

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: October 28, 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 October 7, 2015 letter requesting policy input in advance of the November 4-5 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: October 28, 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 letter of October 7, 2015, to Mr. Sylvain Clermont, Chair of the MRC, requesting policy input on topics that will be of particular interest during the upcoming meetings of the NERC Board of Trustees, Board committees, and the NERC MRC on November 4–5, 2015.

Summary of Comments

We summarize here our views on each of the topics raised in your letter. On each we give NERC the highest of marks on strategic direction – but urge continuing, laser-like focus on implementation.

➤ **Overall Comments:**

NERC has undertaken a series of strategic initiatives to improve its core policies and processes. We are concerned that some of these programs may not achieve their goals of improved efficiency, fairness, and risk-based reliability.

- SM-TDUs have early indications that the BES definition exceptions process is not being implemented as intended and expected. We believe a return to the foundational guiding principles for the BES exception process is warranted.
- SM-TDUs implore NERC to allocate appropriate resources, follow through with the original intent of these programs, and hold the regions and individual staff accountable for the appropriate implementation.
- SM-TDUs recommend that NERC senior leadership remain engaged with these programs to assure successful implementation and consistency among regions.
- Finally, we urge NERC to provide transparency, and where workable, provide for direct stakeholder participation in the implementation of these programs.

➤ **Risk-Based Registration:**

- SM-TDUs thank NERC and the Board of Trustees for initiating the Risk Based Registration (RBR) program to right-size the NERC compliance registry. With FERC approval of Phase I, this initiative has made great strides. SM-TDUs look forward to working with NERC staff to finalize the case-by-case approach proposed in Phase II to address lower-risk GO/GOPs and TO/TOPs.
 - NERC should develop a clear and repeatable process for evaluating case-by-case requests for sub-set lists of Reliability Standard requirements that would apply to lower-risk GO/GOPs and TO/TOPs.
 - NERC should publicly report the facts and circumstances for case-by-case determinations.
 - Senior leadership should review and approve the outcomes of the evaluations.
 - NERC staff should develop metrics to show the success and progress of the program.
 - Selection of participants on the NERC-led panel should be transparent.
 - The RBR program should remain a strategic focus for NERC and the Board.

➤ **Compliance Guidance Policy:**

- SM-TDUs strongly support the proposed Compliance Guidance Policy and the collaborative effort to develop this policy. We stand ready to provide content in the form of Implementation Guidance for endorsement by the ERO.
- SM-TDUs recommend that NERC establish a “Compliance Guidance Implementation Task Force” to help develop implementation procedures and ERO endorsement criteria.
- SM-TDUs are concerned that there is no mechanism for industry input into development of CMEP Practice Guides.

➤ **Clean Power Plan Final Rule – NERC Reliability Assessment Plan (Phase II):**

- SM-TDUs fully endorse NERC’s efforts to educate policy makers at the state and federal levels about reliability implications of the Clean Power Plan. The proposed outreach to state authorities merits particular attention.
- NERC’s proposed timelines for issuance of an educational guide in January 2016, followed by a comprehensive reliability assessment issued by the end of the first quarter of 2016, are both timely.
- NERC should, however, plan on updating the CPP reliability assessment in the fourth quarter of 2016, in conjunction with the issuance of its Long Term Reliability Assessment.

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

Overall Comments:

NERC has undertaken a series of strategic initiatives to improve its core policies and processes. These include the standards process, risk-based compliance monitoring and enforcement, the CIP Version 5 transition, RBR, and the bulk electric system (BES) definition.

We thank NERC for engaging with industry to develop a collaborative set of goals and outcomes for these initiatives. We remain concerned, however, that some of these programs may fall short of achieving the expected outcomes of improved efficiency, fairness, and risk-based reliability. In particular, the summer 2015 NERC stakeholder survey indicated lower satisfaction with the standards program than should be expected. NERC needs to find out why and address these concerns. Second, SM-TDUs have early indications that the BES definition exceptions process is not being implemented as intended and expected—to allow registered entities to demonstrate that excluding certain elements from the BES is consistent with NERC’s risk-based approach to BES reliability. We elaborate further on issues with the BES definition exception process in the other items of concern section below.

Implementation of other recent initiatives may also fall short of achievable outcomes, for similar reasons. Registered entities rely on these programs to develop appropriate internal compliance programs.

We implore NERC to allocate appropriate resources, follow through with the original intent of these programs, and hold the regions and individual staff accountable for the appropriate implementation of these programs. We also recommend that NERC senior leadership remain engaged with these programs to assure successful implementation and consistency among regions. Finally, we urge NERC to provide transparency, and where workable, provide for direct stakeholder participation in the implementation of these programs.

Item 1: Risk-Based Registration:

The Board requests feedback on whether the MRC supports NERC’s recommendations to:

- 1. Use the NERC-led review panel to address an individual entity’s facts and circumstances to determine potential reduced compliance obligations.*
- 2. Continue to monitor the results of the NERC-led review panel to identify consistent potential groups of entities that qualify for a sub-set of NERC Reliability Standards.*

SM-TDUs thank NERC and the Board of Trustees for initiating the RBR program to right-size the compliance registry. We believe that the Phase I effort has made great strides. As to Phase II, we commend NERC staff for their efforts to identify groups of GO/GOPs and TO/TOPs that should be subject to only a subset of otherwise applicable standards/requirements. Although staff was unable to determine such groups at this time based on the scope of the study

undertaken, we are hopeful that decisions by the NERC-led panel will show patterns that will allow predefined subset lists to be created going forward.

FERC approval of Phase I is only the beginning of the RBR initiative. NERC must work towards the efficient implementation of the RBR program, including future examinations of registered entity compliance obligations on a case-by-case basis. Successful implementation will help industry and NERC focus limited resources on the most significant issues to reliable operation of the BES. Therefore, NERC should develop a clear and repeatable process for evaluating case-by-case requests, in accordance with the NERC Rules of Procedures, Appendix 5A, as amended through the RBR Phase I project. Consistent with Appendix 5A, Section III.D.11's requirement for disclosure of the basis of NERC-led panel determinations, this process should include reporting publicly the facts, circumstances, and technical criteria for determinations, so that industry and the regions can identify trends that may lead to future removals of unnecessary compliance obligations. Outcomes of the evaluations should be reviewed for consistency and approved by senior leadership from the ERO enterprise.

NERC staff should develop metrics to show the success and progress of the program. These metrics can help focus resources and give industry assurances that projections for the RBR program will be achieved. NERC should utilize the data sets to analyze and demonstrate that removal of unnecessary compliance obligations for registered entities will have minimal potential impact on BES reliability. This analysis can be used by the Board of Trustees to help assure the Commission, regions, industry and the public that NERC is allocating its resources wisely to focus compliance and enforcement on the most significant risks to BES reliability.

The selection of Regional Entity participants for the NERC-led panel should be transparent. NERC should publish how the members are selected and what expertise they bring to the process. This will assure the industry that the program uses appropriate subject matter expertise, as well as the management perspective and appreciation of the goals to be achieved through RBR, for a fair and repeatable outcome that serves those goals, while preserving BES reliability.

Finally, the RBR program should remain a strategic focus for NERC. NERC senior leadership should remain engaged in the development of the implementation process and hold staff accountable for consistent application across the regions and the successful completion of this process.

Item 2: Compliance Guidance Policy:

The Board requests feedback on whether the MRC supports the direction provided in the revised Compliance Guidance Policy.

SM-TDUs thank NERC and the Board of Trustees for initiating the Compliance Guidance Policy task force. We fully support the proposed policy. We strongly support the collaborative effort to develop this policy and stand ready to provide content in the form of proposed Implementation Guidance for endorsement by the ERO. However, to assure successful

implementation of this policy, we recommend the following areas of focus for Implementation Guidance and CMEP Practice Guides:

Implementation Guidance: NERC should form a joint industry/ERO task force to write Compliance Guidance Policy implementation procedures. These procedures would focus on the development of a consistent procedure for submitting and vetting Implementation Guidance for ERO endorsement. Criteria for endorsement should be clear and achievable. The endorsement process should provide for industry input and visibility. NERC should consider the approach used for standards guidance under Section 11 of the Standard Processes Manual. Finally, the process must identify who in the ERO enterprise will have authority and responsibility to approve the guidance and that it will be used consistently across all regions.

CMEP Practice Guides: SM-TDUs are concerned that there is no industry input mechanism as part of the CMEP Practice Guide. Posting the guidance online is a good practice for transparency, but having an opportunity for industry to provide input during development of Practice Guides would give useful feedback to NERC compliance staff to improve the quality and usability of Practice Guides over time.

Item 3: Clean Power Plan Final Rule – NERC Reliability Assessment Plan (Phase II):

The Board would appreciate guidance and insight regarding the approach outlined above. Specifically, the Board requests MRC input on the following questions:

- 1. Do you support the outlined approach to provide a guidance document for the States on reliability considerations to preserve the reliable operation of the bulk power system?*
- 2. Is there specific policy guidance NERC should consider in developing the guidance document for the States?*
- 3. Do you support the outlined approach for a Phase II assessment and scenario analysis? Are there specific issues for the Planning Committee's Advisory Group to consider in the assessment design and assumptions?*

SM-TDUs fully support NERC's efforts to educate and provide guidance to the states on fundamentals of electric reliability planning and operations, the implications of increased reliance on renewable and distributed energy resources, as well as addressing the reliability implications of various approaches to CPP compliance that may be adopted by the states. SM-TDUs are concerned that EPA's timelines for state plan submission will force many states to make fundamental, irrevocable decisions before the reliability consequences of these decisions are well understood.

While a number of states apparently do not anticipate major challenges meeting the CPP's goals, others may be severely challenged to meet both the interim and final goals.

Moreover, CPP compliance, if poorly implemented, could jeopardize reliability *and* cost consumers billions of dollars that could be saved through a more successful implementation.

It is critical for NERC to produce clear communications in response to the federal plan and regional reliability assessments of the state plans that are directed at a wide array of audiences. Certain state agencies (e.g., environmental departments) that are responsible for developing the state plans have limited knowledge about BES reliability. NERC's communications should be scheduled in advance and posted on regular intervals so that state organizations making decisions on resource plans can rely on the information.

Sufficient staffing and resources should be allocated to meet the first quarter 2016 target release date, since any slippage in communicating the anticipated reliability impacts could affect state implementation plan development.

NERC should conduct a follow-up assessment after initial state plans are submitted to EPA, which is likely to occur in summer 2016. BES reliability assessments will need to be updated after the states have finalized their plans, which is likely to occur by September 2018 and the owners of affected electric generating units begin implementation. At this point, it appears that this reliability assessment could be issued in conjunction with the 2016 Long Term Reliability Assessment that is generally issued by NERC in November of each year.

One potential wild card in this schedule is that EPA has yet to finalize the rule for federal plans applicable to states that elect not to submit a state plan or if EPA fails to approve a state's submission in part. Further, there is the potential for litigation which could result in a stay of the effectiveness of EPA's rules, delaying compliance for all or some elements of the CPP. At this juncture, we would nonetheless urge NERC to proceed on the assumption that sufficient information will be available by late summer/early fall 2016 to complete and issue a revised Special Assessment of CPP reliability impacts by November 2016.

Other items of concern:

We offer the following comments to further detail our concerns on the implementation of the BES definition exception process.

The revised BES definition was not designed to address all possible system configurations. Instead, it was expected to reach the appropriate outcome for the vast majority of cases, with the BES exception process handling cases at the margins where the BES definition's bright-line rules fail to produce reasonable results because of individual circumstances. The unofficial, but often stated position of the BES Standard Drafting Team was that the definition was intended to address about 90% of the BES configurations likely to be seen.

Because no decisions on BES exception requests have been posted, and each entity can view only information regarding its own request(s) on the BESnet tool,¹ we have no official

¹ Making additional information available earlier in the process would improve transparency and staff accountability.

information about program implementation so far. The anecdotal information we have, however, is troubling. We have heard of multiple instances in which Regional Entity or NERC staff members have expressed concerns about granting an exclusion exception, not because of the reliability impact of the facility in question, but rather based on a misplaced fear that approving the request would set precedent mandating that NERC approve exclusion exception requests for other facilities that *are* material to reliability. But where one configuration is materially different from another, there can be no argument that a decision about one is binding on a decision about the other.

A related issue is the consideration of the aggregate impact in deciding exception requests. The Commission envisioned that NERC, with its continent-wide view, would be able to “take into account the aggregate impact on the bulk electric system of approving or denying all the exception requests.” Order 773, P 253. But it also recognized the need for an exception process in the first place—no bright-line definition can appropriately categorize every unique configuration.² For that same reason, NERC (as well as the Regional Entities, as they develop recommendations on exception requests) should be wary of over-generalizing an aggregate impact: a configuration that is rare enough to need exception-process consideration is by virtue of that rarity unlikely to have a significant aggregate impact on BES reliability. As the Commission noted in the registration context,³ an aggregate class must not be defined too broadly, and the parameters must be justified, as must the determination that a class is material to BES reliability. Failure to abide by those principles would undermine NERC’s risk-based policy, in addition to making NERC’s decisions vulnerable on appeal to FERC—a clear waste of ERO and registered entity resources.

A return to the foundational guiding principles for the BES exception process is warranted, and a more risk-based evaluation, consistent with NERC’s other initiatives incorporating risk evaluation, should be employed. In other words, as discussed above, continued involvement by NERC senior leadership is needed to ensure that ERO programs stay on track, and the regions and individual regional and NERC staff need to be held accountable for appropriate implementation. It is also important that all participants—registered entities, Regional Entities, and NERC—adhere to the timelines set out in the Rules of Procedure to the greatest extent possible. Further, NERC should provide greater transparency into BES exception process decisions for all stakeholders. To this end we encourage NERC, to the extent allowed by the Rules of Procedure, to (1) consider providing the opportunity for observer representation by individuals selected by the registered entities on the BES Exception Process Working Group (BEPWG), to represent registered entity perspectives, and (2) make additional information on pending and completed BES exception requests available publicly on the NERC website.

Thank you for the opportunity to provide this policy input.

² Indeed, even the specific considerations referred to in Appendix 5C, and presented in more detail in the Bulk Electric System (BES) Exception Process Working Group’s (BEPWG) BES Exception Request Evaluation Guidelines, were not to be considered necessarily determinative in any particular case.

³ *Mosaic Fertilizer, LLC*, 121 FERC ¶ 61,058, P 37 (2007).