



Energy Resource Appeal Tribunal

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Draft Review Policy

The draft review process fosters consistent and high-quality decision-writing and supports the sharing of knowledge and experience amongst members. This process is not intended to compel or induce decision-makers to decide issues or matters in a particular way.

The draft review process includes a review of any draft decision by the General Counsel. Decisions are reviewed for formatting and editorial concerns (legibility, grammar, spelling, syntax, plain wording, and logical flow). Decisions are also subject to a substantive review, to ensure that the decision is internally consistent, responsive to the issues under appeal, and based on the correct law and legal tests. Decisions also need to have adequate, consistent reasoning displaying a rational chain of analysis. Any apparent unaddressed procedural fairness concerns will be identified. The draft review process does not involve questioning findings of fact, although the process aims to ensure that evidence and submissions are thoroughly addressed and that any apparent inconsistencies are resolved.

The draft review process also includes an optional review of the draft decision by the Chair. The Chair will return any comments to the General Counsel. Comments may be amalgamated so the authorship of any comments is not apparent to the member.

The draft is returned to the member at the end of the review. It is important to recognize that the member is the one who heard the evidence and argument, and they are responsible for the decision. Feedback will typically address the adequacy of reasons, the logical flow and consistency of the analysis, and whether all applicable legal matters were dealt with. This is to assist the member in fully and appropriately providing reasons and responding to submissions. Comments may be accepted or rejected at the sole discretion of the member.

Following any phase of the draft review process, the General Counsel and/or the Chair may suggest that an expanded process of draft review and/or another phase of draft review would be appropriate in a given case. The decision as to whether to participate in any further draft review process remains with the individual member.

Members must have each decision reviewed by the General Counsel, and are encouraged to have the Chair review each decision. Members are free to decline to have the Chair review their decisions, however, and may do so on a decision-by-decision basis. To opt out of Chair review, members must identify this preference when submitting each draft to legal counsel. Assessment of member performance is not affected by the extent to which members participate in the draft review process.

Where decisions are written by panels, the extent of draft review will be determined by the panel member who wishes the largest extent of review. One panel member will not be denied the

opportunity for draft review as a result of another panel member not wishing to have it done. It remains for the panel members to decide whether they wish to accept any comments or suggestions made and/or whether they wish to participate in an expanded or iterative process of draft review, if recommended.