

MEMORANDUM

TO: Holly Mann, Secretary
NERC Member Representatives Committee

FROM: Allen Mosher, Vice President, Policy Analysis & Reliability Standards,
American Public Power Association
Bill Gaines, Director of Utilities and CEO, Tacoma Utilities, on behalf of
the Large Public Power Council
John Twitty, Executive Director, Transmission Access Policy Study
Group

DATE: May 1, 2013

SUBJECT: Response to Request for Policy Input

The American Public Power Association, the Large Public Power Council, and the Transmission Access Policy Study Group have reviewed and concur in the response submitted today by the State/Municipal and Transmission Dependent Utility Sectors to NERC Board Chair Fred W. Gorbet's April 9, 2013 letter requesting policy input in advance of the May 8-9, 2013 NERC Board of Trustees meeting.

In addition, the American Public Power Association, the Large Public Power Council, and the Transmission Access Policy Study Group are sponsors of the Joint Trade Association Policy Input on the Reliability Assurance Initiative, which was also submitted today.



MEMORANDUM

TO: Holly Mann, Secretary
NERC Member Representatives Committee

FROM: Tim J. Arlt
John DiStasio
Bill Gallagher
John Twitty

DATE: May 1, 2013

SUBJECT: Response to Request for Policy Input

The MRC's State and Municipal and Transmission Dependent Utility Sectors ("SM-TDUs") appreciate the opportunity to respond to the April 9, 2013 letter from NERC Board Chair Fred W. Gorbet to Ms. Carol Chinn, Chair of the NERC Member Representatives Committee ("MRC"), requesting policy input on topics to be discussed by the NERC MRC and the NERC Board of Trustees at the upcoming May 8-9, 2013 meetings.

This response addresses each of the three topics raised in Mr. Gorbet's letter: (i) Reliability Assurance Initiative ("RAI"), (ii) Application of Section 215 Criteria, and (iii) Implementation of Executive Order and Impacts on ES-ISAC and ESCC.

I. Reliability Assurance Initiative

SMU-TDUs fully support the Joint Trade Association's response to Mr. Gorbet's letter on RAI and Attachment 1 to that letter.¹ We will not repeat or summarize the Joint Trade Association's response here, but do make several points, some of which we have made on previous occasions.

First, we urge NERC and the Board of Trustees to continue to afford the RAI its highest priority. To this end, the general approach should be to organize the work into a series of phases that develops *and implements* features incrementally. Second, we continue to have questions on how "risk" will be evaluated under RAI and how an entity's internal controls will be evaluated. We encourage NERC to develop criteria and definitions to help clarify these aspects of RAI which will assist registered entities in their compliance efforts and provide a consistent evaluation framework between regions. Third, we urge NERC to push ahead on a separate track the transition of Find, Fix and Track to its next stage: Find, Fix and Record ("FFR"). The RAI and the FFT/FFR initiatives

¹ Joint Trade Association Response to April 9, 2013 Request for Policy Input from NERC Board Chairman Fred W. Gorbet on the Reliability Assurance Initiative (RAI). The Joint Trade Associations include the American Public Power Association, Edison Electric Institute, Electric Power Supply Association, Electricity Consumers Resource Council, the Large Public Power Council, National Rural Electric Cooperative Association and Transmission Access Policy Study Group.

have great potential to free up NERC, regional and industry resources while at the same time providing a more effective, risk-based compliance program.

II. Application of Section 215 Criteria

Mr. Gorbet asked for feedback on NERC's draft internal criteria for determining whether an activity falls within the ambit of Section 215. Since Mr. Gorbet's letter was issued, FERC issued an order approving, subject to modifications, the draft criteria NERC should apply in determining whether its activities are eligible for funding under FPA section 215.² We support the FERC order and the criteria as modified by FERC.

III. Implementation of Executive Order and Impacts on ES-ISAC and ESCC.

The State and Municipal and Transmission Dependent Utility Sectors ("SM-TDUs") support efforts to improve the effectiveness of the ESCC and ES-ISAC. In particular, we would support proposals to broaden the membership of the ESCC, provided that appropriate sector balance is maintained within the ESCC. However, we do not see a corresponding need, much less an urgency, to change the governance and funding of the ES-ISAC. For these reasons, we oppose adoption of the strawman proposal outlined in Attachment 2 of the Request for Policy Input.

ESCC

SM-TDUs support efforts to broaden the membership of the ESCC, while building on its current charter and governance. We believe an expanded ESCC could serve NERC and the industry well as a forum for engagement with the Administration in areas such as the Executive Order on Cybersecurity, Presidential Policy Directive 21, addressing roadblocks on effective information sharing, the National Infrastructure Protection Plan, and improving incident response during major events. We support efforts to leverage the work undertaken by the group of CEOs and trade association officials meeting under NIAC auspices to achieve expanded CEO-level commitment and engagement with the federal government. However, balanced representation on an expanded ESCC, secure funding, an assured role for NERC, and other governance principles remain to be worked out. As is probably no surprise, assured municipal representation is among SM-TDUs' goals. For all of these reasons, SM-TDUs urge the BOT to refrain from any action on the strawman proposal, until such time as industry stakeholders have resolved these issues.

ES-ISAC

Business plan continuity, management oversight and secure funding are essential for the continuing improvement in the ES-ISAC's capabilities. SM-TDUs believe that the organization should remain part of the NERC structure, and that it should continue to be funded under FPA section 215. While it is appropriate for the ESCC to provide recommendations to NERC management on the goals, activities and budget of the ES-ISAC, the strawman proposal in Attachment 2 is not acceptable to SM-TDUs. Although SM-TDUs see room for improvement in the ES-ISAC program, the entities we represent rely on the ES-ISAC as a key resource, and believe the expertise and credibility added by its association with NERC is a valuable asset. Further,

² *North American Electric Reliability Corporation*, 143 FERC ¶ 61,052 (2013).

Section 215 funding provides a secure source of funding for the program that we do not want to see withdrawn. On that subject, in its April 19, 2013 "Order on Compliance," FERC approved NERC's proposed criteria for section 215 activities, a key element of which clearly covers the ES-ISAC.³

Answers to the specific questions posed in your letter regarding the ESCC and ES-ISAC are as follows:

• *Would adopting the proposed changes in ESCC and ES-ISAC governance and funding result in improved security and reliability of the power grid? How?*

Answer: SM-TDUs see no advantage with respect to grid security and reliability in the proposal to alter the governance and funding proposal for ES-ISAC, for reason described above. As to the ESCC, SM-TDUs see some potential advantages in a broader representation and in the promise of concerted upper level management involvement on an ongoing basis. Whether those advantages can be realized without compromising diverse representation, secure funding, and a meaningful, defined role for NERC are open questions that must be resolved before action is taken on the proposal.

• *Is the proposal helpful in the current legislative and regulatory framework in the U.S. and Canada, including the recent PPD-21?*

Answer: For reasons explained above, SM-TDUs see the goals of PPD-21 potentially compromised if the proposal regarding ES-ISAC is adopted. Restructuring the ESCC may advance communications contemplated by PPD-21, but only if questions regarding governance, representation and NERC's role are resolved.

• *How should balance of interests be achieved in the proposed ESCC governance?*

Answer: See above

• *What assurances would there be that adequate funding would be provided to support an effective ESCC and ES-ISAC?*

Answer: SM-TDUs are convinced that the most secure source of funding for these proposals will be under FPA section 215. That is a significant motivating factor for recommending that the status quo for the ES-ISAC be preserved.

³ FERC approved proposed Criterion III, which includes activities encompassed within these questions:

- E. Does the activity involve gathering, analyzing and sharing with and among industry and government participants, information regarding the physical or cyber security of the Bulk Power System?
- F. Does the activity involve the development and dissemination of advisories/ Recommendations/Essential Actions regarding lessons learned and potential reliability risks to owners, and operators of the Bulk Power System?

• *If the ESCC and ES-ISAC become non-statutory, self-governed activities within NERC, what additional changes would be required by NERC? How would the role of the CIPC be affected?*

Answer: (1) SM-TDUs are not recommending a change in the ES-ISAC model; (2) See above regarding suggested agreements that must be reached on governance, funding and representation that must be resolved for the ESCC before changes can be approved. .

• *What assurances are there that the proposed changes will be sustainable and not simply address transient circumstances existing today?*

Answer: See above.

Finally, SM-TDUs are concerned that NERC's recently-issued ES-ISAC Policy Statement⁴ establishes an incomplete firewall between NERC's compliance and enforcement program and the ES-ISAC's role as a real-time communications pathway. In particular, the Policy Statement holds out the possibility of issuance by NERC of a "remedial action directive," which falls under section 500 of the NERC Rules of Procedure, should a registered entity fail to fully respond to information concerning an imminent threat.

SM-TDUs fully agree that electric sector entities are responsible for responding to ES-ISAC communications identifying imminent threats. However, issuance of a remedial action directive is an inappropriate response to inaction or incomplete action by a registered entity because it presupposes a violation of a NERC reliability standard. An entity-specific "Essential Action" would be a more appropriate tool to respond to an imminent threat.

Thank you for the opportunity to provide this input.

⁴ [http://www.nerc.com/files/Updated%20ES-ISAC%20Firewall%20Approval%20\(13%20Mar%202013\).pdf](http://www.nerc.com/files/Updated%20ES-ISAC%20Firewall%20Approval%20(13%20Mar%202013).pdf)

The ES-ISAC Policy Statement provides at page 2:

In the event ES-ISAC personnel become aware of a situation where the potential actions or inactions of a user, owner or operator of the bulk power system constitute an imminent threat to the reliability of the bulk power system, ES-ISAC personnel may make whatever communications are deemed necessary to protect the reliability of the bulk power system. Such communications may be with registered entity senior management. In the rare event that such communications do not resolve the imminent threat, then ES-ISAC personnel are directed to refer the matter to the NERC General Counsel for consideration of issuance of a remedial action directive under the NERC Rules of Procedure or other appropriate action.