

November 9, 2020

VIA ELECTRONIC FILING

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

RE: *North American Electric Reliability Corporation*

Dear Mr. Cunningham:

The North American Electric Reliability Corporation (“NERC”) hereby submits Notice of Filing of the Amended and Restated Bylaws of the North American Electric Reliability Corporation. NERC requests, to the extent necessary, a waiver of any applicable filing requirements with respect to this filing.

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

Sincerely,

/s/ Lauren Perotti

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

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**BEFORE THE
PROVINCE OF MANITOBA**

**NORTH AMERICAN ELECTRIC
RELIABILITY CORPORATION**

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**NOTICE OF FILING OF THE AMENDED AND RESTATED BYLAWS OF THE
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION**

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ATTACHMENTS

ATTACHMENT 1: Amended North American Electric Reliability Corporation Bylaws – Clean

ATTACHMENT 2: Amended North American Electric Reliability Corporation Bylaws – Redline

ATTACHMENT 3: Description of All Amendments to the NERC Bylaws

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**NOTICE OF FILING OF THE AMENDED AND RESTATED BYLAWS OF THE
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION**

The North American Electric Reliability Corporation (“NERC”) hereby provides notice of its Amended and Restated Bylaws. Since the NERC submitted its Application for Recognition as the Electric Reliability Organization (“ERO”) in 2006, the NERC Bylaws (“Bylaws”) have undergone discrete changes to (1) clarify requirements, (2) introduce flexibility, and (3) eliminate outdated language and references.¹ The proposed amendments in this filing are the result of a comprehensive review undertaken by NERC and seek to accomplish the following:

- Address governance matters relating to the composition of NERC’s membership Sectors, certain rules relating to the MRC, as well as the qualification of independent trustees for the Board;
- Update certain provisions to conform with applicable U.S. state law; and
- Improve internal consistency and introduce ministerial changes within the Bylaws with respect to capitalizing defined terms consistently and removing inoperative provisions.

¹ Changes have included: (a) providing a 10-day period of time for newly elected trustees to resolve conflicts of interest; (b) modifying the procedure for electing one or more additional Canadian representatives to the Member Representatives Committee (“MRC”), as necessary, if sufficient Canadian representation does not result from the initial election of MRC members; (c) revising the provision identifying the original members of the NERC Board of Trustees (“Board”); (d) eliminating “regional reliability organization” from the Bylaws; (e) amending a reference to “reliability readiness audits”; (f) authorizing the Board to increase the number of trustees from eleven to twelve, and back to eleven, when necessary; and (g) reducing the five-day prior notice requirement for Board meetings held in closed session to a 24-hour prior notice period.

The proposed amendments reflect input provided by stakeholders over the course of outreach conducted by NERC and the MRC leadership. The proposed amendments do not affect NERC's qualifications or ability to function as the ERO as set forth in section 215 of the U.S.FPA.

Pursuant to Article XIV of the Bylaws, these amendments are subject to approval by the Board, the MRC, and the applicable governmental authorities. The Bylaws amendments were approved by the MRC at its meeting held on August 20, 2020. On August 20, 2020, the NERC Board also approved the proposed amendments to the NERC Bylaws. The applicable notice was provided to the Board and the MRC, respectively, upon the public posting of their agenda packages. The required quorums of the Board and the MRC were present at their respective meetings.

I. NOTICES AND COMMUNICATIONS

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

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II. PROPOSED AMENDMENTS TO THE NERC BYLAWS

This section outlines the most significant proposed amendments. All proposed amendments are identified in detail in **Attachment 3**.

A. NERC Membership Sectors

The main substantive revision proposed relates to the membership structure of NERC. The revisions create an associate Sector, to accommodate candidates for membership that do not meet

the definition of an existing Sector. The revisions also modify the Sector membership definitions to ensure consistency with the intent of fair and balanced participation in NERC governance by stakeholders with a significant role in the reliability and security of the Bulk-Power System (“BPS”).²

1. NERC Proposes to Create a New Sector for Associate Members

NERC membership is voluntary and open to any person or entity who has an interest in the reliable operations of the BPS. Members are grouped into Sectors based on commonality of characteristics and interests related to reliability. As defined in the Bylaws, a Sector means a group of members that are BPS owners, operators, or users or other persons and entities with substantially similar interests, including governmental entities, as pertinent to the purposes and operations of NERC and the operation of the BPS. This structure was created to allow fair and balanced participation in NERC governance by stakeholders with a significant role in the reliability of the BPS. NERC currently has 12 membership Sectors an applicant may join.³ Through membership, an applicant may participate in stakeholder committees that include Sector-based membership, and receive information regarding NERC’s activities.

Over the years, NERC observed that not all entities applying for membership have a common interest represented within the 12 existing Sectors. Certain Sectors have seen an increase in membership from persons and entities that do not necessarily have similar interests among themselves as it pertains to the purposes and operations of NERC or the BPS. This trend is most prevalent with small end-use electricity customers (Sector 9). Sector 9 membership currently

² The proposed revisions do not affect the Segments of the NERC Registered Ballot Body.

³ In these proposed amendments, NERC clarifies in Article II (Membership) that registering in a Sector is a prerequisite to membership and that membership initiation is distinct from registration to become subject to NERC Reliability Standards.

includes any person who is a consumer of electricity within certain parameters. Current Sector 9 members include universities, consultants providing advice to entities in Sectors outside of Sector 9, and a Reliability Coordinator. The Sector has essentially become a place for candidates for membership that do not meet another Sector definition. This results in the loss of the key characteristic that members of a Sector have substantially similar interests that can be clearly voiced as part of NERC's governance processes.

To address this concern, NERC proposes to add a new Sector to its Bylaws for "associate members." The associate Sector would consist of members who do not meet the common interest criteria in the existing Sectors. The associate Sector accommodates the interests of the broader public who may want to participate in NERC matters as a member without diluting the voice and perspective of those members in a particular Sector as it relates to BPS reliability. Associate Sector members will have all rights and duties of members of other Sectors, except for the right to nominate and elect MRC representatives.

The Bylaws would allow an associate Sector member to (1) serve as a representative of another Sector on the MRC and other committees that have Sector-based representation models, (2) serve as a proxy for a member of another Sector (as permitted under the applicable committee scope or charter), and/or (3) coordinate and deliver another Sector's policy input to the Board, if such other Sector chooses to assign those responsibilities to the associate Sector member. Associate Sector members also may serve as at-large members or proxy representatives on committees that include at-large members (as permitted under the applicable committee scope or charter). As a result, an associate Sector member that is elected as a representative of another Sector will have the same rights and responsibilities as any other representative of that Sector.

No changes are proposed to the nomination processes for the MRC or the charters of any other committees. Additionally, no changes to the rights and responsibilities of MRC members are being proposed, other than as discussed further below for the Regional Entity Sector (Sector 11).

To accommodate the broad nature of “associate Sector membership,” which will lack a commonality of interests, NERC also proposes to amend the definition of “Sector” in Article I, Section 1 (Definitions) to include “other persons or entities that have an interest in the Reliable Operation of the North American Bulk Power System.”

2. NERC Proposes to Modify Sector Definitions

a) Language Regarding “Representatives”

The current language of the Bylaws permits persons or entities to join a Sector if they “represent the interests of” entities in the Sector. This broad formulation calls into question whether common interests exist, and may dilute the voice of those entities for which the Sector was created. NERC proposes to address this issue by replacing this language in most Sectors, but not all, with a provision stating that any “not-for-profit association that coordinates and helps the interests of members of [a given Sector] may be a member... unless the majority of the other members of the Sector objects.” Through this proposed change, NERC prioritizes membership in a Sector for stakeholders with a collective and significant role in the reliability and security of the BPS while recognizing that in certain Sectors, stakeholders may benefit from the participation in the Sector of certain entities that provide a coordination role.

b) Membership in the Small End-Use Electricity Customer Sector

To prevent Sector 9 from continuing to serve as a catch-all Sector lacking commonality of interests, NERC proposes to amend the definition of the “small end-use electricity consumer” Sector (Sector 9) to only include entities that exist to protect the interests of small end-use electricity customers as a group, such as consumer advocates and similar organizations. To further prevent

dilution in Sector 9, NERC also proposes to require that an individual or entity cannot become a member of Sector 9 if any “products or services have been provided to “an entity that is eligible to join another Sector [outside of Sector 9]” within the previous twelve months.

c) Sector Assignment for Florida Reliability Coordinating Council, Inc.

NERC proposes to change the Sector assignment for Florida Reliability Coordinating Council (“FRCC”) from Sector 9 (Small End-User Sector) to Sector 10 (ISO/RTO). The current assignment to Sector 9 stems from when FRCC dissolved its Regional Entity division and did not meet the definition of another Sector.

d) Clarification of Government Representatives Voting Rights

Under the current Bylaws, members of the government representatives Sector (Sector 12) include both voting and non-voting members of the MRC. The proposed change references, in the definition of the Sector, the non-voting capacity in which the members of the Sector with regulatory oversight over the Corporation of any Regional Entity serve.

B. MRC-Related Amendments

1. NERC Proposes to Convert the Regional Entity Sector (Sector 11) to Non-Voting

Under the current Bylaws, Regional Entity members may serve on the MRC as voting members and non-voting members. NERC proposes to maintain the participation of the Regional Entities in the MRC, as non-voting members. This change is consistent with the ERO Enterprise model under which the Regional Entities work collaboratively with NERC to fulfill the mission of assuring the effective and efficient reduction of risks to the reliability and security of the grid.

2. Filling Vacancies on the MRC Created by the Election of the Chair and Vice Chair

NERC proposes to allow the MRC to fill vacancies created by the election of the chair and vice chair at any time. Under the current Bylaws in Article VIII, Section 6 (Vacancies on the Member Representatives Committee), such vacancies can only be filled at the annual election of representatives to the MRC. NERC proposes to account for situations in which such vacancies arise off-cycle from the annual election. For example, if a chair or vice chair ceases to serve before the end of her or his term, then the current language could be read to preclude immediate action to refill the position that would be vacated as a result. Therefore, NERC proposes to introduce some flexibility to allow the naming of a replacement from other MRC voting members whenever such vacancies arise.

C. NERC Board Independence and Nominating Committee Composition

The revisions clarify the criteria for independent NERC trustees, to better align the Bylaws with the requirements in Section 215 of the U.S. FPA regarding the ERO's independence from users, owners, and operators of the BPS. They also address a trustee's eligibility to serve on the Board's nominating committee if he or she is not seeking reelection. The revisions streamline, without making substantive revisions, the language regarding the Board's ability to increase and decrease the number of independent trustees.

1. NERC Proposes to Align the Criteria for Independent Trustees with Requirements in Section 215 of the U.S. FPA

Consistent with Section 215 of the U.S. FPA and associated regulations, the ERO must assure its independence of users, owners, and operators of the BPS. While this has always been the practice in selecting NERC's independent trustees, the current language in the Bylaws prohibit independent trustees from being associated with "NERC members" that may or may not be "owners, operators, and users of the BPS." The proposed amendments make the exclusion criteria

explicitly connected to relationships with entities that are subject to reliability standards, thereby more accurately capturing the pool of potential conflicts.

NERC also proposes to remove an inconsistency in the Bylaws around the use of the term “officers” in the context of eligibility to serve as an independent trustee. Under Article III, Section 3 (Independent Board Members), a NERC employee or officer may not serve as an independent trustee; however, Article VI (Officers) defines “officers” as including the chair and vice chair of the Board. The amendments resolve this inconsistency by eliminating the restriction on service as independent trustees by those NERC officers who are not also NERC employees.⁴

2. NERC Clarifies a Trustee’s Eligibility to Serve on the Board’s Nominating Committee if the Trustee is not Seeking Reelection

In Article III, Section 5 (Nominating Committee), NERC clarifies that the Nominating Committee may include any trustee who is not standing for reelection, including those who are term-limited. Similarly, the Nominating Committee can be chaired by any trustee who is not standing for reelection.

3. NERC Streamlines Language Regarding the Board’s Ability to Change the Number of Independent Trustees

In Article III, Sections 1a and 1b, NERC streamlines language to increase or decrease the number of trustees without changing the substance of these provisions.

⁴ As it relates to officers, NERC also proposes to eliminate the reference to an Assistant Secretary-Treasurer officer position as unnecessary. The position does not have any defined responsibilities under the Bylaws and appears redundant with the roles of the Secretary and the Treasurer.

4. NERC Codifies Eligibility Requirement for Canadian Trustees.

In Article III, Section 2 (Composition of Board Based on Country Participation), NERC clarifies that a Canadian trustee must be a citizen and resident of Canada. While that has been the practice, the amended Bylaws would make this requirement explicit.

D. Alignment with New Jersey Corporate Law

NERC proposes to make the following four, procedural amendments to align with current corporate law in New Jersey where NERC is incorporated:

- Permit less than unanimous written consent of all members to authorize actions by the Board so long as certain procedural steps, outlined in the Bylaws, are taken;
- Define conditions for remote participation in meetings of NERC members as well as meetings of the MRC;
- Allow for more efficient decision making through actions without a meeting, provided that all trustees consent to such decision in writing; and
- Clarifies that in the case of the election of trustees by the MRC, the action may be taken without a meeting only if all members of the MRC consent thereto in writing.

Respectfully submitted,

/s/ Nina H. Jenkins-Johnston

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Dated: November 9, 2020

ATTACHMENTS 1 - 3