

MEMORANDUM

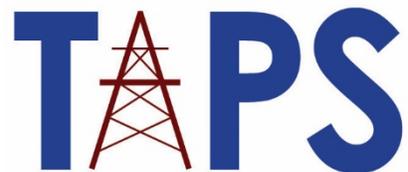
TO: Roy Thilly, Chair
NERC Board of Trustees

FROM: Jack Cashin, Director, Policy Analysis and Reliability Standards, American Public Power Association
John Di Stasio, President, Large Public Power Council
John Twitty, Executive Director, Transmission Access Policy Study Group

DATE: May 6, 2020

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

The American Public Power Association, Large Public Power Council, and 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 Roy Thilly's April 15, 2020 letter requesting policy input in advance of the May 2020 NERC Board of Trustees meetings.



MEMORANDUM

TO: Roy Thilly, Chair
NERC Board of Trustees

FROM: Carol Chinn
William J. Gallagher
Roy Jones
John Twitty

DATE: May 6, 2020

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 April 15, 2020 letter to Jennifer Sterling, Chair of the MRC that invited MRC member sectors to provide input on the Align tool delay and Secure Evidence Locker (SEL) system. The SM-TDUs have provided policy input on those items and some additional issues. We look forward to discussing the Align and SEL issues along with the other items during the virtual meetings of the Board of Trustees (Board), Board committees, and the MRC, on May 13-14, 2020.

Summary of Comments

➤ **Align Tool Delay and Establishment of SEL System**

SM-TDUs believe NERC should delay the project until a more comprehensive business case, that includes both Align and SEL system can be vetted with stakeholders.

- To answer the BOT's questions, stakeholders need to make assumptions about what has been done and what remains to be accomplished (CMEP goals versus NIST Requirements).
- Knowing which highly sensitive items that will be included in the system (or not) and what is their availability vis-à-vis the SEL is important for registered utilities to know.

➤ **Standard Implementation Deferrals**

- SM-TDUs appreciate NERC's willingness to monitor the COVID pandemic to consider the need for further or new standard implementation deferrals.

➤ **Rules of Procedure**

- The Sectors appreciate NERC attentiveness to stakeholder issues regarding the proposed Rules of Procedure changes and look forward to NERC's response.

Align Tool Delay and Establishment of SEL System

The SM-TDUs recognize the importance of the Align Tool and SEL System project to the Electric Reliability Organization (ERO). However, the confluence of significant project changes, cost increases, security concerns around the project, the Executive Order (EO) on securing America's bulk power system (BPS) and the COVID-19 event point to the need to pause and take stock of a project that SM-TDUs believe has many unanswered questions, as we explain below.

The Align and SEL project is multi-faceted and complex. The security, information system technology and financial issues require subject matter experts (SMEs) from each area of the industry to appropriately assess the Align and SEL projects. NERC has conducted periodic outreach and public power utilities have seen general presentations and therefore have a general understanding of Align and the SEL system. SM-TDUs believe, however, that additional efforts are required to provide public power representatives with important detailed information about the Align and SEL projects.

In 2019, following a classified briefing associated with the project, NERC sought industry representatives to look at the technical specifications for the project. Public power volunteers came forward but were asked to sign non-disclosure agreements (NDAs) to participate. Because public power utilities' need to comply with state sunshine laws, this prevented them from signing the NDAs and participating in any technical specification discussions conducted under those NDAs. Therefore, any further technical specification review by public power representatives has only been done at the level of publicly-available information.

On May 1, President Trump signed an Executive Order with the goal of securing America's bulk power system (BPS). The Executive Order prohibits Federal agencies and *U.S. persons* from acquiring, transferring, or installing BPS equipment in which any foreign country or foreign national has any interest and the transaction poses an unacceptable risk to national security or the security and safety of American citizens. The scope of the EO is something that entities such as the ERO need to closely examine to best understand potentially affected services and products from foreign countries that could be impacted by the Order. This examination would include the Align/SEL project and ensuring that next steps will not include equipment inclusive to the Order.

While NERC has provided information on its website and conducted January and March 2020 presentations on Align and SEL, these were broad industry outreach efforts that took place as the COVID-19 emergency unfolded and began to take priority. Consequently, many in Sectors 2 and 5 were unable to fully engage in the NERC outreach. And even then, the presentations were primarily updates on the status of the project, and not intended for collaborative input by the industry. Therefore, as the ERO has ramped up its Align and SEL outreach, it has been late in the project's development process and industry's attention has been focused on COVID-19.

SM-TDU MRC representatives have a responsibility to the NERC Board of Trustees to provide accountability. Moreover, they have a responsibility to their constituencies to communicate the sectors' concerns to the NERC Board. What the SM-TDU MRC representatives are hearing from their constituencies are questions about the Align and SEL, rather than input on its effectiveness and efficiency. The questions relate to issues such as security, technical specifications and project financing. Specific to financing, MRC representatives engaged in the NERC business plan and budget process were informed of the financing plan and budget implications for the Align/SEL project in recent weeks and still have many questions. Consequently, the SM-TDU

MRC representatives and their constituents need additional information about the project before they can provide fully-informed responses to the Board's questions.

The SM-TDUs recognize that NERC feels the need to act expediently on the Align and SEL project. However, the sectors believe there are many open questions and how the COVID-19 event has played a part in distracting stakeholders getting full information just as NERC was ramping up outreach on changes to the Align and SEL. Therefore, we encourage the Board to only reach a decision after further detailed outreach so that the full implications of the project can be fully understood by the ERO and stakeholders.

1. Do the steps taken to segregate content and secure both the Align tool and the ERO SEL, address the security needs associated with the highly sensitive information necessary for Regional Entities to review in support of registered entity CMEP activities?

The background materials state that it was recognized in 2014 that establishing an efficient and effective Compliance Monitoring and Enforcement Program (CMEP) would require consolidating multiple regional platforms into one. This change would require a significant information system change for the ERO. This information system change has come to be known as the Align Tool. Currently, the Align Tool launch is being delayed until 2021 due to addition of the SEL system designed to address concerns regarding the security of highly-sensitive information. NERC asserts that the SEL is a required step and is part of Align.

From the information provided in the policy input letter package, SM-TDUs can only assume that the steps taken by NERC will address the CMEP evidence security issues. Of the three discernable security items from the Board letter materials -- the abstraction layer, third-party review and data protection (CUI/CEII designation) -- specifics are lacking regarding timing and next steps. Therefore, answering the question requires stakeholders to make assumptions about what has been done and what remains to be accomplished. For example, the steps that will be implemented to segregate content and secure the Align/SEL project will use the NIST framework that has 110 criteria and is used by many sophisticated entities to structure their security programs. Therefore, to answer the question appropriately stakeholders would need to understand how many of the 53 CMEP processes that have been harmonized currently meet the 110 NIST gold standard criteria. Further, how many processes are left to be harmonized and what's the timetable?

The security of CMEP data is a broader issue than just the protocols described for the Align/SEL project. The SM-TDUs believe that the CMEP will need to establish security process protocols for engagements to mesh with the new Align/SEL technology. The collection and storage of data in a single location can create a target for bad actors and makes such data more open to potential breaches. NERC has stated that "highly sensitive" data will be required to be in the SEL, and that, due to the SEL's security, registered entities need not be concerned about that data being compromised. Registered entities nonetheless do have concerns about the highly sensitive data that NERC apparently contemplates will be held in the SEL. SM-TDUs believe that the SEL data requirements need to be clear and reviewed by stakeholders. The January and March presentations and meetings with the Compliance and Certification Committee did not include review of specific data item lists. SM-TDUs should have more detailed information about what highly sensitive data might or might not be required by NERC to be stored in the SEL. NERC has said this will be an

issue that utilities can take up with their Regions. While SM-TDUs agree that the ability for industry to work with their Regional Entities to ensure flexibility of how certain sensitive information and evidence is shared in and out of the SEL will be critical, NERC's expectations are also important. That is why knowing which items are highly sensitive or not and what is their availability vis-à-vis the SEL is important for registered utilities to know and should be detailed on a granular level and understood prior to the program going into effect.

The SM-TDUs support use of cloud technologies and believe the FedRAMP and private clouds protocols are considered the best practices for sensitive data storage. It appears that cloud technology is part of the Align/SEL implementation and therefore the SM-TDU's hope that the Board and MRC discussion will explain how NERC's cloud security with the project compares with the compliance obligations registered entities currently face regarding cloud technology implementation.

In summary, we are concerned that the NERC Board is asking stakeholders to approve the Align solution and provide additional funding when this project hasn't received adequate review and vetting by industry. Although there has been a separate CMEP/Align stakeholder initiative, it has had limited engagement and many of public power's industry policymakers are not aware of the project's details, and registered entities have not been involved in the Align tool or SEL development.

2. Are there remaining security concerns not yet sufficiently addressed by the design of Align and the design of the ERO SEL?

As mentioned above, public power has not been directly engaged in addressing security concerns with the Align tool or the design of the SEL. The question assumes that we know how all initial concerns have been addressed; which we do not. SM-TDUs are hopeful that the materials NERC provides to stakeholders in preparation for the May 14, 2020 meeting include details about the security concerns that have been addressed and will be addressed.

3. Do you agree with the proposed strategy to minimize the Net Energy for Load (NEL) assessment impacts of the Align implementation delay and enhancement costs and the ERO SEL costs as set out in Attachment D?

It is difficult for SM-TDUs to fully address the cost increases associated with Align/SEL project and the current and future implications for the NEL assessment, given the lack of complete information on the project. The SM-TDUs are still trying to develop a clear picture of the cost impact of the Align/SEL project. It appears that the Align piece costs approximately \$10 million and the SEL will cost almost \$4 million. Going forward the maintenance cost will approach \$1 million annually. While SM-TDUs can appreciate that NERC believes that it is beneficial to take advantage of timing and lower assessment impacts, SM-TDUs still need to understand the action in the context of the overall ERO budget, both short and long-term. Budget increases associated with the E-ISAC have been a focus of budget discussions in recent years. Has that concern been met in full, or should it be evaluated with the current Align/SEL funding strategy? Being able to measure the NEL impacts in the context of the overall ERO budget would be helpful. Moreover, being able to measure the ERO versus NERC budget, with and without the impacts of the E-ISAC would provide a fuller understanding of the overall Align/SEL impact.

Along with a clearer assessment of the budget impacts, a clear presentation of the business case that includes both the Align/SEL would assist appropriate evaluation. While SM-TDUs understand that security issues exist for the ERO CMEP system regardless of Align, it is not clear what alternative costs and benefits were weighed to measure the change from the original Align effort compared to what is now presented as the full cost for the Align/SEL. Because the Align/SEL has been presented as the only alternative without any discussion of other options and alternatives, the project lacks a comprehensive business case. This is not to say that SM-TDUs necessarily believe that the cost and scope of the Align/SEL are excessive or unjustified. Clearly, significant security is going to be implemented; the SM-TDUs' point is that there is not enough information to determine if the cost of that security is excessive or appropriate in the context of other alternatives. Having the appropriate context information on that question is integral to responding to the Board's question about the project's financial timing/impact.

SM-TDUs have many important questions that we believe would need to be answered to provide an adequate response regarding the financial questions the Board poses. In light of the COVID-19 emergency, which is having adverse financial impacts on most utilities under the purview of the ERO, a prudent financial evaluation must include alternatives to which the proposed project can be compared. For example, there could be an option to delay the financial decisions until NERC and stakeholders can better assess the project and its impact on NERC's budget. Even though there are currently favorable rates to take-on debt, these rates could last for some time and if this project is a priority, there will likely be other sources of funding. Any cost that the NERC Board authorizes will add to the burden that financially-strapped consumers across North America are now experiencing. Careful consideration must be given before any additional expenditures are approved.

If it can be securely and safely done without raising costs, SM-TDUs believe NERC should consider delaying the project until a more fulsome business case can be provided for the Align/SEL project.

Standard Implementation Deferral

We appreciate NERC's filing at FERC seeking delay of the implementation dates for seven reliability standards. COVID-19 has caused novel issues for utilities and industry, and the delay is important for maintaining reliability. The SM-TDUs appreciate that NERC is continuing to monitor the ongoing impacts of the pandemic to assess whether extension of the existing deferrals or new deferrals will be needed.

Rules of Procedure Changes

As expressed at the April NERC trades meeting, the SM-TDUs have significant concerns about the proposed NERC ROP changes. We look forward to NERC's response and further collaboration on this issue.

Thank you for the opportunity to provide this policy input. We look forward to the discussion at the meetings.