and 4.2 of this rule, be filed 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 the recommendation.
5. If the re-balloted proposed reliability standard that contains a provision to address a specific matter identified in a directive issued 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, request appropriate relief.
6. 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.

# **ALTERNATIVE B**

# PROPOSED ALTERNATIVE B IN RESPONSE TO MARCH 18 ORDER ON STANDARDS, WITH OPTIONS

DISCUSSION DRAFT October 13, 2010

CHANGES FROM ALTERNATIVE A ARE MARKED IN **RED UNDERSCORING AND ~~STRIKE-OUT~~**

## A. 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 Board of Trustees determines that the standards process ~~does did~~ not result in a standard that addresses a specific matter that is 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 process, openness, and a balance of interests in developing reliability standards. If the Board of Trustees determines that the standards process ~~does did~~ not result in a standard that addresses a specific matter that is 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 (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 identified in directives issued by applicable ERO governmental authorities, including equivalent alternatives. If the Board of Trustees is presented with a proposed standard that fails to address such directives, the Board of Trustees may remand, with instructions, the proposed reliability standard to the Standards Committee.

**[OPTION 1 FOR SECTION 2; ALSO SEE OPTION 2, BEGINNING ON PAGE 3.]**

2. Upon a written finding by the Board of Trustees that a ballot pool has failed to approve a proposed reliability standard that contains a provision to address a specific matter identified in a directive issued by an ERO governmental authority, the Board of Trustees shall **direct the Standards Committee (in the first instance) or NERC management (in the alternative) to prepare a draft reliability standard**

that addresses the regulatory directive, taking account of the entire developmental record pertaining to the matter. remand the proposed reliability standard to the Standards Committee, with instructions to (i) convene a public technical conference to discuss the issues surrounding the regulatory directive, including whether or not the proposed standard is just, reasonable, in the public interest, helpful to reliability, practical, technically sound, technically feasible, and cost-justified; (ii) working with NERC staff, prepare a memorandum discussing the issues, an analysis of the alternatives considered and other appropriate matters; and (iii) re-ballot the proposed reliability standard one additional time, with such adjustments in the schedule as are necessary to meet the deadline contained in paragraph 2.1 of this Rule.

- 2.1 The draft reliability standard shall thereafter be posted for a 45-day public comment period.
- 2.2 If, after considering the entire developmental record (including the comments received under paragraph 2.1 of this Rule), the Board of Trustees finds that the draft reliability standard, with such modifications as the Board of Trustees determines are appropriate in light of the comments received, is just, reasonable, in the public interest, practical, technically sound, technically feasible, cost-justified and serves the best interests of reliability of the bulk power system, then the Board of Trustees shall approve the draft standard and direct that the draft standard be filed with ERO governmental authorities with a request that the draft standard be made effective.
- 2.3 If, after considering the entire developmental record (including the comments received under paragraph 2.1 of this Rule), the Board of Trustees is unable to find that the draft reliability standard, even with modifications, is just, reasonable, in the public interest, practical, technically sound, technically feasible, cost-justified and serves the best interests of reliability of the bulk power system, then the Board of Trustees shall approve the draft standard as a compliance filing in response to the regulatory directive and direct that the standard be filed with the ERO governmental authority issuing the regulatory directive with a recommendation that the draft standard not be made effective.
- 2.4 The filing of the draft reliability standard under either paragraph 2.2 or paragraph 2.3 of this Rule shall include an explanation of the basis for the decision by the Board of Trustees.

3. 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.

**OPTION 2 FOR SECTION 2; THIS SECTION WOULD REPLACE SECTION 2, ABOVE**

2. Upon a written finding by the Board of Trustees that a ballot pool has failed to approve a proposed reliability standard that contains a provision to address a specific matter identified in a directive issued by an ERO governmental authority, the Board of Trustees shall ~~direct the Standards Committee (in the first instance) or NERC management (in the alternative) to prepare a draft reliability standard that addresses the regulatory directive, taking account of the entire developmental record pertaining to the matter. remand the proposed reliability standard to the Standards Committee, with instructions to (i) convene a public technical conference to discuss the issues surrounding the regulatory directive, including whether or not the proposed standard is just, reasonable, in the public interest, helpful to reliability, practical, technically sound, technically feasible, and cost-justified; (ii) working with NERC staff, prepare a memorandum discussing the issues, an analysis of the alternatives considered and other appropriate matters; and (iii) re-ballot the proposed reliability standard one additional time, with such adjustments in the schedule as are necessary to meet the deadline contained in paragraph 2.1 of this Rule.~~

2.1 The draft reliability standard shall thereafter be posted for a 45-day public comment period.

2.2 After considering the entire developmental record (including the comments received under paragraph 2.1 of this Rule), the Board of Trustees may direct that the draft standard be filed with ERO governmental authorities with a recommendation that the draft standard be made effective.

2.3 After considering the entire developmental record (including the comments received under paragraph 2.1 of this Rule), the Board of Trustees may direct that the standard be filed with the ERO governmental authority issuing the regulatory directive with a recommendation that the draft standard not be made effective.

- 2.4 The filing of the draft reliability standard under either paragraph 2.2 or paragraph 2.3 of this Rule shall include a discussion of the basis for the recommendation of the Board of Trustees, including whether the draft reliability standard is just, reasonable, in the public interest, practical, technically sound, technically feasible, cost-justified and serves the best interests of reliability of the bulk power system.
- ~~2.5 — Such a re-ballot shall be completed within forty five (45) 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.~~
- ~~2.6 — In any such re-ballot, negative votes without comments related to the proposal shall be counted for purposes of establishing a quorum, but only affirmative votes, and negative votes with comments related to the proposal, shall be counted for purposes of determining the number of votes cast and whether the proposed standard has been approved.~~
- ~~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 established, then the proposed reliability standard shall be deemed approved by the ballot pool and shall be considered by 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 written public comment particularly focused on the technical aspects of the provisions of the proposed reliability standard that address the specific matter identified in the regulatory directive, including whether or not the proposed standard is just, reasonable, in the public interest, helpful to reliability, practical, technically sound, technically feasible, and cost-justified.~~
- ~~4.2 — The Board of Trustees may, in its discretion, convene a public technical conference to receive additional input 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 proposed reliability standard and complete developmental record, including the additional input received under subsections 4.1 and 4.2 of this rule, be filed 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 the recommendation.~~

~~5. If the re-balloted proposed reliability standard that contains a provision to address a specific matter identified in a directive issued 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, request appropriate relief.~~

~~6. 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.~~

# **ALTERNATIVE C**

A. **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 Board of Trustees determines that the standards process ~~does-did~~ not result in a standard that addresses a specific matter that is 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 process, openness, and a balance of interests in developing reliability standards. If the Board of Trustees determines that the standards process ~~does-did~~ not result in a standard that addresses a specific matter that is 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 (new language is underscored):**

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

In circumstances where this Rule 321 applies, the Board of Trustees shall have the authority to take one or more of the actions set out below. The Board of Trustees shall have the authority to chose which one or more of the actions are appropriate to the circumstances and need not take these actions in sequential steps.

1. The Standards Committee shall have the responsibility to ensure that standards drafting teams address specific matters that are identified in directives issued by applicable ERO governmental authorities, including equivalent alternatives. If the Board of Trustees is presented with a proposed standard that fails to address such directives, the Board of Trustees ~~may~~ has the authority to remand, with instructions (including establishing a timetable for action), the proposed reliability standard to the Standards Committee.
2. Upon a written finding by the Board of Trustees that a ballot pool has failed to approve a proposed reliability standard that contains a provision to address a specific matter identified in a directive issued by an ERO governmental authority, the Board of Trustees ~~shall~~ has the authority to remand the proposed reliability standard to the Standards Committee, with instructions to (i) convene a public technical conference to discuss the issues surrounding the regulatory directive, including whether or not the proposed standard is just, reasonable, in the public interest, helpful to reliability, practical, technically sound, technically feasible, and cost-justified; (ii) working with NERC staff, prepare a memorandum discussing the issues, an analysis of the alternatives considered and other appropriate matters; and (iii) re-ballot the proposed reliability standard one

additional time, with such adjustments in the schedule as are necessary to meet the deadline contained in paragraph 2.1 of this Rule.

- 2.1 Such a re-ballot shall be completed within forty-five (45) 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 comments related to the proposal shall be counted for purposes of establishing a quorum, but only affirmative votes, and negative votes with comments related to the proposal, shall be counted for purposes of determining the number of votes cast and whether the proposed standard has been approved.
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 established, then the proposed reliability standard shall be deemed approved by the ballot pool and shall be considered by 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~~ has the authority to 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 written public comment particularly focused on the technical aspects of the provisions of the proposed reliability standard that address the specific matter identified in the regulatory directive, including whether or not the proposed standard is just, reasonable, in the public interest, helpful to reliability, practical, technically sound, technically feasible, and cost-justified.
  - 4.2 The Board of Trustees may, in its discretion, convene a public technical conference to receive additional input 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 have authority to~~ 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 have authority to~~ direct that the proposed reliability standard and complete developmental record, including the additional input received under subsections 4.1 and 4.2 of this rule, be filed 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 the recommendation.

5.

~~5. Upon a written finding by the Board of Trustees that standard drafting team has failed to develop, or a ballot pool has failed to approve, a proposed reliability standard that contains a provision to address a specific matter identified in a directive issued by an ERO governmental authority, the Board of Trustees has the authority to direct the Standards Committee (in the first instance) or NERC management (in the alternative) to prepare a draft reliability standard that addresses the regulatory directive, taking account of the entire developmental record pertaining to the matter. If the re-balloted proposed reliability standard that contains a provision to address a specific matter identified in a directive issued 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, request appropriate relief.~~

5.1 The draft reliability standard shall thereafter be posted for a 45-day public comment period.

5.2 If, after considering the entire developmental record (including the comments received under paragraph 5.1 of this Rule), the Board of Trustees finds that the draft reliability standard, with such modifications as the Board of Trustees determines are appropriate in light of the comments received, is just, reasonable, in the public interest, practical, technically

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sound, technically feasible, cost-justified and serves the best interests of reliability of the bulk power system, then the Board of Trustees has the authority to approve the draft standard and direct that the draft standard be filed with ERO governmental authorities with a request that the draft standard be made effective.

5.3 If, after considering the entire developmental record (including the comments received under paragraph 5.1 of this Rule), the Board of Trustees is unable to find that the draft reliability standard, even with modifications, is just, reasonable, in the public interest, practical, technically sound, technically feasible, cost-justified and serves the best interests of reliability of the bulk power system, then the Board of Trustees has the authority to approve the draft standard as a compliance filing in response to the regulatory directive and direct that the standard be filed with the ERO governmental authority issuing the regulatory directive with a recommendation that the draft standard not be made effective.

5.4 The filing of the draft reliability standard under either paragraph 5.2 or paragraph 5.3 of this Rule shall include an explanation of the basis for the decision by the Board of Trustees.

6. NERC shall on or before 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.