

## 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:** November 5, 2014

**SUBJECT:** Response to Request for Policy Input

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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 15, 2014 letter requesting policy input in advance of the November 2014 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:** November 5, 2014

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

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The MRC's State/Municipal and Transmission Dependent Utility sectors ("SM-TDUs") appreciate the opportunity to respond to your October 15, 2014 letter to Mr. John A. Anderson, Chair of the NERC Member Representatives Committee ("MRC"), requesting policy input on topics that will be of particular interest during the upcoming November 12-13, 2014 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:

- **Reliability Assurance Initiative ("RAI"):** NERC must timely complete the training of NERC staff, Regional Entity staff, and registered entities to ensure successful implementation of RAI in 2015. SM-TDUs urge NERC to address how the scoping of audits and other elements of RAI can be meaningfully applied to small and medium-sized registered entities, for which the contemplated burden of the Internal Controls Evaluation module is clearly disproportionate to potential benefits. Greater clarity is required on how NERC and the Regional Entities will perform risk assessment of registered entities on a consistent basis. Since 2015 will serve as a transition year for the Compliance Monitoring and Enforcement Program ("CMEP"), NERC should err on the side of disclosure of how its compliance exceptions and aggregation programs are applied. Finally, NERC and registered entities should agree upon a common set of goals and metrics for an RAI-driven CMEP, to define what "success" is.
- **Critical Infrastructure Protection ("CIP") Version 5 Transition:** It is incumbent on NERC to post the promised lessons learned from the transition pilots and provide additional guidance to support the transition. There are numerous outstanding issues still expected to be posted for comment in the 4<sup>th</sup> quarter of 2014. Without final information, registered entities cannot move forward with assessing, budgeting and implementing their plans to fully comply with CIP Version 5 requirements. Industry experts are ready to assist in this effort. Additional guidance on the categorization of specific facilities as high, medium or low impact BES Cyber Assets in CIP-002-5 is particularly important, since the incorrect categorization of a facility as low impact would lead to an incorrect application of lesser security controls and a delay in

compliance activities. NERC must also provide guidance on how RAI should be used to demonstrate compliance with CIP requirements that previously required entities to “identify, assess and correct” deficiencies in their CIP compliance programs.

- **Risk-Based Registration (“RBR”) Initiative:** We strongly support Board approval and prompt implementation of Phase 1 of the RBR Initiative and believe remaining technical concerns can be resolved. SM-TDUs also urge NERC to commit the resources required to develop and complete a Phase 2 proposal for consideration by the Board by November 2015. Additional clarity in the procedures to be used to request “sub-lists” of reliability requirements is needed as well.
- **Reliability Review of Proposed Environmental Regulations:** We applaud NERC for undertaking the special reliability assessments of potential resource adequacy and operational impacts on the bulk power system of EPA’s proposed section 111(d) rule to establish CO<sub>2</sub> emission limits for existing electric generating units, as requested in our August 2014 comments. However, it is unfortunate that NERC’s initial assessment was not released in time to permit stakeholders to provide technical guidance and policy input to NERC prior to the November Board meeting. NERC must timely complete the assessment targeted for release in February 2015 to ensure that policymakers have full opportunity to consider and understand the reliability risks and uncertainties associated with EPA’s proposed rule prior to its adoption.
- **ERO Enterprise Strategic Plan 2015-2018 and 2015 ERO Enterprise and Corporate Metrics:** The SM-TDUs generally support the NERC Three-Year Strategic Plan for 2015-2018 and 2015 ERO Enterprise and Corporate Metrics and pledge to work with NERC to establish achievable and measurable ERO and RE goals and performance metrics for the plan.

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

***Item 1: Reliability Assurance Initiative, Critical Infrastructure Protection Version 5 Transition, and Risk-Based Registration Initiative:***

*The MRC is encouraged to provide targeted feedback on these three NERC initiatives including their communication and outreach efforts to support transparency, collaboration, and industry-wide understanding.*

**Reliability Assurance Initiative (“RAI”):**

SM-TDUs fully support NERC’s efforts to restructure its compliance monitoring and enforcement program in ways that focus on providing reasonable assurance to regulators, regulated entities and the public that compliance with NERC standards is being achieved, thereby mitigating risks to the reliable operation of the bulk electric system. The comments below seek to identify the critical path objectives that need to be achieved in 2015 to ensure success for this initiative.

**Training:** NERC must timely complete the training of NERC staff, Regional Entity staff, and registered entities to ensure successful implementation of RAI in 2015. It appears that NERC's primary focus to date has been on the development of program elements to address the 2015 audit plans for larger entities that perform multiple reliability functions, as well as further development of the compliance exception and aggregation programs.

**Application of RAI to Smaller Entities:** SM-TDUs urge NERC to address how the scoping of audits and other elements of RAI can be meaningfully applied to small and medium-sized registered entities, for which the contemplated burden of the Internal Controls Evaluation module is clearly disproportionate to potential benefits. While small and medium-sized registered entities certainly do have internal management controls, the burden of documenting these controls or establishing the formalized controls that are appropriate for large entities with hundreds of employees does not make sense for smaller entities with limited impacts on BES reliability and a more narrow scope of functional responsibilities. NERC and its REs should conduct a focus group effort in early 2015 to identify RAI tools and metrics that are appropriate to smaller registered entities.

**Risk Assessment:** Greater clarity is required on how NERC and the Regional Entities will perform risk assessment of registered entities on a consistent basis. SM-TDUs urge NERC to provide very specific and granular examples of how the ERO Enterprise Inherent Risk Assessment Guide has been applied. In particular, the Appendix B – Information Attribute List and Appendix C – Risk Factor Examples are so broad as to allow for widely varying assessments of the inherent risk profile of any particular entity, which could well deny the registered entity the certainty required to plan its internal compliance program and allocate internal resources to the areas with the most significant risks to BES reliability.

**Transparency and Consistency:** We fully recognize that Compliance Enforcement Authority staff must be allowed to exercise professional judgment and that such judgment is dependent on entity-specific facts and circumstances. However, registered entities have the equally reasonable expectation that the methods used by CEA staff will produce consistent results and that registered entities will be able to anticipate with reasonable certainty how various elements of the CMEP will be carried out. Since 2015 will serve as a transition year for the CMEP to an RAI-centric foundation, NERC should err on the side of disclosure of how its compliance exceptions and aggregation programs are applied, by providing the same level of detail provided under the current Find, Fix and Track program ("FFT").

**ERO Goals and Metrics:** Finally, NERC and registered entities should agree upon a common set of goals and metrics for an RAI-driven CMEP, to define what "success" is. During recent discussions of the RAI Advisory Group with NERC management, the following potential end-state goals were identified:

- Credibility of ERO staff that is prepared and qualified to implement the program and can educate stakeholders on how the program will be carried out.

- Ensure industry is prepared so stakeholders understand what they need to do differently and are prepared to learn and adapt to early lessons from program implementation.
- Well-developed interface between NERC, regional entities and registered entities, with consistent forms, procedures and timelines.
- The ERO has retained the regulatory trust of FERC and other regulatory authorities.
- The ERO has established the right set of balances of interests on transparency.
- Tangible CMEP process efficiency benefits for registered entities and for the ERO, including quantifying how RAI has reduced the administrative burden for registered entities.
- Quantifiable performance metrics for the CMEP for 2016, including both big picture ERO performance goals and granular, quantifiable and reportable measures for NERC and RE staff.

#### **Critical Infrastructure Protection Version 5 Transition:**

Version 5 of the CIP Reliability Standards was approved by FERC almost one year ago. Although NERC has recently released its Implementation Study Report and we expect a number of draft guidance documents to be posted for comment in the 4th quarter of 2014, there has been very little guidance issued to date that contains technical details on actual implementation. NERC should put additional emphasis on its efforts to ensure industry gets good technical guidance in time to meet the April 1, 2016 enforcement date for Version 5. Without final information, registered entities cannot move forward with assessing, budgeting and implementing their plans to fully comply with CIP Version 5.

It appears that industry is looking to NERC for answers while NERC seems to be referring questions back to the Pilot Participants rather than taking an active role in addressing various issues raised by registered entities. Industry experts are ready to assist in this effort. Zero-defect compliance should not be the goal here. Rather, NERC guidance should be combined with processes to identify and correct major errors during the transition process.

Additional guidance on the categorization of specific facilities as high, medium or low impact BES Cyber Assets in CIP-002-5 is a key issue, since the incorrect categorization of a facility as low impact would lead to an inappropriate application of lesser security controls and a one-year delay in the assumed date for enforceable compliance. Even though CIP-002-5 Attachment 1 established bright line criteria, categorization at the device or facility level poses a major risk of errors. Additional guidance similar to the Lessons Learned for Generation Segmentation and Far-end Relay Impact Rating would be welcome. Also, to reduce the risk of an entity going past April 1, 2016, assuming it has only low impact BES Cyber Assets, it would

be helpful to have a process for entities to attest and NERC to review conclusions that they do not have high or medium impact facilities.

Our members are also expressing growing concern that NERC guidance is not forthcoming on how to demonstrate compliance with requirements that until recently revised, required entities to “identify, assess and correct” deficiencies in their CIP compliance program performance.

**Risk-Based Registration Initiative:**

SM-TDUs strongly support the RBR proposals and applaud the hard work of NERC staff in developing and revising the draft documents on an aggressive schedule. We urge the Board to approve the RBR package for prompt submission to FERC and implementation of Phase 1 in 2015. The Framework and proposed changes to the Rules of Procedure (“ROP”) are generally technically sound, reasonable, and well-calculated to achieve the RBR initiative’s vital goal of ensuring that the right entities are subject to the right set of reliability standards. The RBR proposals will eliminate or reduce compliance costs that are not justified based on risk to BES reliability and that therefore impose an undue and unnecessary burden on all involved.

An additional benefit of prompt implementation of Phase 1 of RBR is that it will facilitate RAI implementation: if various types of functional entities are deactivated, there is no need for the ERO to perform Inherent Risk Assessments or Internal Control Evaluations for those entities, unless they are registered for other functions. Therefore, deactivating those entities promptly should result in significant savings of ERO staff time and resources in the RAI context, as well as in the ERO’s broader compliance and enforcement efforts.

**Implementation Plan**

SM-TDUs support the Implementation Plan, but have one concern with respect to Phase 2 implementation. Specifically, it is crucial that momentum be maintained in Phase 2; the issue of appropriately scaled treatment of lower risk TO/TOPs and GO/GOPs is of great importance to registered entities in our sectors. We urge the Board to encourage NERC Staff to commit to specific Phase 2 dates to help ensure that Phase 2 does not fall by the wayside in the press of other matters in 2015.

**Distribution Providers**

The proposed revisions to the Registry Criteria for Distribution Providers (“DPs”) are appropriate; SM-TDUs strongly urge the Board to approve them. These changes will significantly reduce burdens on both small DPs and the ERO, without posing a material risk to reliability. Data assembled by NERC suggests that DPs with peak load under 75 MW serve a very small portion of U.S. load, and that including these entities on the Compliance Registry is not needed to accomplish the primary reliability objectives of standards applicable to DPs, particularly when viewed in the context of reliability standards’ purpose of avoiding BES instability, uncontrolled separation, and cascading outages.

Moreover, NERC's proposal that any DP that does not meet the proposed registration criteria, but that owns, controls, or operates a required BES-protective Under-Frequency Load Shedding ("UFLS") protection system, be retained on the NCR as a UFLS-Only DP will further mitigate any risk. Such UFLS-Only DPs would be subject to PRC-006 and corresponding regional reliability standards, but they would not be responsible for any other DP reliability standards, including standards whose purpose is maintaining UFLS protection systems (such as PRC-005 and PRC-008), unless the UFLS-Only DP function is identified in the Applicability Section. This conservative proposal strikes the right balance: it ensures that such DPs continue to participate in existing UFLS programs, without imposing on their ratepayers the additional costs of compliance with all other DP standards.

### **Deactivation of IAs, LSEs, and PSEs**

NERC also proposes to remove three functional entity categories from the Statement of Compliance Registry Criteria and to deactivate all registrations for such categories. The three categories—Interchange Authority ("IA"), Load-Serving Entity ("LSE"), and Purchasing-Selling Entity ("PSE")—are not material to reliability, and their removal from NERC's compliance and enforcement authority will not pose a risk to BES reliability. SM-TDUs support these proposals. The few tasks assigned to these functions that do serve a necessary reliability purpose (i.e., are not appropriate for retirement) are duplicative of responsibilities placed on other functional entities, and/or obligations imposed by other enforceable mechanisms such as the OATT. While tariff requirements are not equivalent to Section 215 obligations, the existence of enforceable tariff requirements reduces the risk posed by removal of Section 215 obligations. Therefore, tariff requirements are relevant to assessing whether the residual risks, if any, posed to BES reliability are sufficient to warrant continued registration for compliance and enforcement of NERC standards under Section 215.

### **Requests for Sub-lists**

We have had an opportunity to review the revised Rules of Procedure which were issued on October 28<sup>th</sup> and have some comments on Requests for Sub-lists.

We applaud the team's response to commenters that NERC will make public decisions regarding sub-set lists of applicable Reliability Standards. We are also encouraged that NERC plans to provide guidance to Registered Entities and Regional Entities regarding eligibility for sub-set lists. Although these are both positive developments, more can be done.

First, confusion remains as to the process for a Request for Sub-lists. Although it is implied in several sections of Appendices 5A and 5B that there is a process and the team responded to commenters that decisions regarding sub-set lists will be made by the NERC-led review panel, the process is not clearly identified nor defined in the Rules of Procedure as is the Deactivation Process. Second, we believe that NERC should adopt a test similar to the materiality test that will apply to Requests for Sub-lists. We suggest that the process NERC plans to undertake to develop guidance for sub-set-lists eligibility be open to Registered Entities and that the resulting guidance be included in the Rules of Procedure.

NERC should commit to addressing these issues in the Phase 2 process or in another defined process.

In short, SM-TDUs urge the Board to approve the proposal presented by NERC Staff for prompt filing with FERC, and to encourage and facilitate prompt implementation of Phase 1 and development of Phase 2. NERC should also commit to addressing the sub-lists issues we have raised in Phase 2 or in another defined process.

***Item 2: Reliability Review of Proposed Environmental Regulations:***

*The Board of Trustees would appreciate guidance and insight regarding:*

- 1. NERC's reliability assessment planned for February 2015, which is prior to the EPA's anticipated finalization of the 111(d) rules.*
- 2. The reliability assessment currently targeted for after the rules are proposed to be finalized, and prior to the initial State implementation plan submittals.*

The SM-TDUs fully endorse NERC's phased approach to studying the reliability assumptions that underlie the Clean Power Plan Proposed Rule issued by the Environmental Protection Agency on June 2, 2014. While it is unfortunate that NERC's initial assessment was not released in time to permit stakeholders to provide technical guidance and policy input to NERC prior to the Board meeting, SM-TDUs support the scope of NERC Staff's initial evaluation, which we understand will focus on the system and regional aspects of the expected resource mix changes, the potential acceleration of strained essential reliability services (e.g., voltage support, ramping, frequency response), and reliability considerations of further concentration of natural gas generation, variable resources, distributed resources, and demand-side management.

In addition, the SM-TDUs support the reliability assessment planned for February, which is prior to the EPA's anticipated finalization of the 111(d) rules as well as the reliability assessment currently targeted for after the rules are proposed to be finalized, and prior to the initial State implementation plan submittals. In order that NERC's analysis might inform both the EPA Final Rule and the initial State implementation plan submittals, it is absolutely essential that NERC staff apply whatever resources are required to meet these critical deadlines.

The SM-TDUs continue to believe, as we recommended in our August 6, 2014 response to the July 16, 2014 Policy Input Letter, that the NERC Board of Trustees should establish a small policy-level advisory group comprised of one or more NERC Trustees, MRC members, and senior industry representatives to advise NERC management and staff on issues that should be addressed by subsequent studies that will assess the reliability impacts of State decisions on implementation of the Final EPA Rule. This policy-level advisory group would complement the technical support now being provided by the Planning Committee.

Finally, the SM-TDUs are very appreciative of the considerable attention that the Board of Trustees gave this matter at their August 14, 2014 meeting in Vancouver, British Columbia. While the Board did not specifically request comment on the EPA Clean Power Plan Proposed



Rule in its July 16, 2014 Policy Input Letter, several trade associations, the NERC Reliability Issues Steering Committee and the SM-TDUs nonetheless raised this important issue in our respective comments, and the Board was very responsive to our concerns.

### ***Item 3: ERO Enterprise Strategic Plan 2015-2018 and 2015 ERO Enterprise and Corporate Metrics***

*The MRC is encouraged to provide feedback on the proposed three-year strategic plan which includes five goals and several consolidated activities and deliverables. Feedback is also encouraged on the four performance metrics that are set forth by NERC and the Regional Entities as indicators of the effectiveness of the ERO Enterprise in achieving its mission and the goals and objectives outlined in the strategic plan.*

The SM-TUDs generally support the NERC Three-Year Strategic Plan for 2015-2018 and 2015 ERO Enterprise and Corporate Metrics and pledge to work with NERC to establish achievable and measureable ERO and RE goals and performance metrics for the plan. As an initial matter, the Strategic Plan should be mapped against NERC's current program activities as well as the criteria for certification as the ERO. Further, it is critical that the individual performance goals of officers and employees of the ERO and the Regional Entities be tightly aligned with the metrics in the "2015 ERO Enterprise and Corporate Metrics."

We suggest that enhancements be made to the goals for ERO Metric 4, sub-metric G (Joint ERO Enterprise) – "Transformation of RAI concepts to implementation of risk-based compliance monitoring and effectiveness." As they stand now, the metrics for this goal are essentially about consistency across regions. There are other important ERO goals for the RAI program that need to be measured, as outlined above in our RAI comments. In particular, NERC should quantify how RAI has reduced or moderated the administrative burden of compliance on registered entities. There are many new "tools" in the RAI Framework. Without a concerted effort to reallocate ERO compliance and enforcement resources based on material risk to reliability, application of new RAI tools could well lead to an increase and not a decrease in compliance resource requirements.

Also we have several questions regarding sub-metric B (Primary NERC) – "Quality, up-to-date guidance, developed for Board-approved Reliability Standards related to risk elements to support risk-based compliance monitoring." It appears that Reliability Standard Audit Worksheets (RSAWs) are going to be replaced by "guidance." If so, have there been any stakeholder communications regarding this planned change in approach? Are there related details as to how these guides will be developed and a commitment that this guidance will provide clear compliance expectations similar to the RSAW tool? The metrics are based upon "guidance" and "guidance outreach." Has NERC developed clear criteria for what qualifies as "guidance" and "guidance outreach"?

Thank you for the opportunity to provide this policy input.