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: April 24, 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 April 2, 2015 letter requesting policy input in advance of the May 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: April 24, 2015

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

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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 2, 2015 letter to Mr. Sylvain Clermont, Chair of the MRC, requesting policy input on topics that will be of particular interest during the upcoming May 6-7, 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, as well as NERC's recent Phase I Special Assessment of the EPA's Proposed Clean Power Plan. We summarize our principal concerns and comments as follows:

- **Future of Standards Development:** SM-TDUs agree that improvements in the content and quality of NERC reliability standards are still needed. The best way to accomplish these improvements is through the Standards program's normal five-year review process. NERC and stakeholders should work together to set priorities through the Reliability Standards Development Plan and address remaining reliability gaps, deficiencies in quality and clarity, lessons learned from compliance implementation, and identification of standards that impose a compliance burden that is disproportionate to their reliability benefits. The review process should begin with an assessment of prior standards improvement initiatives, including the Standards Process Input Group (SPIG) recommendations and the Independent Expert/P81 reviews of NERC standards.

- **Critical Infrastructure Protection (CIP) Version 5 Transition Program:** 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. We believe NERC has advanced interpretations that go beyond what the standards actually require. Executive and Board-level involvement or independent facilitation may be necessary to ensure successful implementation. The ERO should also recognize that certain technical ambiguities in the Version 5 standards cannot be resolved through NERC compliance guidance; they should be addressed through the standards development process. Guidance should focus on the interim approach to compliance until standards revisions can be completed. SM-TDUs recommend the following specific steps for guidance development:

1. The Version 5 Transition Advisory Group (VTAG) should be retained as the mechanism for industry input into CIP V5 lessons learned,
2. NERC guidance development should follow the NERC Standard Processes Manual (SPM) Section 11 process,
3. NERC should provide executive leadership and direction to the VTAG process,
4. The group should utilize structured facilitation to resolve conflicts,
5. An escalation procedure to address issues that require interpretation through the standards development process should be adopted,
6. More effective methods for disseminating the results should be adopted, and
7. NERC should form a separate CIP V5 low impact asset technical advisory group.

- **Physical Security Reliability Standard Implementation:** The legal enforcement date for Requirement R2 is 90 days after the responsible transmission owner completes and distributes its reliability assessment under R1. SM-TDUs request that NERC clarify that this 90-day clock begins to run on October 1, 2015, the enforcement date for R1. This clarification would allow TOs that complete their R1 assessments prior to October 1 to provide neighboring entities with such assessments earlier in the third quarter of 2015, leaving more time to reconcile potential inconsistencies in those assessments.

- **Compliance Guidance:** SM-TDUs see a continuing tension between the ERO and registered entities when it comes to development of compliance guidance. An understanding of what "ERO independence" means with regard to compliance and enforcement is needed. We urge NERC to recognize and embrace the benefits of transparent and collaborative processes for guidance development and the importance of regulatory certainty for registered entities.

- **NERC Phase I Special Assessment of the EPA's Proposed Clean Power Plan:** Finally, SM-TDUs would like to commend NERC for its rigorous and timely assessment of the potential reliability impacts of the Environmental Protection Agency's (EPA) proposed Clean Power Plan. SM-TDUs encourage NERC to conduct additional special assessments as state and regional clean power implementation plans are developed and then submitted to EPA for approval.

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

Item 1: Future of Standards Development:

The Board requests feedback from the MRC on the desired path forward for standards development, and whether there are any additional NERC activities necessary to achieve such goals. Specifically, the following questions could be considered in responding to the Board's request:

1. *Content: Could standard requirements be improved to more effectively mitigate risks to the Bulk Power System? Do they have the content to maintain necessary accountability?*

2. *Quality: Are the standards concise with clear compliance expectations? Are the standards drafted with high quality?*

3. *Results-based: Are the standards results-based? (i.e., Have "X" result compared to Have a process)*

4. *Technology neutral: Are the standards sufficiently flexible to address projected technology changes and enhancements to the grid?*

5. *Improvements needed: What benefits might result from additional improvements to standards? Is there a level of diminishing returns on content and quality? If the standards should be improved, what is the appropriate timing and best way to proceed?*

Reaching a "steady state" for reliability standards is a great accomplishment – but what steady state means needs to be discussed and clarified. Steady state is not stasis, much less stagnation. The focus moving forward should be to continuously evaluate and improve upon the standards subject to enforcement, through a systematic periodic review process. SM-TDUs agree with other stakeholders that despite our collective best efforts, a number of standards and requirements are ambiguous, unclear in their compliance expectations, or otherwise impose costs that could be reduced while still achieving reliability objectives. Eliminating redundancy of requirements within different standards as well as improving on the quality and clarity of compliance expectations within existing standards should also be a point of emphasis for NERC. The Standard Processes Manual provides for just such a periodic review of all NERC standards on a five year cycle.

SM-TDUs suggest that NERC and industry stakeholders work together to set priorities through the Reliability Standards Development Plan and address any remaining reliability gaps, deficiencies in quality and clarity, as well as standards that impose a compliance burden that is disproportionate to their reliability benefits. As each family of standards comes up for review, each standard should be revised, as appropriate, to ensure that there is a clear set of reliability objectives and that they are applicable to the correct functional entities and BES facilities. Each requirement must satisfy criteria for results-based standards. Paragraph 81 review for redundancy must be addressed as well. Finally, compliance expectations must be reexamined to integrate the new risk-based approach to compliance monitoring and enforcement.

The review process described above should build on prior standards improvement initiatives, including the Standards Process Input Group (SPIG) process and the Independent Expert/P81 reviews of NERC standards. To leverage the recommendations and results of those efforts, we suggest that an assessment of the implementation and results of both the SPIG and Independent Expert/P81 recommendations should be performed with both ERO and stakeholder involvement. Board level participation in this review and assessment would be beneficial considering their prior involvement.

Item 2: Critical Infrastructure Protection (CIP) Version 5 Transition Program:

The Board requests feedback from the MRC, given the progress described in the MRC background materials, on whether there are other specific NERC activities that should be undertaken to achieve the objectives of the Transition Program.

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. In a number of cases, stakeholders have come to the conclusion that auditors intend to address perceived security risks through "creative" readings of specific requirements during the enforcement process. Executive and Board-level involvement or independent facilitation may be necessary to ensure successful implementation.

The ERO should also recognize that certain technical ambiguities in the Version 5 standards can't be resolved through NERC compliance guidance; they should be addressed through standards revisions or interpretations. Guidance should focus on the interim approach to compliance until standards revisions can be completed.

We elaborate on these points below and conclude with specific recommendations on the path forward for the CIP Version 5 transition program.

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 ask questions concerning CIP Version 5 standards. The 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.

Unfortunately, the complexity of the technical discussions, the ambiguity of the standard language and strong opinions held by certain members within the VTAG membership has made it difficult to come to consensus and finalize guidance on all but the least controversial items. This has led to untimely communication of expectations to the registered entities to which the standards apply. For those controversial items that the VTAG has decided to undertake, certain strongly voiced opinions have influenced the process with their specific security views. For example, the recently issued NERC Compliance Memorandum on Control Centers has

interpreted a vague standard in ways that clearly stray from the functional model and the NERC entity registration process.

Without an effective method for consensus building within the VTAG or a process for identification of issues that require resolution through a more formal process (e.g., standard development) resolution has not been reached on many key issues. Even worse, in a few cases, guidance predicated on an incorrect interpretation of the standard has been issued.

SM-TDUs are concerned that NERC has decided to abandon using the formal SPM Section 11 *Process for Approving Supporting Documents*[1] for several of the lessons learned where consensus could not be achieved. We are also concerned that NERC staff will resort to mining the "record" associated with the CIP V5 filing to FERC, particularly the SDT Response to Comments, for justification of compliance positions. While responses to comments do provide the SDT's explanation of the rationale associated with the intent of the requirements, these materials have not been subject to industry comment during the standards development process and should not be relied on for developing enforcement guidance.

Industry input in the transition to CIP V5 continues to be a critical component to ensuring (1) implementation readiness, (2) clarifying compliance and enforcement expectations, (3) providing industry and Regional Entities a better understanding of the technical and compliance-related resources and efforts necessary for an efficient and effective transition, and (4) ensuring consistent and reasonable enforcement of CIP V5.

SM-TDUs recommend that the VTAG continue with its work plan. However, we need to look at the rules of engagement for the VTAG and consider executive-level participation and/or use of outside consultants with strong facilitation skills to address conflicts among the members. There needs to be an agreement on the escalation procedures when VTAG members have fundamental disagreements. Where it is clear that industry stakeholders overwhelming disagree with NERC or RE staff, those items must be evaluated based on their risks to reliability to determine appropriate compliance monitoring and enforcement approaches. Where requirements are ambiguous and lead to multiple interpretations, those disputes need to be addressed through the standards development process. Additionally, while these items are under development as lessons learned, formal standards interpretations, or publication as NERC guidance, the ERO should exercise discretion in its audit approach, so that entities can focus their compliance programs on the vast majority of Version 5 requirements that are not ambiguous.

We believe it is in the interests of both NERC and the industry to redouble their commitment to a collaborative process, as intended but not yet achieved, for a smooth CIP V5 transition. Industry stakeholders see the VTAG model as a positive opportunity to have open and transparent collaboration between industry and the ERO. Considering the pace at which the VTAG was put together, significant work has been accomplished. The ability for the VTAG members to collaborate with other industry stakeholders through outreach has also been extremely helpful, especially the use of the expertise within the CIPC and other stakeholder

[1] Available at: http://www.nerc.com/comm/SC/Documents/Appendix_3A_StandardsProcessesManual.pdf, page 43.

forums. However, this outreach was not sufficient to ensure widespread awareness and understanding of the issues.

As discussed in our February 2015 policy input, SM-TDUs believe it is imperative that NERC stand-up a CIP V5 low impact asset technical advisory group sooner rather than later to start working through implementation guidance issues. We are 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. This continues to be an important concern for the large number of state-municipal and TDU entities that have no previous CIP compliance experience but must reach auditable compliance beginning in less than two years.

Therefore, we recommend the following:

1. VTAG should be retained as the mechanism for industry input into CIP V5 lessons learned,
2. NERC guidance development should follow the NERC SPM Section 11 process,
3. NERC should provide executive leadership and direction to the VTAG process,
4. The group should utilize structured facilitation to resolve conflicts,
5. An escalation procedure to address issues that require interpretation through the standards development process should be adopted,
6. More effective methods for disseminating the results should be adopted, and
7. NERC should form a separate CIP V5 low impact asset technical advisory group.

Item 3: Physical Security Reliability Standard Implementation:

The Board requests feedback from the MRC, given the progress described in the MRC background materials, on whether there are other specific NERC activities that should be undertaken support the implementation of CIP-014-1.

The CIP-014 Reliability Standard as written requires the completion of the initial R1 risk assessment no later than the effective date of the standard on October 1, 2015. The due date for the R2 third party review in the standard is no later than 90 days following the actual date of completion of the R1 risk assessment. Other requirements in the standard are then due based on the date of completion of the R2 third-party review. In other words, an entity that completes its R1 risk assessment well in advance of October 1, 2015 will have a due date for R2 (and other requirements) much earlier than an entity that completes its R1 risk assessment on or around October 1.

The Implementation Plan for CIP-014 is written such that the R2 third-party review must be complete within 90 days of the effective date of the standard, i.e., by December 30, 2015, rather than based on the date of completion of R1. So if an entity were to follow the Implementation Plan rather than the wording of the standard, it would have due dates for R2 and other requirements that are much later than had it followed the literal language of the standard.

Based on feedback and comments on NERC webinars and in other forums, there is quite a bit of uncertainty among entities concerning due dates associated with CIP-014, and formal clarification of the required timeframes for achieving compliance is needed. SM-TDUs request that NERC clarify that for NERC enforcement purposes, the 90-day clock begins to run for R2 on October 1, 2014, the enforcement date for R1. This clarification would allow TOs that complete their R1 assessments prior to October 1 to provide neighboring entities with such assessments earlier in the third quarter of 2014, leaving more time to reconcile potential inconsistencies in those assessments among the transmission owners located within a specific region.

Item 4: Compliance Guidance:

The Board is requesting feedback from the MRC on the following questions:

1. *What type of content in guidance would industry find useful?*

2. *Are there particular forms of guidance that are more useful to industry?*

3. *What distinctions should there be between the content of compliance-related guidance provided to industry, compared to the guidance provided by the ERO to ERO Enterprise compliance and enforcement staff?*

4. *What process should be used to develop industry compliance-related guidance, and what is the appropriate level of industry input into the development of that guidance?*

5. *How should compliance-related guidance for ERO Enterprise compliance and enforcement staff be developed?*

SM-TDUs see a continuing tension between the ERO and registered entities when it comes to development of compliance guidance. Stakeholders are told that the ERO must be "independent" with regard to compliance and enforcement and that compliance guidance development is not a negotiation. We recognize and appreciate these facts, while urging NERC to recognize and embrace the benefits of transparent and collaborative processes for guidance development.

For example, the SPM in the Rules of Procedure is clear that NERC compliance staff and the SDT are supposed to collaborate to develop Reliability Standard Audit Worksheets (RSAWs). The fact that the submitted input and comments from stakeholders is not shared with SDTs is untenable and clearly not collaborative. We need to have a dialogue around what "independent" means in the context of compliance. That may help in the development of guidance documents. Ultimately, we should strive for better measures in the standards so that there is less need for guidance.

SM-TDUs believe the important question is not the form or even the content of what NERC calls the guidance (whether it is called or distributed as Guidance, Lessons Learned,

FAQs, CANs, CARS, auditor notes, RSAWS, bulletins, or industry webinars). It's a question of industry input into, and in most cases, consensus around the guidance before it is published.

We do recognize that collaboration and transparency may not be possible for guidance that comes out of NERC compliance audits and enforcement actions. Stakeholders recognize that they are not going to have full opportunity to provide input, because such guidance comes out of litigated enforcement actions or settlements between registered entities and CEA staff which are closed to third parties. In effect, the specific facts and circumstances addressed in an audit report that comes out of either a settlement or litigation with a specific registered entity may provide insights for other industry participants. It may also lead to faulty inferences as to what actions are required to assure compliance.

Conversely, the quality and understanding of other forms of NERC guidance is improved through a collaborative approach. Most NERC guidance provides lessons learned from general compliance oversight, best practices identified in the implementation process, and/or NERC CMEP/CEA staff observations about the meaning and intent of the standards and associated development record.

Both types of guidance should be transparent, i.e., NERC should avoid providing guidance to CEA staff that is not shared with industry, both registered entities and third parties such as consultants. NERC's risk-based CMEP and its reliance on entity internal controls to self-identify, report and correct deficiencies is predicated on industry and the ERO having consistent understandings of reliability risks to the BES as well as a common understanding of what is required to demonstrate reasonable compliance. Non-public audit guidance risks creating a disconnect between how registered entities identify and carry out their responsibilities as compared to the enforcement approach applied by the ERO during the audit process and through other violation discovery methods.

NERC needs to develop a triage process to quickly identify whether auditor and registered entity questions should be addressed through compliance guidance, best practices documents, interpretations or formal standards development. The Standards Committee has under development a "single portal" process that addresses the concerns of stakeholder that requests for guidance are not timely, do not have avenues for stakeholder involvement and input, or the response by NERC comes in the wrong form (e.g., where a request for interpretation of a standard should really be addressed through a revised RSAW or clarification on how measures are assessed).[2]

Finally, NERC provides guidance to stakeholders in a variety of forms. Sometimes handling the overall volume of guidance can be cumbersome. Having too much correspondence is better than having none at all, but it would be nice if the variety of formats and distribution channels could be streamlined. There is also some question as to the validity of each type of guidance. Regional staff and NERC at times have contradicted each other as to which type of

[2] Go to: http://www.nerc.com/pa/Stand/Documents/Single_Portal_V1_052714.pdf

guidance should be implemented and which is strictly informational. Finally, significant changes in audit approach, by either NERC or regional entity staff, should be publicized to stakeholders through a formal process or public outreach rather than by word of mouth.

NERC Phase I Special Assessment of the EPA's Proposed Clean Power Plan

Finally, SM-TDUs would like to commend NERC for its rigorous and timely assessment of the potential reliability impacts of the EPA's proposed Clean Power Plan. NERC's April 21 special assessment of "*Potential Reliability Impacts of EPA's Proposed Clean Power Plan: Phase I*" clearly falls within the scope of NERC's statutory responsibilities as the FERC-certified ERO to perform periodic assessments of reliability and adequacy, to protect the public interest in reliable operation and planning of the North American bulk power system.

NERC's assessment is consistent with many of the concerns we have raised with the potential reliability and operational impacts of the EPA Clean Power Plan. NERC raises a note of caution as the Clean Power Plan proposes sweeping changes to our nation's current system of energy generation, transmission, distribution and consumption.

NERC has emphasized the need for additional time to develop and implement state compliance plans and for a reliability assurance mechanism to protect bulk power system reliability. This includes time to plan, permit and build the infrastructure necessary to implement the Clean Power Plan. These and other concerns and recommendations in the NERC assessment line up with those of many states and industry stakeholders, including public power utilities.

It is our hope and expectation that EPA will carefully review NERC's recommendations and make appropriate adjustments to the Clean Power Plan proposal to preserve the reliable, affordable and environmentally responsible electric service consumers expect and deserve.

SM-TDUs also encourage NERC to conduct additional special assessments as state and regional clean power implementation plans are developed and then submitted to EPA for approval. We appreciate that the time and resources required to conduct these studies may be significant. Nonetheless, NERC's independent assessments will be critically important to ensure a common understanding among industry stakeholders and policy makers of the reliability risks and feasibility of these plans.

Thank you for the opportunity to provide this policy input.