

MEMORANDUM

TO: Fred W. Gorbet, Chair
NERC Board of Trustees

FROM: Allen Mosher, Vice President, Policy Analysis, American Public Power Association
Jacqueline Sargent, General Manager, Platte River Power Authority, on behalf of the Large Public Power Council
John Twitty, Executive Director, Transmission Access Policy Study Group

DATE: February 6, 2015

SUBJECT: Response to Request for Policy Input

The American Public Power Association, the Large Public Power Council, and the Transmission Access Policy Study Group concur with the Policy Input submitted today by the State/Municipal and Transmission Dependent Utility Sectors of the Member Representatives Committee in response to NERC Board Chair Fred W. Gorbet's January 16, 2015 letter requesting policy input in advance of the February 2015 NERC Board of Trustees meeting.



MEMORANDUM

TO: Fred W. Gorbet, Chair
NERC Board of Trustees

FROM: Carol Chinn
Jackie Sargent
Bill Gallagher
John Twitty

DATE: February 5, 2015

SUBJECT: Response to Request for Policy Input to NERC Board of Trustees

The Sector 2 and 5 members of the NERC Member Representatives Committee (“MRC”), representing State/Municipal and Transmission Dependent Utilities (“SM-TDUs”), appreciate the opportunity to respond to your January 16, 2015 letter to Mr. Sylvain Clermont, Chair-Elect of the MRC, requesting policy input on topics that will be of particular interest during the upcoming February 11-12, 2015 meetings of the NERC Board of Trustees, Board committees, and the NERC MRC.

This response addresses each of the topics raised in your letter. We summarize our principal concerns and comments as follows:

➤ **Critical Infrastructure Protection (CIP) Version 5 Transition Program:**

- Registered Entities need regulatory certainty in order to comply with NERC Standards. A lack of clarity continues to exist with regards to many aspects of CIP Version 5 compliance expectations. This has significant impact on Registered Entities, the Regional Entities and NERC due to the implementation timeline. This is an untenable situation which must be recognized and addressed with a sense of urgency.
- We urge NERC to work with industry stakeholders to timely complete and issue Lessons Learned developed through the Transition Study process. We also request assurance that the regions will follow this guidance.
- While Lesson Learned guidance is still in development, we urge discretion in the ERO’s initial audit approach as both industry and auditors incorporate the Lesson Learned into their CIP programs.
- The Lessons Learned development process has revealed several potentially significant disagreements on interpretation of CIP Version 5 requirements. Unilateral NERC issuance of Lessons Learned will not resolve such differences. Rather, formal standard interpretations or standard revisions may be necessary.

- A Transition Study should be conducted as soon as practicable for the new Low Impact asset requirements that become enforceable on April 1, 2017.
 - We also remain concerned that the RSAW development process has not met what we view as reasonable stakeholder expectations. Collaboration with the SDT does not conflict with the ERO's ability to maintain audit independence.
- **Physical Security Reliability Standard Implementation:**
- SM-TDUs support NERC's proposed implementation program and stand ready to work with NERC staff to timely complete this project.
 - The Commission's directive to eliminate or define "widespread" from Requirement R1 could create substantial difficulty in meeting the October 1, 2015 implementation date. We request regulatory forbearance where a Registered Entity's initial identification of BES risk differs from what NERC and the Commission subsequently require.
- **Essential Reliability Services (ERS) Measures Framework Report:** SM-TDUs fully support the work of the ERS Task Force and the identified metrics. Substantial work remains to be completed before the proposed metrics can be relied upon for operational purposes.
- **Assessment Stabilization Initiative:** SM-TDUs support NERC's proposed assessment stabilization initiative and believe it should be applied to all section 215 assessments by NERC and each of its regional entities. Further, greater uniformity in the working capital and operating reserve policies of the regional entities is needed.

SM-TDUs elaborate below on these high-level points.

Item 1: Critical Infrastructure Protection (CIP) Version 5 Transition Program:

The Board would appreciate feedback from the MRC as to whether the proposed NERC implementation program outlined in the MRC materials is focused on the appropriate areas and would enable implementation of the CIP Version 5 Reliability Standards in an efficient and effective manner, and whether there are any additional specific NERC activities necessary to achieve such goals.

SM-TDUs have a number of serious concerns with respect to the timely completion and public posting of guidance in the form of Lessons Learned during the CIP Version 5 transition program. We also comment below on the related area of Reliability Standard Audit Worksheet development.

CIP Version 5 Transition Study

NERC staff and industry have worked together over the past year to develop Lessons Learned (LL) from the CIP Version 5 Reliability Standards Transition Study. This guidance

gives valuable insight to Registered Entities that are implementing new compliance programs. We believe LL will also inform the NERC and RE audit approach for CIP Version 5. SM-TDUs nonetheless have continuing concerns with the implementation of the Transition Program.

LL development is a collaborative effort among NERC staff, Regional Staff, and industry Transition Study participants. Using Section 11 of the Standards Process Manual, the Transition Study team is sharing draft LL guidance with stakeholders and gathering comments. These are positive attributes of the current process; however a few other aspects present challenges.

At present, 23 topics are under discussion or development for issuance of CIP Version 5 Lessons Learned, but none has been finalized.¹ In our August 6, 2014 Response to Request for Policy Input, we implored the Board to set a firm schedule for Study milestones and posting of Transition Study Lessons Learned. We again request that NERC make this a priority and offer our subject matter experts to assist NERC and Regional staff.

The CIP Version 5 Transition Study has also identified several complex implementation concerns with the approved CIP Version 5 standards. Specifically, Study participants, along with Regional and NERC staff, have identified several cases where there may be more than one way to read certain standard language. These multiple readings of the standard can have far reaching impact on the implementation of Responsible Entity CIP programs. For example, one of the most complex issues is associated with Medium Impact assets and the definitions associated with External Routable Connectivity (ERC). During the Study, the participants came to two completely opposite readings, providing supporting evidence for both readings of the Requirements.

Some study participants have proposed guidance that identifies both readings and acknowledges both approaches as compliant. NERC and Regional Entity staff appear to favor issuance of a LL that provides a definitive resolution to ambiguities identified by the Transition Study participants during their early implementation of CIP Version 5. Study participants believe the LL should only be used to provide clarifying explanation of the standards. Ambiguities in the Requirements should be addressed through the formal Interpretation process or through revisions to specific Requirements.

We also note with concern that the largest pool of new assets coming under the CIP Version 5 standards is Low Impact BES assets with BES Cyber Systems. This includes a large number of Responsible Entities that will be subject to CIP requirements for the first time and only for Low Impact BES Cyber Systems. To facilitate implementation of the new objective criteria associated with CIP-003-6, Requirement R2, NERC should launch a targeted Low Impact Transition Study as soon as practicable.

The industry is now implementing its compliance plans and configuring security systems for compliance with the High and Medium impact requirements. This work is proceeding

¹ Two CIP V5 Lessons Learned are pending Standards Committee approval; three additional LLs are posted for stakeholder comment through February 6, 2015. See CIP V5 Transition Program page at:

<http://www.nerc.com/pa/CI/Pages/Transition-Program.aspx>

without clear CMEP guidance or consensus on the issues raised above. SM-TDUs urge that while these LL guidance documents are still being developed, NERC exhibit discretion in its CIP Version 5 audit approach while both industry and auditors address these complex standard language issues.

RSAW Development

NERC has published three versions of the CIP Version 5 RSAWs, and each version has been significantly different. In the first comment period, even the individual RSAWs for each standard appeared to differ from each other. It has been unclear to stakeholders why each of the versions has changed over each comment period. Contributing to this uncertainty, individual stakeholder comments received by NERC were not publicly posted, as is done throughout the standards development process. Nor were RSAW comments shared with the CIP Version 5 standard drafting team (SDT) until the final comment period. This has left stakeholders in the dark as to why their comments were not adopted and why other changes were made to the RSAWs. We recognize there has been competition for stakeholder engagement between reviewing the full suite of CIP Version 5 RSAWs and the CIP Version 5 ballot. This is a unique time in that the full suite of RSAWs is still being developed, well after approval of Version 5 by the ballot pool and adoption by the Board.

The CIP Version 5 Revisions SDT has offered to collaborate with the RSAW development team from the beginning. In fact, the SDT provided direct comments, including red-lined RSAWs to the development team, but primarily due to time demands of the standards drafting process, there had not been a cross-team discussion about the SDT comments or other stakeholder comments. The SDT and RSAW development team finally had a face-to-face meeting following ballot three to discuss the rationale for the changes requested by the SDT. The meeting was very positive as both teams were able to explain their individual perspectives. As a result of the meeting, the RSAW development team included most of the SDT comments, leading to a clearer RSAW for all stakeholders.

This outcome demonstrates the benefits of collaboration between SDT and RSAW development teams. Further, we believe the apparent concerns among NERC and Regional Entity staff about “independence” of the compliance and enforcement process are misplaced. Since the RSAWs are used by Responsible Entities to prepare and present initial compliance information to the audit staff, it is important that the RSAWs provide sufficient information to Responsible Entities on what is expected. This collaboration does not impede an auditor from reviewing Responsible Entities programs; in contrast, having a clear and transparent RSAW product improves a Responsible Entity’s ability to provide a clear and complete narrative along with evidence to aid the audit staff during their engagement. The Standard Processes Manual even dictates collaboration of the SDT and NERC Compliance Staff.

Item 2: Physical Security Reliability Standard Implementation:

The Board would appreciate feedback from the MRC as to whether the proposed NERC implementation program outlined in the MRC materials is focused on the appropriate areas and

would enable implementation of the Physical Security Reliability Standard, CIP-014-1, in an efficient and effective manner, and whether there are any additional specific NERC activities necessary to achieve such goals.

The SM-TDUs support the proposed NERC CIP-014-1 implementation program outlined within the MRC materials. While it is ambitious, each element is clearly needed, including:

- The timely publication of guidance documents developed in collaboration with industry;
- Active monitoring and assessment by NERC staff of CIP-014-1 implementation activities by Registered Entities;
- Timely outreach and communication to Registered Entities through various webinars, workshops, and technical conferences; and
- Timely training of Registered Entity staff.

SM-TDUs urge NERC to work with stakeholders to timely complete each of these implementation program elements, to ensure that Registered Entities can meet each of the compliance deadlines set forth in the approved standard, beginning on October 1, 2015. We stand ready to assist NERC in these efforts. Our experience with the development of implementation guidance for the CIP Version 5 cybersecurity standards led us to conclude that early action is essential.

We must nonetheless flag another issue of pressing concern to our Sectors and to other registered entities that are potentially subject to CIP-014-1. In Paragraph 35 of Order 802, FERC directed NERC to develop and submit modifications to the Reliability Standard to either define or eliminate the use of the term "widespread" in Requirement R1. As outlined on the CIP-014-1 Project Page:

FERC noted that incorporating the undefined term "widespread" in Reliability Standard CIP-014-1 introduces excessive uncertainty in identifying critical facilities under Requirement R1. As FERC stated in its earlier March 7, 2014 Order, only an instability that has a "critical impact on the operation of the interconnection" warrants finding that the facility causing the instability is critical under Requirement R1. The March 7 Order did not intend to suggest that the physical security Reliability Standards should address facilities that do not have a "critical impact on the operation of the interconnection." FERC stated that this understanding is unintentionally absent in Requirement R1 because the requirement only deems a facility critical when, if rendered inoperable or damaged, it could result in widespread instability, uncontrolled separation, or Cascading within an Interconnection. The definition in Requirement R1 should not be dependent on how an applicable entity interprets the term "widespread" but instead should be modified to make clear that a facility that has a critical impact on the operation of an Interconnection is critical and therefore subject to Requirement R1.

While the SM-TDUs are reasonably confident that a technical consensus will be reached concerning the Commission's directive, timing is a severe concern. NERC must submit its modifications to R1 to FERC by July 27, 2015, making it unlikely that Commission approval

will take place prior to October 1, 2015, the date by which Registered Entities must complete their initial risk assessments identifying each of the critical stations and substations.

This presents a significant conundrum with genuine compliance risk for Registered Entities to whom this Reliability Standard applies.

One approach to addressing the concern of Registered Entities that they might incorrectly guess the final resolution of the issue raised in Paragraph 35, and, in the process, incorrectly guess the scope of the initial risk assessment in R1, might be for the ERO Enterprise to establish a policy of enforcement forbearance for Registered Entities who must comply with CIP-014-1, R1, provided that the Registered Entity can document the basis for its initial risk assessment.

For example, if a Registered Entity documented that it performed its initial risk assessment from the perspective of identifying Transmission stations and Transmission substations that if rendered inoperable or damaged could result in uncontrolled separation or Cascading within an Interconnection for conditions such as voltage collapse or instability as defined in the TP/PC methodology in TPL-001-4 R.6, that Registered Entity should be seen as complying with R1, regardless of how the Paragraph 35 question is finally resolved.

Item 3: Essential Reliability Services (ERS) Measures Framework Report

The Board is seeking policy level comments, inputs, and perspectives on the framework, measures, and planned assessment evaluation plans. Specifically, the Board would appreciate feedback from the MRC on the following questions:

- 1. Do the planned assessment and proposed initial measures provide the needed insights on future BPS reliability to enable risk-based and comprehensive decision-making by state, federal, and provincial regulators?*
- 2. What policy recommendations does the MRC have regarding the use of the ERSTF Measures Framework Report?*

The SM-TDUs strongly support the work of the Essential Reliability Services Task Force to develop a technically rigorous and broadly supported framework backed by practical measures of BES performance. The ERSTF is off to a great start but there is a lot of work yet to do. The ERSTF needs to formalize the process to document results and identify best practices. There is still a great deal of field research yet to be completed. Indeed, the number of generation and transmission resource variables to test and confirm is, in the words of one colleague, “mind boggling.” Thus, it is premature to talk about standards or guidelines.

The framework still needs empirical work and testing of the performance measures. We want to avoid a premature jump to specific measures or a rush to incorporate them into reliability standards. Some of the ERS measures also seem more appropriate as characteristics of resources to be procured through resource planning and capacity procurement process, rather than as measures of BES performance.

Item 4: Assessment Stabilization Initiative

The Board is requesting policy input from stakeholders regarding the goals and guiding principles applicable to the assessment stabilization initiative set forth above, as well as the potential changes to the company's Working Capital and Operating Reserve Policy which will be set forth in more detail as part of the NERC Finance and Audit Committee's February 12, 2015 meeting agenda materials (to be posted one to two weeks prior to the meeting).

The SM-TDUs support this initiative and would urge both NERC and the regions to adopt the goals and guiding principles applicable to the assessment stabilization initiative. SM-TDUs also believe that NERC and the Regional Entities should each adopt the proposed Working Capital and Operating Reserve Policy or explain why their specific variations on such policies accomplish consistent outcomes for section 215-related activities.

The revenues received as a result of Notices of Penalty are generally a small percentage of the NERC and Regional Entity assessments on load-serving entities. However, in exceptional cases or years, penalty revenues resulting from a major BES event could reduce the NERC or Regional Entity assessments to levels that are substantially below those which would otherwise apply, only to have the assessment balloon upward by double-digit amounts in subsequent years. In these cases, normalization that would credit such penalty revenues against assessments over a two to three year period makes sense. Care must nonetheless be taken to ensure that penalty revenues are not viewed as a free cash windfall to fund initiatives that would otherwise be viewed as unaffordable by NERC or a region.

SM-TDUs support Board adoption of NERC's proposed Working Capital and Operating Reserve Policy. We also request that the NERC Board review and compare the Working Capital and Operating Reserve Policies employed by each of the Regional Entities, with respect to all funds collected and expended for section 215 purposes. While there may be valid historical reasons for the differences in policies between each of the Regional Entities, the differences (e.g., how they are calculated; target levels; management and board controls for when they are used) are striking. Each region should maintain adequate working capital and operating reserves to meet its statutory obligations, but no more than the reserves required for those purposes. Further, a similar set of rules should apply across the regions, recognizing that there are some well-known differences in governance and processes between regions. A one-size-fits-all approach is not required, but differences need to be justified.

Thank you for the opportunity to provide this policy input.