

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Reliability Technical Conference

Docket No. AD15-7-000

**WRITTEN STATEMENT OF
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ON BEHALF OF THE TRANSMISSION ACCESS
POLICY STUDY GROUP
FOR THE JUNE 4 TECHNICAL CONFERENCE**

Thank you for inviting me to participate in today's technical conference. In particular, I am pleased to participate in this panel on ERO Performance and Initiatives, which provides an opportunity to take stock of where NERC is on initial implementation of several major initiatives, including NERC's risk-based approach to compliance and enforcement of NERC reliability standards and implementation of CIP Version 5 standards. Getting these efforts right is key to NERC's ability to achieve the objectives everyone shares of cost-effectively maintaining and enhancing reliability.

As retired CEO of Vermont Public Power Supply Authority and consultant to TAPS—the Transmission Access Policy Study Group, an association of transmission dependent utilities in more than thirty-five states—I am acutely aware of both the importance of a reliable and secure Bulk-Power System ("BPS"), as well as the heavy compliance burden borne by registered entities, even if they are small systems with limited impact on BPS reliability. As a member and past chairman of NERC's Member Representatives Committee, I am actively engaged in NERC policy issues. From these vantage points, I will provide my views on several of the important questions posed to this panel, and am ready to answer your questions on the others.

I. RISK-BASED COMPLIANCE AND ENFORCEMENT

NERC's Reliability Assurance Initiative ("RAI"), recently renamed Risk-Based Compliance Monitoring and Enforcement Program ("Risk-Based CMEP"), which the Commission recently approved,¹ is a timely, if not overdue, reform in the way NERC and its Regional Entities approach compliance and enforcement. TAPS has strongly supported this movement away from a "zero tolerance" approach in which all possible violations are treated as enforcement matters to be individually processed (as an NOP or FFT), regardless of the BPS risk posed. While assuring consistency across and within Regions,² Risk-Based CMEP is intended to prioritize and customize compliance and enforcement resources based on risk, rather than continue a "one-size-fits-all" approach. NERC and its Regional Entities are expected to take account of a registered entity's risk profile and the strength of its internal controls to develop and apply a more surgical approach to scoping audits for that entity, determining their frequency, and applying other compliance and enforcement tools. NERC and its Regional Entities would also exercise greater discretion in declining to treat a deficiency as an enforcement matter. Registered entities are expected to take on greater responsibility for developing and implementing internal controls—management practices and tools that enable the registered entity to detect, correct, and prevent violations.

Risk-Based CMEP is an essential maturation of the ERO Enterprise, better enabling it to effectively and efficiently perform its role in FPA Section 215's regulatory

¹ *N. Am. Elec. Reliability Corp.*, 150 FERC ¶ 61,108 (2015).

² *Id.* P 52 (requiring annual report to document "whether RAI has been implemented in a consistent manner across the Regional Entities"). *See also id.* P 36 (transparency will "allow interested registered entities and other parties to measure consistency across entities, classes of entities, or Regional Entities . . .").

scheme for development and enforcement of reliability standards. It is the natural complement of risk-based standards³ and risk-based registration efforts.⁴

While Risk-Based CMEP should yield efficiencies for the ERO, and potentially registered entities, it is too early to assess results and impacts. NERC's implementation began early this year, and is prioritized to those on the audit schedule for 2015. That means it has not yet directly touched most of the smaller entities that TAPS represents, who typically are not audited as frequently. Small entities also were not included in the trials that preceded submission and approval of the program. So while we have taken some comfort in NERC's commitment to scale the program for application to smaller entities, how that will be accomplished on a consistent basis is not yet clear.

To better understand how NERC and its Regions plan to scale application of Risk-Based CMEP to smaller entities, and help inform that process, TAPS reached out to NERC and worked with NERC to put together a "small entity exercise" held on February 24-25, attended by NERC and Regional staff as well as a number of TAPS members. In addition to offering NERC and its Regions an opportunity to explain the program in general terms, this exercise provided more concrete examples to begin to grapple with the challenges of applying Risk-Based CMEP to smaller entities. The exercise focused on five TAPS members, who described their systems and their internal controls with regard

³ NERC strives for "results based" standards. <http://www.nerc.com/pa/Stand/Pages/ResultsBasedStandards.aspx>; *see also* Electric Reliability Organization Proposal to Retire Requirements in Reliability Standards, Order No. 788, 78 Fed. Reg. 73,424 (Dec. 6, 2013), 145 FERC ¶ 61,147, P 1 (2013) (approving NERC's request to retire 34 reliability standard requirements that provide little protection for Bulk-Power System reliability or are redundant with other requirements). *See also* *N. Am. Elec. Reliability Corp.*, 149 FERC ¶ 61,141, P 55 (2014) (performance metrics and "feedback loop to the Reliability Standards development process will further support NERC's goal of developing results-based Reliability Standards").

⁴ *N. Am. Elec. Reliability Corp.*, 150 FERC ¶ 61,213 (2015).

to compliance with specific standards, allowing for a meaty and robust discussion among the various Regional Entity representatives as to how such controls would be assessed. While the exercise did not eliminate TAPS' concerns about how NERC and its Regions would apply Risk-Based CMEP on a consistent basis, especially with regard to smaller entities, it hopefully was a learning experience on all sides and will enrich the discussion and implementation going forward. TAPS very much appreciates the engagement of NERC and its Regions on this exercise, and would welcome the opportunity to build on the lessons learned to make application of Risk-Based CMEP to smaller entities sensible for all involved and consistent across and within Regions.

Before I leave the subject of Risk-Based CMEP, I wanted to highlight the importance of the feedback loop to standards development, as flagged in the second question for this panel and recognized in the Commission's order approving RAI. The order correctly notes that "[t]he adoption of the streamlined RAI programs to process lower risk compliance matters suggest that there may be provisions of Reliability Standards that provide little protection to the reliable operation of the Bulk-Power System, and we support NERC's efforts to identify such provision for proposed retirement."⁵ I urge NERC to take the Commission's comments to heart by using the results of Risk-Based CMEP to inform and reinvigorate the P 81 efforts,⁶ so that Risk-Based CMEP becomes an effective tool to achieving risk-based standards. Since registered entities still must comply with all applicable standards, it is important to recognize and reduce unnecessary compliance burden.

⁵ *N. Am. Elec. Reliability Corp.*, 150 FERC ¶ 61,108, P 27 n.47.

⁶ *See N. Am. Elec. Reliability Corp.*, 138 FERC ¶ 61,193, P 81, *clarifying order on reh'g*, 139 FERC ¶ 61,168 (2012).

II. CRITICAL INFRASTRUCTURE PROTECTION (“CIP”) VERSION 5 IMPLEMENTATION

The Commission’s question about how work is progressing on industry implementation of CIP Version 5 is very timely. With the April 2016 date for enforcement requirements applicable to high and medium impact assets fast approaching, and the April 2017 low impact asset enforcement date coming close behind, the process for timely development of lessons learned and other forms of compliance guidance for the CIP Version 5 standards has faltered and may be at risk of failure. Differences of opinion between Regional Entity staff, NERC staff, and industry stakeholders include differing interpretations of what the standards in fact require and the evidence required to demonstrate compliance.

NERC formed the Version 5 Transition Advisory Group (“VTAG”) to develop and disseminate compliance guidance, lessons learned from the Version 5 pilot program, and answers to frequently asked questions concerning CIP Version 5 standards.⁷ VTAG, which is comprised of NERC, Regional Entity, and industry subject matter experts in both cyber-security and compliance, has been facilitated by NERC staff, with the intention of quickly addressing non-controversial issues and distributing appropriate guidance to registered entities, CMEP staff, and other stakeholders that are assisting the efforts of hundreds of registered entities to reach auditable compliance by April 1, 2016.

The VTAG model was a positive opportunity to have open and transparent collaboration between industry and the ERO, and considering the pace at which the VTAG was put together, significant work has been accomplished. However, the

⁷ See NERC, CIP V5 Transition Program, <http://www.nerc.com/pa/CI/Pages/Transition-Program.aspx>.

complexity of the technical discussions, the ambiguity of the standard language, and strong opinions held by certain members within the VTAG membership have made it difficult to come to consensus and finalize guidance on a number of items. This has led to untimely communication of expectations to registered entities, providing guidance predicated on what many believe to be an incorrect interpretation of the standard. Such actions threaten to undermine the credibility of the standards development process, and make the already difficult CIP Version 5 transition efforts more complicated, risky, and expensive for registered entities, thereby impeding compliance readiness.

At its May 7 Board of Trustees meeting, NERC recognized the urgency of this situation. To address the broader question of compliance guidance, NERC is forming a new advisory team, similar to the former Standard Process Input Group (“SPIG”), which will include members from the Board of Trustees and Member Representative Committee (“MRC”) along with NERC executives and leaders from the Regional Entities. The group will discuss types of guidance, drafting and approval of guidance, audiences, and resolving differences in interpretations, and present their ideas at the August Board meeting, with a plan to finalize recommendations by November. As described in its recent announcement,⁸ NERC also took additional steps to address the specific CIP Version 5 transition issues:⁹

As for the path forward on Critical Infrastructure Protection Version 5 standards, a team of executives and technical staff will address any implementation issues within the next two months as the enforcement date approaches.

⁸ NERC, Board Adopts Four Standards; Bids Farewell to Retiring Vice President (May 7, 2015), *available at* <http://www.nerc.com/news/Headlines%20DL/Board%2007MAY15.pdf>.

⁹ *Id* at 2.

While NERC's announcement does not spell out the intended industry involvement in the CIP Version 5 implementation efforts, I am hopeful that industry will have meaningful input, and as a result of both of these efforts, the overall guidance process can be improved and consensus can be reached on many, if not all, of the outstanding CIP Version 5 implementation issues. But given the efforts and investments required by registered entities to achieve compliance by April 2016, time is rapidly running out, as are the options, which must all be on the table.

Where consensus can be reached, guidance may be the most efficient approach to assuring consistent application of standards and facilitating industry efforts to comply with new standards, such as CIP Version 5. Absent such consensus, where requirements are ambiguous and lead to multiple interpretations, those disputes may need to be addressed through the formal standards interpretation process or development of a revised standard. While the interpretations process set forth in Section 7.0 of NERC's Standard Processes Manual¹⁰ could provide for both industry input and certainty, and in theory does so more quickly than the full standards development process, the time required to complete that process *and* Commission review may limit its effectiveness to resolve CIP Version 5 implementation issues sufficiently in advance of April 2016 to provide an effective roadmap to guide initial industry compliance efforts.

Given acute timing issues, multiple avenues may need to be employed to ensure a consistent, reasonable, and fair transition to initial CIP Version 5 implementation. Where it is clear that industry stakeholders overwhelmingly disagree with NERC or Regional

¹⁰ Standard Processes Manual, Rules of Procedure, Appendix 3A (effective June 26, 2013), http://www.nerc.com/FilingsOrders/us/RuleOfProcedureDL/Appendix_3A_StandardProcessesManual_20130626.pdf.

Entity staff, those items must be evaluated based on their risks to reliability to determine appropriate compliance monitoring and enforcement approaches. Additionally, while resolution of these items are under development, the ERO should exercise discretion in its audit approach, so that registered entities can focus their compliance efforts on the vast majority of Version 5 requirements that are not ambiguous.

Finally, given the experience with CIP Version 5 implementation for medium and high impact assets, it is imperative that NERC establish a CIP Version 5 low impact asset technical advisory group sooner (rather than later) to start working through implementation guidance issues. I am greatly concerned that the current focus on April 2016 will delay needed attention to the looming April 2017 deadline for enforceable compliance for low impact assets, which is potentially a much larger set of assets than the medium and high impact assets. This continues to be an important concern for the large number of entities, including TAPS members, that have no previous CIP compliance experience but must reach auditable compliance beginning in less than two years.

III. ES-ISAC

I close by briefly responding to the Commission's question regarding the ES-ISAC. I recently toured the under-construction facility and was briefed by NERC staff. The new facility should provide the complete physical separation of the ISAC from NERC's compliance and enforcement efforts that is essential for the ISAC to perform its essential information sharing function. I support the ES-ISAC and see no reason why it shouldn't remain at NERC.

I look forward to your questions and the panel's discussion of these critical issues.

June 1, 2015