MEMORANDUM

TO: Roy Thilly, Chair
NERC Board of Trustees

FROM: Delia Patterson, General Counsel and Vice President, Regulatory Affairs, American Public Power Association
John Di Stasio, President, Large Public Power Council
John Twitty, Executive Director, Transmission Access Policy Study Group

DATE: April 26, 2017

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

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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 6, 2017 letter requesting policy input in advance of the May 10-11, 2017 NERC Board of Trustees meetings.

MEMORANDUM

TO: Roy Thilly, Chair
NERC Board of Trustees

FROM: Carol Chinn
Vicken Kasarjian
William J. Gallagher
David Osburn

DATE: April 26, 2017

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 letter dated April 6, 2017 to Mr. John Twitty, 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 (BOT), Board committees, and the NERC MRC on May 10-11, 2017.

Summary of Comments

- **Item 1: Special Reliability Assessments Under Consideration**
  - With the decline of base-load generation and the increase in variable generation in the supply mix, the SM-TDUs propose to prioritize the following three areas for consideration in an upcoming Special Assessment: "Accelerated Retirements of Base-load Resources,"[1] "Changing Resource Mix Impacts on Planning and Operational Reserves," and "Evaluation of Resource Adequacy Approaches."
- **Item 2: Application of Cost Effectiveness Methods for Standards Development**
  - NERC should establish a formal initiative to document steps to evaluate not only new Reliability Standards, but also existing Reliability Standards for their cost effectiveness. Any evaluation must include the associated compliance and enforcement costs
  - For both new and existing Reliability Standards, cost effectiveness assessments must include consideration of disparate cost impacts on smaller registered entities. And, NERC should ensure that the consideration of cost effectiveness will not lead to more prescriptive, less performance-based Reliability Standards.

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[1] Please note that the Policy Input Letter Attachment A lists "Accelerated Nuclear Retirements" as a topic. The SM-TDUs consider this too narrow of a scope and therefore would support a broader assessment of *all* base-load generation retirements.

- Specifically, for new Reliability Standards, the SM-TDUs support the two-stage approach for consideration of the cost effectiveness during the drafting of a new Reliability Standard, but would urge NERC to interpose a third phase that would look at the cost effectiveness of newly adopted Reliability Standards within two years of the effective date of such standards.
    - The cost effectiveness process should incorporate these additional considerations:
        - While the individual Standard Drafting Teams (SDTs) would take the lead in assessing the cost effectiveness of the standards they are drafting, there should be a feedback and oversight mechanism for NERC and the Standards Committee to ensure consistency and standardization in such assessments.
        - The cost effectiveness assessment at the Standard Authorization Request (SAR) stage should take into account the "Guideline on Consensus Building and SAR Development"[2] approved by the Standards Committee in June 2016.
        - A cost effectiveness assessment should be conducted within two years after a Reliability Standard's effective date.
- Specifically, for existing Reliability Standards, much like the Paragraph 81 process for review of standards to be retired, NERC should solicit from stakeholders a listing of candidate Reliability Standards whose cost effectiveness is in question and prioritize the process for review and revision (or retirement) of such standards to achieve cost effectiveness.

Item 1: Special Reliability Assessments Under Consideration

Using the list provided in Attachment A as a starting point, the Board is requesting the MRC members prioritize three special assessment topics with an explanation of their importance.

The SM-TDUs have long supported NERC's performance of special assessments to supplement its long-term and seasonal reliability assessments on important reliability considerations that deserve special focus, and we appreciate the opportunity to provide input in NERC's selection of topics to be addressed in upcoming special assessments. As you requested, the SM-TDUs would prioritize the following three areas for consideration in an upcoming Special Assessment: "Accelerated Retirements of Base-load Resources," "Changing Resource Mix Impacts on Planning and Operational Reserves," and "Evaluation of Resource Adequacy Approaches."

[2] This Guideline included in the Standards Committee's agenda package for its June 15, 2016 meeting (Item 9b(ii)(1)), which is available at: http://www.nerc.com/comm/SC/Agenda%20Highlights%20and%20Minutes/SC%20Agenda%20Package%20June%2015%202016.pdf.

"Accelerated Nuclear Retirements" is the first topic listed in Attachment A to the policy input request,[3] and with an expansion to cover retirements of all base-load units. The SM-TDUs agree that a special assessment is needed to address the impacts of such retirements. As the SM-TDUs commented in our policy input dated August 3, 2016, a detailed assessment of the implications for nuclear retirements was notably absent in the CPP Phase II Report.[4] In this August 3, 2016 policy input, we noted that "with respect to the Accelerated Nuclear Retirements Generation Case, the CPP Phase II Report failed to provide any guidance or possible alternative paths forward to address, in a practical and useful manner, the very large base load capacity losses and attendant reliability impacts that necessarily occur when an existing nuclear unit retires." With the most recent announcements concerning Diablo Canyon in California and Indian Point in New York, addressing this open issue has become even more important.

The SM-TDUs, however, would strongly urge NERC to consider expanding this special assessment to cover the retirements of all base-load generation, not just nuclear resources. Even with the suspension of the Clean Power Plan and the Trump Administration's support for the coal industry, it is apparent that the market forces and public policies that are driving the acceleration of nuclear retirements (*e.g.*, low natural gas prices and state and local support for wind, solar and other renewables) will have the same impact on traditional coal-fired base-load generation. As noted in *Utility Dive*'s recent survey:

> Utility executives were most confident about the growth of utility-scale solar and distributed generation in their service areas, followed by distributed and grid-scale storage, wind and natural gas. They were most pessimistic about coal, oil and nuclear.
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> … In no region did more than 10% of respondents indicate an expectation of any coal growth in the fuel mix, reflecting more competitive economics for natural gas and renewable energy across the nation.[5]

While the same factors contributing to the accelerated retirement of nuclear plants likely will drive retirements of coal-fired generation, it also is apparent that the retirements of any base-load resource, whether nuclear or coal-fired, will raise similar issues to be reviewed in the special assessment (*i.e.*, "generation adequacy, essential reliability services and fuel diversity and security"). The SM-TDUs submit that expanding the special assessment to cover the retirement of all base-load generation, not just nuclear, will not change the fundamental nature of the analysis

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3 "NERC Special Reliability Assessment Topics Under Consideration" (March 2017).

4 *Potential Reliability Impacts of EPA's Clean Power Plan Phase II* (May 2016).

5 Utility Dive, 2017 *State of the Electric Utility Survey* at 27, 30, *available at* http://www.utilitydive.com/library/2017-state-of-the-electric-utility-survey-report/ (April 2017); *see also id.* at 28 (noting that 52% of the respondents predicted that coal-fired generation would "decrease significantly" over the next 10 years).

proposed on this topic and would broaden the appeal and usefulness of this special assessment to a wider set of stakeholders.[6]

The SM-TDUs also support prioritization of special assessments for "Changing Resource Mix Impacts on Planning and Operational Reserves" and "Evaluation of Resource Adequacy Approaches." This is for many of the same reasons why we support a special assessment on retirements of base-load generation. The changing generation resource mix is a primary concern as traditional base-load resources likely become a smaller part of the fleet and the penetration of intermittent resources continues to rise. The SM-TDUs recognize that the ways we have historically accounted for these resources in planning will need to evolve as the resource mix changes. While we would not support Reliability Standards to address these issues or NERC's direct involvement in modelling or planning, the SM-TDUs would welcome input from a special assessment that applies NERC's technical expertise to survey analytical techniques used to assess and account for variable generation resources.

Item 2: Application of Cost Effectiveness Methods for Standards Development

> *The Board requests MRC policy input on the current and proposed cost-effectiveness activities, including whether they are sufficient or if additional approaches should be considered.*

The SM-TDUs fully support NERC's efforts to address cost effectiveness as part of standards development and strongly urge NERC to move with all deliberate speed to formalize this process. The evaluation of the cost effectiveness of standards must include compliance and enforcement costs. It is resource intensive to document, archive evidence for years and have proof of compliance for an audit, self-certification or spot check. And it is imperative that NERC apply its assessment of cost effectiveness not only to new Reliability Standards, but also to existing Reliability Standards. As the Commission noted ten years ago in Order No. 693, "[a] Reliability Standard may take into account the size of the entity that must comply and the cost of implementation."[7] While we appreciate the hard work conducted by NERC to explore the issue of cost effective standards, including the Cost Effectiveness Analysis Process proposed in 2011 and the subsequent pilot programs, it has not progressed nearly far enough and the SM-TDUs would ask that the BOT elevate the status of this work to a formal ERO initiative. As with other recent initiatives (such as the Reliability Assurance Initiative and the Risk-Based Registration Initiative), a formal prioritization and project schedule are needed to ensure that the exploration of cost effectiveness of Reliability Standards does not continue on an ad hoc basis.

As a general principle that applies to new and existing Reliability Standards, it is important that any consideration of cost effectiveness include consideration of the disparate cost impacts of a Reliability Standard on smaller registered entities. Logically, the costs of complying with a Reliability Standard include both a non-recurring implementation cost as well as a recurring

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[6] In fact, this broader interest was echoed in a recent memorandum from Secretary of Energy Rick Perry (Perry, Rick, Memorandum to Chief of Staff re Study Examining Electricity Markets and Reliability, *available at* https://s3.amazonaws.com/dive_static/paychek/energy_memo.pdf (Apr. 14, 2017).

[7] *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, 72 Fed. Reg. 16,416 (Apr. 4, 2007) FERC Stats. & Regs. ¶ 31,242 at P 6 (2007).

maintenance cost it is reasonable to consider that such costs likely will burden smaller utilities more severely than larger utilities. As noted above, the Commission specifically found that "[a] Reliability Standard may take into account the size of the entity that must comply." Moreover, the Commission is required under the Regulatory Flexibility Act to look specifically at cost impact of a proposed rule (such as a rule to adopt a proposed Reliability Standard) on "small entities." And, the development of this cost impact record for the Commission through cost effectiveness assessments in the development and during application of Reliability Standards would facilitate the Commission's review of Reliability Standards.

In addition, the adoption of a formal cost effectiveness process should not come at the expense of performance-based standards. When a Reliability Standard is appropriately drafted to identify the reliability goal to be achieved (the "what") while avoiding prescriptively dictating the means of achieving that goal (the "how"), the Reliability Standard empowers each registered entity to decide for itself the most cost effective way to comply. As cost effectiveness of a Reliability Standard is considered, it will necessarily assume a particular approach to implementation and compliance, and cost data based on that assumption. The SM-TDUs, however, would caution against hard-coding that assumption into the requirements of the Reliability Standard because that would undermine NERC's goal of drafting performance-based standards.

With these general principles in mind, for new Reliability Standards specifically, the SM-TDUs support a two-phase approach like the one used with the pilot project in Project 2015-10: Single Points of Failure TPL-001, but would also add a third phase in which a newly adopted Reliability Standard would be evaluated for cost effectiveness within 2 years of its effective date. Under the approach currently governing the pilot project, the SDT would first solicit comments on the cost effectiveness of a proposed Reliability Standard in the review of a proposed SAR, and once a draft standard is developed, the SDT would conduct an assessment of implementation costs for specific types of registered entities that may incur an incremental burden in complying with the draft standard. However, the actual cost effectiveness of the standard will not be known until the Reliability Standard is actually implemented by responsible registered entities. Accordingly, a third phase is needed to ensure that cost effectiveness of newly adopted Reliability Standard is reviewed early on in its implementation and actual implementation costs (which may not have been expected during the drafting of the standard) can properly be identified. This three-phase approach will allow for more holistic review of the cost effectiveness of new Reliability Standards, and this approach needs to be documented as part of the standard development process as soon as possible.

In addition, the SM-TDUs would suggest the following reforms be incorporated into the cost effectiveness process when it is documented in detail:

- While it is appropriate for the each SDT to take the lead in assessing the cost effectiveness of the Reliability Standard(s) it develops, the cost effectiveness process should include some mechanism for feedback and oversight by NERC and the Standards Committee. This mechanism would ensure consistency in the collection and assessment of cost effectiveness data and facilitate the standardization of such assessments as part of the overall standards development process. It also would minimize the possibility of disputes as to whether the implementation costs and reliability benefits of a particular standard have been properly considered and balanced.

- The first phase of the cost effectiveness process should reflect the references to cost effectiveness in the "Guideline on Consensus Building and SAR Development" adopted by the Standards Committee in June 2016. It is important during the SAR phase to achieve consensus on whether the reliability benefits anticipated by a proposed Reliability Standard will outweigh the costs of implementing it.

- As noted above, the SM-TDUs suggest that NERC assess the cost effectiveness of a newly adopted Reliability Standard within two years of its effective date to ensure that the actual implementation costs and reliability benefits continue to support that standard. For any newly adopted Reliability Standard that proves not to be cost effective in actual implementation, the SM-TDUs would suggest accelerating the periodic review to determine whether that standard should be modified or retired.

For existing Reliability Standards specifically, the bulk of the Reliability Standards have already been written without any review of cost effectiveness. Much like the Paragraph 81 process for review of standards to be retired, NERC should solicit from stakeholders a listing of candidate Reliability Standards whose cost effectiveness is in question, and prioritize the process for review and revision (or retirement) of such standards to achieve greater cost effectiveness. Thereafter, the process for conducting periodic reviews of Reliability Standards (Section 13.0 of the Standards Process Manual) should be updated to clarify that an assessment of the cost effectiveness of each Reliability Standard will be conducted during the periodic review for that standard.

Thank you for the opportunity to provide this policy input.