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## I. NOTICES AND COMMUNICATIONS

Notices and communications with respect to this filing may be addressed to the following:<sup>4</sup>

Shamai Elstein  
Senior Counsel  
Marisa Hecht  
Counsel  
North American Electric Reliability  
Corporation  
1325 G Street, N.W.  
Suite 600  
Washington, D.C. 20005  
202-400-3000  
shamai.elstein@nerc.net  
marisa.hecht@nerc.net

Howard Gugel  
Senior Director, Standards and Education  
North American Electric Reliability  
Corporation  
3353 Peachtree Road, N.E.  
Suite 600, North Tower  
Atlanta, GA 30326  
404-446-2560  
howard.gugel@nerc.net

## II. BACKGROUND

### A. Regulatory Framework

Section 215(f) of the FPA provides the regulatory framework for revisions to the NERC ROP, stating that “[t]he [ERO] shall file with the Commission for approval any proposed rule or proposed rule change, accompanied by an explanation of its basis and purpose.”<sup>5</sup> Section 215(f) also provides that the proposed rule or rule change “shall take effect upon a finding by the Commission, after notice and opportunity for comment, that the change is just, reasonable, and not unduly discriminatory or preferential, is in the public interest, and satisfies the requirements of subsection (c) [of § 215].”<sup>6</sup> The Commission’s regulations require that the filing include “a description of the proceedings conducted by the [ERO] ... to develop the proposal.”<sup>7</sup> The NERC ROP are ERO rules as defined in Section 39.1 of the Commission’s regulations.<sup>8</sup>

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<sup>4</sup> NERC respectfully requests a waiver of Rule 203 of the Commission’s regulations, 18 C.F.R. § 385.203 (2017), to allow the inclusion of more than two persons on the service list in this proceeding.

<sup>5</sup> 16 U.S.C. § 824o(f).

<sup>6</sup> *Id.*

<sup>7</sup> 18 C.F.R. § 39.10.

<sup>8</sup> 18 C.F.R. § 39.1.

## **B. Appendix 3D of the NERC ROP**

Pursuant to Section 305 of the NERC ROP, NERC Reliability Standards must be approved by the RBB prior approval by the NERC Board of Trustees and applicable governmental authorities. The composition of the RBB was designed to assure that all individuals and entities with an interest in Reliability Standards will have a fair opportunity to participate in the Reliability Standard development and voting processes and that no single entity or single interest can dominate the process. As approved by the Commission, the RBB votes by the following 10 segments, designed along functional or business lines within the industry: (1) Transmission Owners; (2) ISOs/RTOs; (3) Load-Serving Entities; (4) Transmission Dependent Utilities; (5) Electric Generators; (6) Electricity Brokers, Aggregators, and Marketers; (7) Large Electricity End Users; (8) Small Electricity Users; (9) Federal, State, and Provincial Regulators or Other Government Entities; and (10) Regional Entities.<sup>9</sup> The RBB segments help facilitate equitable representation from all relevant industry participants in the Reliability Standards voting process.

Appendix 3D of the NERC ROP defines specific criteria for membership in each RBB segment. Pursuant to Guideline 4 of the Segment Qualification Guidelines (“Guideline 4”) in Appendix 3D “any individual or entity, such as a consultant or vendor, providing products or services related to Bulk Power System reliability within the previous 12 months to another entity eligible to join Segments 1 through 7 shall be qualified to join any one Segment for which one of the entities receiving those products or services is qualified to join.” For the reasons discussed in Section III of this Petition, NERC proposes revisions to Appendix 3D to modify Guideline 4.

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<sup>9</sup> See ERO Certification at PP 78-93, *order on reh’g and compliance*, 117 FERC ¶ 61, 126 at PP 22-30; 48-74.

### **C. Development of the Proposed Revisions**

NERC publicly posted the proposed revisions on July 26, 2017 for a 45-day public comment period. NERC received six sets of comments from industry stakeholders in response to the posting. The comments are provided in Exhibit B. Exhibit C provides NERC's consideration of those comments. The NERC Board of Trustees approved the proposed revisions on November 9, 2017.

### **III. PROPOSED CHANGES**

To help ensure that the votes of the ISOs and RTOs in Segment 2 of NERC's RBB are appropriately represented, NERC proposes revisions to Appendix 3D to limit participation in Segment 2 to ISOs/RTOs exclusively, excluding other individuals and entities, such as consultants or vendors, from participating in Segment 2. Appendix 3D provides that Segment 2 is for "[a]ny entity authorized by appropriate governmental authority to operate as an RTO or ISO." Currently, there are eight such entities in North America, each of which participates in Segment 2. Given the current structure of the electric industry, the number of RTOs and ISOs is not likely to change.

After review of the Segment Qualification Guidelines and the weighted vote structure of the RBB at the request of stakeholders, NERC determined that ISO/RTO votes in Segment 2 could be diluted in a manner that does not adequately represent the interests of ISOs/RTOs should other individuals or entities join Segment 2 pursuant to Guideline 4 of the Segment Qualification Guidelines. Given the limited number of ISO/RTOs in North America, allowing non-ISOs/RTOs to vote in Segment 2 could have a substantial impact on the voting outcome for Segment 2. The NERC ROP does not require individuals or entities that are allowed to join Segments 1-7 pursuant to Guideline 4 to actually vote consistent with the interests of the entities in that segment. Consequently, allowing non-ISO/RTO individuals or entities to join Segment 2 could undermine the ISO/RTO votes in that segment.

Due to the potential for non-ISOs/RTOs to undermine the votes of ISOs/RTOs if they are allowed to participate in Segment 2, NERC is proposing changes to Appendix 3D to exclude non-ISOs/RTOs from joining Segment 2. Specifically, NERC proposes the following change to Guideline 4 of the Segment Qualification Guidelines in Appendix 3D:

4. Any individual or entity, such as a consultant or vendor, providing products or services related to Bulk Power System reliability within the previous 12 months to another entity eligible to join Segments 1 ~~through, 3, 4, 5, 6, or 7~~ shall be qualified to join any one Segment for which one of the entities receiving those products or services is qualified ~~to join~~.

Similarly, NERC proposes the following change to paragraph (e) of the definition of Segment 8 in Appendix 3D:

- e. Any individual or entity, such as a consultant, employee or vendor, providing products or services related to Bulk Power System reliability within the previous 12 months to another entity eligible to join Segments 1 ~~through, 3, 4, 5, 6, or 7~~, including trade associations representing such Segments, shall be qualified to join any one Segment for which one of the entities receiving those products or services is qualified ~~to join~~ and shall not be eligible to join Segment 8.

The proposed changes are designed to balance the interests of organizations in the RBB while continuing to ensure that all interested parties can join a segment to vote and comment on proposed Reliability Standards. Currently, there are no non-ISOs/RTO members in Segment 2 such that the proposed changes will have no effect on the current makeup of the RBB or any existing ballot pools. Moreover, the proposed revisions would not exclude any individuals or entities from joining the RBB. Individuals or entities that provide reliability services to ISOs/RTOs may join Segment 8 or, if they provide reliability services to other entities, the segment to which anyone of those entities belongs.

A number of commenters noted that the proposed revisions would result in disparate treatment of consultants and vendors that provide services to ISOs/RTOs. They noted that, under the proposed changes, whereas individuals or entities that provide reliability services for entities

qualified to join Segments 1, 3, 4, 5, 6, or 7 may join one of those segments and cannot join Segment 8, the individuals or entities that exclusively provide services to ISOs/RTOs could not join Segment 2 but could join Segment 8. While NERC recognizes this disparate treatment, it concluded that the proposed revisions are warranted to ensure that the votes of ISOs/RTOs are properly represented. Segments 1, 3, 4, 5, 6, and 7 are large, or have a large population of eligible individuals or entities, such that the outcome of the votes in those segments are unlikely to be substantially affected by the addition of other individuals or entities that are allowed to join those segments pursuant to Guideline 4.<sup>10</sup> In contrast, as noted above, the population of eligible entities for Segment 2 is very small and not expected to change. As such, NERC concluded that it was reasonable to treat Segment 2 as the exception to the principle that consultants/vendors should participate in the segments in which the entities to which they provide services are eligible to join.

NERC is committed to ensuring due process, openness, and balance of interests in developing its Reliability Standard. This includes fair representation of all views in its process for developing a proposed Reliability Standard. NERC will continue to evaluate the qualification guidelines and rules for joining the RBB to ensure that the process continues to be fair, open, balanced, and inclusive. Certain commenters offered additional suggestions regarding proposed revisions to Appendix 3D that NERC will consider in future reviews of the RBB in accordance with Section 305 of the ROP.

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<sup>10</sup> For reference, as of the date of filing, there were 134 entities in Segment 1, 123 in Segment 3, 42 in Segment 4, 126 in Segment 5, 72 in Segment 6, and 8 in Segment 7. While Segment 7 has a similarly small number of participants, there are a significant number of entities eligible to join Segment 7, whereas the numbers of eligible entities for Segment 2 is expected to remain static.

#### IV. CONCLUSION

For the reasons set forth above, NERC requests that the Commission approve the proposed revisions to Appendix 3D of the NERC ROP, attached as Exhibit A, to be made effective upon Commission approval.

Respectfully submitted,

/s/ Shamai Elstein

Shamai Elstein  
Senior Counsel  
Marisa Hecht  
Counsel  
North American Electric Reliability  
Corporation  
1325 G Street, N.W., Suite 600  
Washington, D.C. 20005  
202-400-3000  
shamai.elstein@nerc.net  
marisa.hecht@nerc.net

*Counsel for the North American Electric  
Reliability Corporation*

Date: November 21, 2017

**Exhibit A**

**Clean and Redline Revisions of Appendix 3D to the  
NERC Rules of Procedure**

## **Appendix 3D**

# **Registered Ballot Body Criteria**

**Effective: [Proposed Date]**

# Appendix 3D — Development of the Registered Ballot Body<sup>1</sup>

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## **Registration Procedures**

The Registered Ballot Body comprises all organizations, entities, and individuals that:

1. Qualify for one of the Segments, and
2. Are registered with NERC as potential ballot participants in the voting on Reliability Standards, and
3. Are current with any designated fees.

Each participant, when initially registering to join the Registered Ballot Body, and annually thereafter, shall self-select to belong to one of the Segments described below.

NERC general counsel will review all applications for joining the Registered Ballot Body, and make a determination of whether the self-selection satisfies at least one of the guidelines to belong to that Segment. The entity or individual will then be “credentialed” to participate as a voting member of that Segment. The Standards Committee will decide disputes, with an appeal to the Board of Trustees.

All registrations will be done electronically.

## **Segment Qualification Guidelines**

1. Except as set forth below, the Segment qualification guidelines are inclusive; i.e., any entity or individual with a legitimate interest in the reliability of the Bulk Power System that can meet any one of the guidelines for a Segment is entitled to belong to and vote in that Segment.
2. Corporations or organizations with integrated operations or with affiliates that qualify to belong to more than one Segment (e.g., Transmission Owners and Load Serving Entities) may belong to each of the Segments in which they qualify, provided that each Segment constitutes a separate membership and is represented by a different representative. Individuals or entities that elect to participate in Segment 8 are not eligible to participate in multiple Segments.
3. At any given time, affiliated entities may collectively be registered only once within a Segment.
4. Any individual or entity, such as a consultant or vendor, providing products or services related to Bulk Power System reliability within the previous 12 months to another entity eligible to join Segments 1, 3, 4, 5, 6 or 7 shall be qualified to join any one Segment for which one of the entities receiving those products or services is qualified.
5. Corporations, organizations, entities, and individuals may participate freely in all subgroups.
6. After their initial selection, registered participants may apply to change Segments annually, on a schedule determined by the Standards Committee.

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<sup>1</sup> The Segment qualification guidelines were proposed in the final report of the NERC Standing Committees Representation Task Force on February 7, 2002. The Board of Trustees endorsed the industry Segments and weighted Segment voting model on February 20, 2002 and may change the model from time to time.  
Effective [Proposed Date]

7. The qualification guidelines and rules for joining Segments will be reviewed periodically to ensure that the process continues to be fair, open, balanced, and inclusive. Public input will be solicited in the review of these guidelines.
8. Since all balloting of Reliability Standards will be done electronically, any registered participant may designate a proxy to vote on its behalf. There are no limits on how many proxies a person may hold. However, NERC must have in its possession, either in writing or by email, documentation that the voting right by proxy has been transferred.

## **Segments**

### **Segment 1. *Transmission Owners***

- a. Any entity that owns or controls at least 200 circuit miles of integrated transmission facilities, or has an Open Access Transmission Tariff or equivalent on file with a regulatory authority.
- b. Transmission Owners that have placed their transmission under the operational control of an RTO or ISO.
- c. Independent transmission companies or organizations, merchant transmission developers, and transcos that are not RTOs or ISOs.
- d. Excludes RTOs and ISOs that are eligible to join to Segment 2.

### **Segment 2. *Regional Transmission Organizations (RTOs) and Independent System Operators (ISOs)***

- a. Any entity authorized by appropriate governmental authority to operate as an RTO or ISO.

### **Segment 3. *Load-Serving Entities (LSEs)***

- a. Entities serving end-use customers under a regulated tariff, a contract governed by a regulatory tariff, or other legal obligation to serve.
- b. A member of a generation and transmission (G&T) cooperative or a joint-action agency is permitted to designate the G&T or joint-action agency to represent it in this Segment; such designation does not preclude the G&T or joint-action agency from participation and voting in another Segment representing its direct interests.
- c. Agents or associations can represent groups of LSEs

### **Segment 4. *Transmission Dependent Utilities (TDUs)***

- a. Entities with a regulatory, contractual, or other legal obligation to serve wholesale aggregators or customers or end-use customers and that depend primarily on the transmission systems of third parties to provide this service.
- b. Agents or associations can represent groups of TDUs.

### **Segment 5. *Electric Generators***

- a. Affiliated and independent generators, including variable and other renewable resources.
- b. A corporation that sets up separate corporate entities for each one or more generating plants in which it is involved may only have one vote in this Segment regardless of how many single-plant or multiple-plant corporations the parent corporation has established or is involved in.

- c. Agents or associations can represent groups of electrical generators.

**Segment 6. Electricity Brokers, Aggregators, and Marketers**

- a. Entities serving end-use customers under a power marketing agreement or other authorization not classified as a regulated tariff.
- b. An entity that buys, sells, or brokers energy and related services for resale in wholesale or retail markets, whether a non-jurisdictional entity operating within its charter or an entity licensed by a jurisdictional regulator.
- c. G&T cooperatives and joint-action agencies that perform an electricity broker, aggregator, or marketer function are permitted to belong to this Segment.
- d. Agents or associations can represent groups of electricity brokers, aggregators, or marketers.
- e. This Segment also includes demand-side management providers.

**Segment 7. Large Electricity End Users**

- a. At least one service delivery taken at 50 kV (radial supply or facilities dedicated to serve customers) that is not purchased for resale.
- b. A single customer with an average aggregated service Load (not purchased for resale) of at least 50,000 MWh annually, excluding cogeneration or other back feed to the serving utility.
- c. Agents or associations can represent groups of large end users.

**Segment 8. Small Electricity Users**

- a. Service taken at below 50 kV.
- b. A single customer with an average aggregated service Load (not purchased for resale) of less than 50,000 MWh annually, excluding cogeneration or other back feed to the serving utility.
- c. Agents, state consumer advocates, or other advocate groups can represent groups of small customers.
- d. Any entity or individual currently employed by an entity that is eligible to join one or more of the other nine Segments, shall not be qualified to join Segment 8.
- e. Any individual or entity, such as a consultant, employee or vendor, providing products or services related to Bulk Power System reliability within the previous 12 months to another entity eligible to join Segments 1, 3, 4, 5, 6 or 7, including trade associations representing such Segments, shall be qualified to join any one Segment for which one of the entities receiving those products or services is qualified and shall not be eligible to join Segment 8.

**Segment 9. Federal, State, and Provincial Regulatory or other Government Entities**

- a. Does not include federal power management agencies or the Tennessee Valley Authority.
- b. May include public utility commissions.

**Segment 10. Regional Entities**

- a. Any entity that is a Regional Entity. It is recognized that there may be instances in which an entity is both an RTO or ISO and a Regional Entity. In such a case, the two functions must be

sufficiently independent to meet NERC's Rules of Procedure and applicable regulatory requirements, as evidenced by the approval of a Regional Entity delegation agreement. Without such an approval, the entity shall be limited to choosing to enter one Segment or the other, but not both.

## Appendix 3D

### Registered Ballot Body Criteria

Effective: **July 1, 2014**[Proposed Date]

~~(as noted below)~~

~~The highlighted term “Load” in this document will become effective as defined terms on July 1, 2014 in accordance with the Bulk Electric System Order (Order No. 773) and the June 13, 2013 Order Granting Extension of Time. See Appendix 2 of the Rules of Procedure.~~

# Appendix 3D — Development of the Registered Ballot Body<sup>1</sup>

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## **Registration Procedures**

The Registered Ballot Body comprises all organizations, entities, and individuals that:

1. Qualify for one of the Segments, and
2. Are registered with NERC as potential ballot participants in the voting on Reliability Standards, and
3. Are current with any designated fees.

Each participant, when initially registering to join the Registered Ballot Body, and annually thereafter, shall self-select to belong to one of the Segments described below.

NERC general counsel will review all applications for joining the Registered Ballot Body, and make a determination of whether the self-selection satisfies at least one of the guidelines to belong to that Segment. The entity or individual will then be “credentialed” to participate as a voting member of that Segment. The Standards Committee will decide disputes, with an appeal to the Board of Trustees.

All registrations will be done electronically.

## **Segment Qualification Guidelines**

1. Except as set forth below, the Segment qualification guidelines are inclusive; i.e., any entity or individual with a legitimate interest in the reliability of the Bulk Power System that can meet any one of the guidelines for a Segment is entitled to belong to and vote in that Segment.
2. Corporations or organizations with integrated operations or with affiliates that qualify to belong to more than one Segment (e.g., ~~transmission~~ Transmission owners-Owners and Load Serving Entities) may belong to each of the Segments in which they qualify, provided that each Segment constitutes a separate membership and is represented by a different representative. Individuals or entities that elect to participate in Segment 8 are not eligible to participate in multiple Segments.
3. At any given time, affiliated entities may collectively be registered only once within a Segment.
4. Any individual or entity, such as a consultant or vendor, providing products or services related to Bulk Power System reliability within the previous 12 months to another entity eligible to join Segments 1, 3, 4, 5, 6 or ~~through~~ 7 shall be qualified to join any one Segment for which one of the entities receiving those products or services is qualified ~~to join~~.
5. Corporations, organizations, entities, and individuals may participate freely in all subgroups.
6. After their initial selection, registered participants may apply to change Segments annually, on a schedule determined by the Standards Committee.

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<sup>1</sup> The Segment qualification guidelines were proposed in the final report of the NERC Standing Committees Representation Task Force on February 7, 2002. The Board of Trustees endorsed the industry Segments and weighted Segment voting model on February 20, 2002 and may change the model from time to time.  
Effective [Proposed Date]

7. The qualification guidelines and rules for joining Segments will be reviewed periodically to ensure that the process continues to be fair, open, balanced, and inclusive. Public input will be solicited in the review of these guidelines.
8. Since all balloting of Reliability Standards will be done electronically, any registered participant may designate a proxy to vote on its behalf. There are no limits on how many proxies a person may hold. However, NERC must have in its possession, either in writing or by email, documentation that the voting right by proxy has been transferred.

## **Segments**

### **Segment 1. Transmission Owners**

- a. Any entity that owns or controls at least 200 circuit miles of integrated transmission facilities, or has an Open Access Transmission Tariff or equivalent on file with a regulatory authority.
- b. Transmission ~~owners~~ Owners that have placed their transmission under the operational control of an RTO or ISO.
- c. Independent transmission companies or organizations, merchant transmission developers, and transcos that are not RTOs or ISOs.
- d. Excludes RTOs and ISOs that are eligible to join to Segment 2.

### **Segment 2. Regional Transmission Organizations (RTOs) and Independent System Operators (ISOs)**

- a. Any entity authorized by appropriate governmental authority to operate as an RTO or ISO.

### **Segment 3. Load-Serving Entities (LSEs)**

- a. Entities serving end-use customers under a regulated tariff, a contract governed by a regulatory tariff, or other legal obligation to serve.
- b. A member of a generation and transmission (G&T) cooperative or a joint-action agency is permitted to designate the G&T or joint-action agency to represent it in this Segment; such designation does not preclude the G&T or joint-action agency from participation and voting in another Segment representing its direct interests.
- c. Agents or associations can represent groups of LSEs

### **Segment 4. Transmission Dependent Utilities (TDUs)**

- a. Entities with a regulatory, contractual, or other legal obligation to serve wholesale aggregators or customers or end-use customers and that depend primarily on the transmission systems of third parties to provide this service.
- b. Agents or associations can represent groups of TDUs.

### **Segment 5. Electric Generators**

- a. Affiliated and independent generators, including variable and other renewable resources.
- b. A corporation that sets up separate corporate entities for each one or more generating plants in which it is involved may only have one vote in this Segment regardless of how many single-plant or multiple-plant corporations the parent corporation has established or is involved in.

- c. Agents or associations can represent groups of electrical generators.

**Segment 6. Electricity Brokers, Aggregators, and Marketers**

- a. Entities serving end-use customers under a power marketing agreement or other authorization not classified as a regulated tariff.
- b. An entity that buys, sells, or brokers energy and related services for resale in wholesale or retail markets, whether a non-jurisdictional entity operating within its charter or an entity licensed by a jurisdictional regulator.
- c. G&T cooperatives and joint-action agencies that perform an electricity broker, aggregator, or marketer function are permitted to belong to this Segment.
- d. Agents or associations can represent groups of electricity brokers, aggregators, or marketers.
- e. This Segment also includes demand-side management providers.

**Segment 7. Large Electricity End Users**

- a. At least one service delivery taken at 50 kV (radial supply or facilities dedicated to serve customers) that is not purchased for resale.
- b. A single customer with an average aggregated service Load (not purchased for resale) of at least 50,000 MWh annually, excluding cogeneration or other back feed to the serving utility.
- c. Agents or associations can represent groups of large end users.

**Segment 8. Small Electricity Users**

- a. Service taken at below 50 kV.
- b. A single customer with an average aggregated service Load (not purchased for resale) of less than 50,000 MWh annually, excluding cogeneration or other back feed to the serving utility.
- c. Agents, state consumer advocates, or other advocate groups can represent groups of small customers.
- d. Any entity or individual currently employed by an entity that is eligible to join one or more of the other nine Segments, shall not be qualified to join Segment 8.
- e. Any individual or entity, such as a consultant, employee or vendor, providing products or services related to Bulk Power System reliability within the previous 12 months to another entity eligible to join Segments 1, 3, 4, 5, 6 or ~~through~~ 7, including trade associations representing such Segments, shall be qualified to join any one Segment for which one of the entities receiving those products or services is qualified ~~to join~~ and shall not be eligible to join Segment 8.

**Segment 9. Federal, State, and Provincial Regulatory or other Government Entities**

- a. Does not include federal power management agencies or the Tennessee Valley Authority.
- b. May include public utility commissions.

**Segment 10. Regional Entities**

- a. Any entity that is a Regional Entity. It is recognized that there may be instances in which an entity is both an RTO or ISO and a Regional Entity. In such a case, the two functions must be sufficiently independent to meet NERC's Rules of Procedure and applicable regulatory requirements, as evidenced by the approval of a Regional Entity delegation agreement. Without such an approval, the entity shall be limited to choosing to enter one Segment or the other, but not both.

**Exhibit B**

**Comments of Proposed Revisions**

**From:** [blohm.r@gmail.com](mailto:blohm.r@gmail.com) on behalf of [Robert Blohm](#)  
**To:** [RQPComments](#)  
**Subject:** [Replace previous send re:][Replace previous send re:][Replace previous send re:]My comments on Registered Ballot Body (RBB) Criteria Proposed Revisions to the NERC Rules of Procedure (Appendix 3D)  
**Date:** Tuesday, June 27, 2017 4:13:08 PM

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Comments (to proposed revisions to NERC Rules of Procedure, Appendix 3D) by Robert Blohm, Managing Director, Keen Resources, Ltd., NERC Small Electricity Consumer Segment 8 member. Also Small Electricity Consumer Segment 8 representative to the NERC Standards Committee and to the NERC Operating Committee.

1. The redlined change in clauses "4" and "e" is **discriminatory** because it allows a consultant or vendor to a Segment 2 entity to be a member of Segment 8, while prohibiting a consultant or vendor to any of the other Segment 1 through 7 entities from being a member of Segment 8. Conversely, it is discriminatory by conferring upon only Segment 2 entities alone the privilege of contracting a consultant or vendor that is a member of Segment 8, while all the other Segment 1 through 7 entities are prohibited from contracting a Segment 8 member. Since the underlying rationale for the prohibition is an apparent presumption of a conflict of interest by the consultant or vendor, the proposed change arbitrarily (without explanation) exempts from said presumption consultants or vendors to a Segment 2 entity as if all and only Segment 2 entities can have no interest in conflict with a Segment 8 entity. How? The proposed redlined change can be adopted, while the resulting discrimination and arbitrariness are avoided, if the presumption is dropped per comment 2 below, and if the terms "entity" and "employee", rather than conflated together, are separated by a bright line per comments 3 and 4 below. (Otherwise, for example, the proposed change would unfairly allow consultant Ben Li, who represents IESO in NERC (the only case, I am aware of, of a consultant member of Segment 2 representing a Segment 2 member on a NERC committee), the exception of becoming a Segment 8 member while keeping his IESO client but now no longer representing that client in Segment 2, while no consultant to any other Segment 1 through 7 entity would be granted that privilege.)

2. Replace (in clause "e") "and shall not be eligible to join Segment 8" by "and, **once a member of such a segment**, shall not be eligible to join Segment 8".

*Rationale:* exclusion from Segment 8 that is due only to "eligibility to join", rather than to actual membership, in another Segment is discriminatory and deprives NERC of the benefit of membership by many of the most technically expert people in the industry, while denying them access to NERC membership unless a client agrees, or deprives them of economic livelihood as a condition for joining NERC. Conflict of interest should be addressed as potential in a Code of Conduct statute (for example in a simple "recusal" requirement subject to review/objection by Segment 8 members), not by presumption and by membership discrimination.

3. Replace (in clause "e") "consultant, employee or vendor" by "consultant or vendor".

*Rationale:* employees are already, exclusively addressed in the previous clause "d". Delete "**employee**".

4. Replace "entity or individual currently employed" in clause "d" by "individual currently employed".

*Rationale:* biological persons, not **entities**, are "employed". Personal income tax and social security are withheld, not from entities on payroll checks, but only from biological persons.

5. Replace, in two places (clause "e" and clause "4"), "join any one Segment for which" by "join any one Segment which".

*Rationale:* use of the preposition "**for**" is ungrammatical (non-functional) and it should be deleted: "Segment" is the antecedent of the relative pronoun "which" that is the direct object of "join", and that is not an object of the preposition "for". An entity joins a membership Segment of NERC: an entity does not join NERC "for" a Segment.

On Mon, Jun 26, 2017 at 2:37 PM, Courtney Baughan <[Courtney.Baughan@nerc.net](mailto:Courtney.Baughan@nerc.net)> wrote:



# Notice of Proposed Revisions to the NERC Rules of Procedure and Request for Comments

NERC Rules of Procedure, Appendix 3D  
(Registered Ballot Body Criteria)



Click here for: [NERC Rules of Procedure site](#)

Click here for: [Summary of Proposed Revisions](#)

Click here for proposed changes: [Redlined Text of Proposed Revisions to Rules of Procedure Appendix 3D](#)

**Proposed Revisions to Rules of Procedure** – The North American Electric Reliability Corporation (“NERC”) is proposing revisions to currently effective Appendix 3D (Registered Ballot Body Criteria) of its Rules of Procedure. The Registered Ballot Body is the aggregation of all entities or individuals that qualify for one of the Segments approved by the Board of Trustees and are registered with NERC as potential ballot participants in the voting on proposed Reliability Standards. At the request of stakeholders, the purpose of these revisions is to help ensure that the votes of the Independent System Operators and Regional Transmission Organizations in Segment 2 are appropriately represented in the Registered Ballot Body voting structure.

NERC requests comments on the proposed revisions to the NERC Rules of Procedure. The 45-day comment period begins June 26, 2017 and ends August 10, 2017.

A redlined version of Appendix 3D showing the proposed revisions are now available at: [NERC Rules of Procedure](#).

Comments are due August 10, 2017, and must be submitted electronically to [ROPcomments@nerc.net](mailto:ROPcomments@nerc.net). NERC intends to submit these changes to the NERC Board of Trustees for consideration at its November 2017 meeting.

For more information or assistance, please contact [Marisa Hecht](#) (via email) or call [404-446-9620](tel:404-446-9620).

3353 Peachtree Road NE

Suite 600, North Tower

Atlanta, GA 30326

[404-446-2560](tel:404-446-2560) | [www.nerc.com](http://www.nerc.com)



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Comments to Proposed Revisions to the NERC Rules of Procedure, Appendix 3D (Registered Ballot Body Criteria)

I appreciate the opportunity to provide comments to the proposed revisions to the NERC Rules of Procedure, Appendix 3D (Registered Ballot Body Criteria).

The revision addresses the impact of the votes of the Independent System Operators (“ISOs”) and Regional Transmission Organizations (“RTOs”), Segment 2, in the overall tallying of votes for all the segments. It purports to exclude other individuals and entities, such as consultants, from participating in Segment 2.

I respectfully submit that no segment should be treated in any manner that is different from the other segments, regardless of their size. I acknowledge that the total number of ISOs/RTOs is relatively small in comparison with the membership of some of the other segments and also recognize the important role that ISOs/RTOs have in ensuring the reliable operation of the Bulk Electric System. However, the proposed amendment introduces a preferential treatment for this Segment that is not appropriate.

Furthermore, in trying to exclude those companies or individuals from participating in Segment 2, the proposed amendment would permit them to join Segment 8. Note that, as in the case of Segment 2, the membership of Segment 8 is also small, although for different reasons than that of Segment 2. There seems to be a concern and intention of protecting ISOs/RTOs’ votes while similar concerns about Segment 8 are being disregarded. The proposal appears to try to resolve a perceived problem in Segment 2 by shifting the same problem into Segment 8. According to the currently effective Rules of Procedure, only single customers and entities representing groups of small customers (agents, state consumer advocates or other advocate groups) are eligible to join Segment 8. Permitting consultants that provide services to entities in Segment 2 (or to any other segment), to join Segment 8, distorts and violates the spirit and intent of the current criteria.

My view is that all segments should be subject to exactly the same rules with no exceptions either in favour or against any of them, that is, all segments must be treated in an identical manner.

In order to resolve the real, or perceived, issue of undue influence of consultants’ votes in the ballot results, consideration could be given to possibly creating a new segment only for consultants. Companies and individuals providing consulting services on Bulk Electric System reliability related matters would qualify to join this newly created segment. If this is not practical, the current segment membership criteria should remain as is.

Thanks for your consideration,

David Kiguel, P. Eng., FEC  
Member of the Standards Committee representing Segment 8



August 8, 2017

**VIA ELECTRONIC MAIL**

**ROPcomments@nerc.net**

The North American Electric Reliability Corporation (“NERC”) is proposing revisions to Appendix 3D (Registered Ballot Body Criteria) of its Rules of Procedure (“ROP”). NERC states that, at the request of stakeholders, the purpose of these revisions is to help ensure that the votes of the Independent System Operators (“ISOs”) and Regional Transmission Organizations (“RTOs”) in Segment 2 are appropriately represented in the Registered Ballot Body voting structure.

The ISO/RTO Council (“IRC”) fully supports the changes that NERC proposes to make in Guideline 4 of the Segment Qualification Guidelines for joining Segments of NERC’s Registered Ballot Body and paragraph (e) of the definition of Segment 8 (Small Electricity Users), both of which are included in Appendix 3D to the ROP. As currently drafted, these provisions could potentially dilute the votes of the ISOs and RTOs in the NERC standard development process, and, thereby, undermine the value of that voting segment in the development of efficient and effective standards.

Currently, Guideline 4 provides that “[a]ny individual or entity, such as a consultant or vendor, providing products or services related to Bulk Power System reliability within the previous 12 months to another entity eligible to join Segments 1 through 7 shall be qualified to join any one Segment for which one of the entities receiving those products or services is qualified to join.” Similar language that allows consultants, employees, and vendors to join Segment 2 appears in paragraph (e) of Segment 8’s definition. Notably, Segment 2 is limited to entities that are authorized by appropriate governmental authority to operate as an ISO or RTO. The IRC agrees that Guideline 4 and the definition of Segment 8 potentially undermine the ISO/RTO perspective, which, in turn, undermines the value of Segment 2 in the voting process. Specifically, these provisions allow consultants, who may not represent the viewpoint of ISOs or RTOs, to participate in Segment 2. This potential is exacerbated by the fact that, to qualify to join Segment 2, the consultant does not have to have an existing relationship with an ISO/RTO – it merely has to have had a relationship with an ISO/RTO within the past 12 months (and that relationship does not have to be related to NERC standards or programs).

Thus, the current rule has the potential to undermine the rights and positions of the ISOs and RTOs that patently belong in Segment 2, which then has a negative impact on the integrity of the RBB, the effectiveness and efficiency of the standards development process and, ultimately, the quality of the standards. Accordingly, the IRC agrees with the revisions to the ROP and thanks NERC for making those revisions.

/s/ Anna McKenna

Roger E. Collanton, General Counsel  
Anna McKenna  
Assistant General Counsel, Regulatory  
**California Independent System Operator Corporation**  
250 Outcropping Way  
Folsom, California 95630  
amckenna@caiso.com

/s/ Margoth Caley

Raymond W. Hepper  
Vice President, General Counsel, and Secretary  
Theodore J. Paradise  
Assistant General Counsel, Operations and Planning  
Margoth Caley  
Senior Regulatory Counsel  
**ISO New England Inc.**  
One Sullivan Road  
Holyoke, Massachusetts 01040  
mcaley@iso-ne.com

/s/ Stephen G. Kozey

Stephen G. Kozey  
Senior Vice President  
Joseph G. Gardner  
Vice President & Chief Compliance Officer  
**Midcontinent Independent System Operator, Inc.**  
720 City Center Drive  
Carmel, Indiana 46032  
stevekozey@misoenergy.org

/s/ Nathan Bigbee

Chad V. Seely  
Vice President and General Counsel  
Nathan Bigbee  
Assistant General Counsel  
**Electric Reliability Council of Texas, Inc.**  
7620 Metro Center Drive  
Austin, Texas 78744  
Nathan.bigbee@ercot.com

/s/ Christopher R. Sharp

Robert E. Fernandez, General Counsel  
Raymond Stalter,  
Director of Regulatory Affairs  
Christopher R. Sharp, Senior Compliance Attorney  
**New York Independent System Operator, Inc.**  
10 Krey Boulevard  
cpatka@nyiso.com

/s/ Craig Glazer

Craig Glazer  
Vice President-Federal Government Policy  
James M. Burlew  
Senior Counsel  
**PJM Interconnection, L.L.C.**  
Suite 600  
1200 G Street, N.W.  
Washington, D.C. 20005  
202-423-4743  
Craig.Glazer@pjm.com  
James.Burlew@pjm.com

/s/ Mike Riley

Paul Suskie  
Sr. VP Regulatory Policy  
& General Counsel  
Mike Riley  
Associate General Counsel, Markets and  
Regulatory Policy  
**Southwest Power Pool, Inc.**  
201 Worthen Drive  
Little Rock, Arkansas 72223-4936  
Michael.b.riley@spp.org

/s/ Tam Wagner

Tam Wagner  
Senior Manager, Regulatory Affairs  
Maia Chase  
Senior Regulatory Analyst  
**Independent Electricity System Operator**  
1600-120 Adelaide Street West  
Toronto Ontario M5H1T1  
Canada  
tam.wagner@ieso.ca  
maia.chase@ieso.ca

/s/ Diana Wilson

Diana Wilson

Director Interjurisdictional Affairs  
and Compliance

**Alberta Electric System Operator**

2500, 330 – 5 Avenue SW

Calgary, Alberta T2P 0L4

Diana.wilson@aeso.ca

### **Comments of Herb Schrayshuen regarding NERC's Proposed Changes to the ROP Appendix 3D**

As a person who works as a consultant to the power industry, I have been impacted by the application of the current RBB "consultant rule" (Appendix #D-Segment Application Guideline part 4). I have been assigned to RBB Segments 4, 2 and 5 in the last four years as a result of this rule. In each case my votes have "diluted" the segment to which I was assigned.

NERC's reasons for its consultant rule are the potential conflict of interest of consultants. The concern is that consultants might use Segment 8 balloting to promote the interests on behalf of their clients who can more appropriately vote their interests in other Segments. NERC has a good goal. But the solution to date has had undesirable impacts as NERC has noted and is currently responding to.

Another goal of NERC should be to not lose the benefit of the knowledge (commenting and balloting) from within the consultant community.

I offer the following recommendation to NERC on the proposed ROP change:

I propose that another course be taken. Rather than "protect" a given RBB Segment from ballot "dilution" through the addition of new voters resulting from the application of the "consultant rule", I propose that NERC eliminate the need to reassign anyone to an alternate RBB Segment.

Instead of the approach being proposed the solution I propose is to require individuals providing consulting services to entities in RBB Segments other than Segment 8 (as part of their employment), to vote their interests as individuals in Segment 8 as a qualifying Small Electricity User. I recommend that NERC allow such individuals to vote in Segment 8 provided they first agree (through an attestation) to adhere to certain principles. These principles would be similar to the duties of SC members as outlined in the Standards Committee Charter (see Section 6).

The starting point for a set of principles for such an attestation might include the following:

#### **Expectations Statement Attestation required for a Segment 8 RBB Member who is also employed as a consultant to registered entities eligible to vote and comment in NERC RBB Segments other than Segment 8.**

- a. Contribute to the work and success of the NERC and the Regions mission with respect to reliability.
- b. Be knowledgeable about power system reliability issues and the NERC Reliability Standards development process.
- c. Act as subject matter expert representative and use their right to be an RBB member in Segment 8 and cast votes in Segment 8 that promote the interests of Segment 8 entities.

Thank you for considering this comment and proposed alternate approach.

Herb Schrayshuen

8/10/2017

**From:** [Wade, Shelby](#)  
**To:** [ROPComments](#)  
**Cc:** [Truhe, Brenda Lyn \[PPL\]](#); [Longo, Michelle McCartney \[PPL\]](#); [Keisling, Jennifer](#); [Hall, Tony](#); [Phillips, Steven](#); [Mulvihill, Jennifer](#)  
**Subject:** PPL Corporation NERC Registered Entities: ROP Appendix 3D Comments  
**Date:** Thursday, August 10, 2017 10:11:18 AM

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Good Morning –

Please see ***PPL Corporation NERC Registered Entities'*** comments below:

“PPL Corporation NERC Registered Entities support the change that only RTOs/ISOs are permitted to join Segment 2. Additionally, PPL Corporation Registered Entities request NERC consider a change to the Rules of Procedure to prohibit vendors and service providers from diluting other Ballot Pool Segments, i.e. only entities registered as Transmission Owners should be permitted to register in Segment 1. We recognize the other segments are larger than Segment 2 and dilution concern is lower; however, to a lesser degree the dilution concern remains for all other segments and should similarly be addressed. If a NERC Registered Entity chooses to hire a vendor/service provider to represent its interests in the ballot process, NERC should require an identification of the relationship so it is clear what entity is being represented by the vendor/service provider.”

Kind Regards,

**Shelby Wade**

Associate | Federal Regulation & Policy | LG&E and KU

220 West Main Street, Louisville, KY 40202

O: 502-627-4158

[lge-ku.com](http://lge-ku.com)

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## **NERC Rules of Procedure, Appendix 3D**

### **ROP Comments by SPP Standards Review Group**

The SPP Standards Review group agrees with the proposed changes applicable to Segment 2 of the Rules of Procedures (ROP). Allowing non-ISO/RTO entities or individuals to join Sector 2 would only serve to dilute the small number of ISOs and RTOs that make up Sector 2. Given that there are currently no members of Sector 2 that are not ISOs or RTOs, this amendment will not cause harm to any parties currently voting in Sector 2.

**Exhibit C**

**Consideration of Comments**

## Consideration of Comments

### Proposed Changes to Appendix 3D to the NERC Rules of Procedure Related to Registered Ballot Body

The North American Electric Reliability Corporation (“NERC”) thanks all commenters who submitted comments on the proposed changes to Appendix 3D to the Rules of Procedure (“ROP”). NERC held one comment period for revisions to Appendix 3D from June 26, 2017 through August 10, 2017. NERC received six (6) sets of comments from industry stakeholders in response to the posting, as shown in the table on the following pages.

The comments are posted on the NERC ROP [page](#).

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**I. List of Commenters**

<b>Organization or Individual</b>	
1.	Robert Blohm, Keen Resources, Ltd.
2.	David Kiguel
3.	Independent System Operator/Regional Transmission Organization Council (“ISO/RTO Council”)
4.	Herb Schrayshuen
5.	PPL Corporation NERC Registered Entities
6.	Southwest Power Pool Standards Review Group (“SPP SRG”)

## II. Proposed Revisions

Pursuant to Section 305 of the NERC ROP, NERC Reliability Standards must be approved by a Registered Ballot Body (“RBB”) prior to submittal to the NERC Board of Trustees and then to applicable governmental authorities for their approval. The RBB votes by the following 10 segments: (1) Transmission Owners; (2) Independent System Operators (“ISOs”) and Regional Transmission Organizations (“RTOs”); (3) Load-Serving Entities; (4) Transmission Dependent Utilities; (5) Electric Generators; (6) Electricity Brokers, Aggregators, and Marketers; (7) Large Electricity End Users; (8) Small Electricity Users; (9) Federal, State, and Provincial Regulators or Other Government Entities; and (10) Regional Entities. Appendix 3D of the ROP defines the specific criteria for membership in each Registered Ballot Body Segment. Under the currently-effective version of Appendix 3D, any individual or entity, such as a consultant or vendor, providing products or services related to Bulk Power System reliability within the previous 12 months to another entity eligible to join Segments 1 through 7 shall be qualified to join any one Segment for which one of the entities receiving those products or services is qualified.

NERC proposed revisions to Appendix 3D to limit Segment 2 to ISOs/RTOs and exclude other individuals and entities, such as consultants or vendors, from participating in Segment 2. After review of the Segment Qualification Guidelines and the weighted vote structure of the RBB at the request of stakeholders, NERC determined that ISO/RTO votes in Segment 2, given the limited number of ISO/RTOs in North America, could be diluted in a manner that does not adequately represent the positions of ISOs/RTOs should other individuals or entities join Segment 2. Given the current structure of the electric industry, the number of RTOs and ISOs is not likely to change or grow significantly. Therefore, allowing non-ISO/RTO individuals or entities to join Segment 2 risks diluting the votes disproportionately in that Segment as compared to the larger Segments. To ensure ISO/RTO votes are properly represented in ballot pools, NERC proposed revising Appendix 3d to limit membership in Segment 2 to only RTOs and ISOs. Currently there are no non-ISOs/RTO members in Segment 2. Non-ISO/RTO individuals or entities may continue to join Segment 8 or another Segment in which an entity to whom services are provided belongs. The proposed redline changes are available [here](#).

## III. Comments

Of the six (6) commenters, three (3) commenters were generally supportive of the proposed changes with one offering additional revisions. One commenter was conditionally supportive if NERC made additional modifications. Two (2)

commenters were generally not supportive and proposed alternative modifications. The following table provides a summary of stakeholder comments and NERC’s response.

Summary of Stakeholder Comments	Action/Response and Notes
<ul style="list-style-type: none"> <li>Mr. Blohm commented that the proposed redlines are discriminatory to both consultants and entities. Mr. Blohm stated that the proposed changes allow some consultants to join Segment 8 while keeping their clients in Segment 2 and prohibit entities in Segment 1-7 from contracting consultants that are members of Segments 8. Mr. Blohm also commented that consultants providing services to Segment 2 members are exempt from the presumed conflict of interest between consultants providing services to entities and members of Segment 8.</li> <li>Mr. Blohm commented that the proposed revisions could be adopted if NERC incorporated other revisions to address his comments. He suggested that consultants be allowed to join Segment 8, even if providing services to entities, unless they are actually members of other Segments. In addition, he proposed removing employees from clause e as they are addressed in clause d and restricting clause d to only individuals rather than both individuals and entities. Finally, he suggested a grammatical change to delete “for” in clauses e and 4.</li> </ul>	<ul style="list-style-type: none"> <li>In its application to become the Electric Reliability Organization, NERC committed to ensure due process, openness, and balance of interests in developing a Reliability Standard. This includes fair representation of all views in its process for developing a proposed Reliability Standard, and any person or entity with a legitimate interest in the reliability of the Bulk-Power System may join the RBB. In addition, NERC organizes the RBB along business lines so the Segments should represent how organizations and individuals operate in the industry. NERC’s proposed changes help to ensure that RTOs and ISOs are appropriately represented in the RBB. Any consultants or vendors providing reliability services exclusively to an ISO/RTO may still join the RBB through Segment 8. If the consultant or vendor also provides reliability services to entities eligible to join other segments, the vendor or consultant must join one of those segments. NERC recognizes the disparate treatment for consultants and vendors providing reliability services exclusively to ISOs/RTOs but concluded it was warranted for the reasons articulated above. NERC will consider more comprehensive guidelines and rules for consultants and vendors joining the RBB pursuant to the NERC</li> </ul>

Summary of Stakeholder Comments	Action/Response and Notes
	<p>Rules of Procedure Section 305.3.3 and Appendix 3D, Segment Qualification Guideline 7.</p> <ul style="list-style-type: none"> <li>• NERC will not make the commenter’s proposed change to allow consultants to join either Segments 1-7 or Segment 8. NERC does not agree that excluding consultants or vendors from Segment 8 due to eligibility to join other Segments deprives NERC of the membership of consultants or vendors. Rather, those particular consultants or vendors may join one of the Segments of the entity to which they provide services. Therefore, these consultants and vendors may fully participate in RBB activities through voting and commenting in the Segment to which they are eligible to join.</li> <li>• NERC will not make the commenter’s proposed change to remove employee from clause e. Although clause d discusses employees’ ineligibility to join Segment 8, clause e addresses former employees’ ineligibility to join 12 months after employment.</li> <li>• NERC will adopt alternative grammatical changes based on the commenter’s suggestion. NERC will delete “to join” from clauses e and 4.</li> </ul>
<ul style="list-style-type: none"> <li>• Mr. Kiguel commented that the proposed revisions give preferential treatment to Segment 2 and no segment should be treated differently than other segments. He also commented that</li> </ul>	<ul style="list-style-type: none"> <li>• NERC asserts that the proposed changes balance the interests of organizations in the RBB while helping to ensure all interested parties can join a Segment to vote and comment. NERC also notes that Segment 2 is</li> </ul>

Summary of Stakeholder Comments	Action/Response and Notes
<p>the proposed change would shift consultants from Segment 2 into Segment 8 and cause similar issues to those of Segment 2, such as dilution of votes in a small Segment and violation of the spirit and intent of the current criteria.</p> <ul style="list-style-type: none"> <li>Mr. Kiguel suggested that NERC could create a separate Segment for consultants to alleviate any issues with consultants in entity Segments. He commented that if this change is not practical, the criteria should remain unchanged.</li> </ul>	<p>different than Segment 8 because of the small number of entities eligible to join Segment 2 that is unlikely to grow significantly, if at all. In contrast, Segment 8 has a significantly larger number of individuals eligible to join. Therefore, the issues described in Segment 2 will not be transferred to Segment 8.</p> <ul style="list-style-type: none"> <li>NERC will not adopt the commenter’s proposal to create a separate Segment for consultants and vendors at this time. NERC periodically reviews the RBB composition and can consider any such changes in the future.</li> </ul>
<ul style="list-style-type: none"> <li>The ISO/RTO Council supports the proposed revisions. The ISO/RTO Council commented that Segment 2 votes could be diluted by individuals that may not represent Segment 2 interests and undermine the value of that Segment in developing standards.</li> </ul>	<ul style="list-style-type: none"> <li>NERC appreciates the comments.</li> </ul>
<ul style="list-style-type: none"> <li>Mr. Schrayshuen noted that as a consultant he has been in several Segments over the past few years. Mr. Schrayshuen commented that the proposed solution does not achieve the goal of alleviating the concern that consultants may use Segment 8 to vote in their clients’ interests. He commented that there still exists a conflict of interest if consultants and vendors providing services to Segment 2 join Segment 8 and a risk</li> </ul>	<ul style="list-style-type: none"> <li>NERC asserts that the proposed changes balance the interests of organizations in the RBB while helping to ensure all interested parties can join a Segment to vote and comment. Consultants and vendors may continue to join Segment 8 if providing services exclusively to ISOs/RTOs. Therefore, NERC can benefit from the knowledge and input of the consultant community. NERC will consider more comprehensive guidelines and rules for consultants and vendors</li> </ul>

Summary of Stakeholder Comments	Action/Response and Notes
<p>of losing the benefit of the knowledge from the consultant community.</p> <ul style="list-style-type: none"> <li>Mr. Schrayshuen proposed allowing consultants providing services to entities from Segments 1-7 to join Segment 8 but requiring them to adhere to certain principles. In particular, he suggested that consultants in Segment 8 attest that they will vote representing Segment 8 entities, contribute to the ERO Enterprise reliability mission, and be knowledgeable about power system reliability issues and the standards development process.</li> </ul>	<p>joining the RBB pursuant to the NERC Rules of Procedure Section 305.3.3 and Appendix 3D, Segment Qualification Guideline 7.</p> <ul style="list-style-type: none"> <li>NERC will not adopt the commenter’s proposed change to allow consultants and vendors to join Segment 8 at this time but will consider the approach during a review pursuant to the NERC Rules of Procedure Section 305.3.3 and Appendix 3D, Segment Qualification Guideline 7.</li> </ul>
<ul style="list-style-type: none"> <li>The PPL Corporation NERC Registered Entities support the proposed changes and suggest that NERC consider similar changes for other Segments to prohibit consultants from joining as voters in the RBB. An entity may choose to hire a consultant to represent its interests in a Segment, but then the consultant should identify their client.</li> </ul>	<ul style="list-style-type: none"> <li>NERC appreciates the comments. NERC will not make the commenter’s proposed change at this time. NERC periodically reviews the RBB composition and will consider any broader changes during those subsequent reviews.</li> </ul>
<ul style="list-style-type: none"> <li>SPP SRG supports the proposed changes and notes that because no non-RTO/ISO entities are part of Segment 2, no parties are harmed by this change.</li> </ul>	<ul style="list-style-type: none"> <li>NERC appreciates the comments.</li> </ul>