

MEMORANDUM

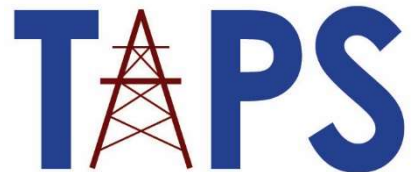
TO: Ken DeFontes, Chair
NERC Board of Trustees

FROM: John McCaffrey, Senior Regulatory Counsel, American Public Power Association
John Di Stasio, President, Large Public Power Council
Terry Huval, Executive Director, Transmission Access Policy Study Group

DATE: November 3, 2022

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 Ken DeFontes' October 12, 2022 letter requesting policy input in advance of the November 15-16, 2022 NERC Board of Trustees meetings.



MEMORANDUM

TO: Ken DeFontes, Chair
NERC Board of Trustees

FROM: John Haarlow
Terry Huval
John Twitty
Brian Evans-Mongeon

DATE: November 3, 2022

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 October 12, 2022 letter to MRC Chair Roy Jones in which the Board of Trustees (Board) requests MRC input concerning the recommendations of NERC Staff and the Standards Process Stakeholder Engagement Group (SPSEG) “in relation to improving NERC’s ability to address urgent reliability needs with appropriate agility, while also maintaining reasonable notice and opportunity for public comment, due process, openness, and balance of interests.”

The SM-TDUs respond to the Board’s questions below. We look forward to discussing these issues and other agenda items during the meetings of the Board and the MRC on November 15-16, 2022.

Summary of Comments

- The SM-TDUs support the Board’s asking NERC Staff to identify potential improvements to the standards development process, and we appreciate the White Paper’s presentation of recommendations in response.
- The SM-TDUs support improving the standards process and improving NERC’s agility. We are concerned, however, that some of the proposals set out in the White Paper may not be the most effective means of achieving the Board’s goals, and may even be counterproductive. Simply attempting to accelerate the process may result in increased numbers of failed ballots due to an inadequate technical foundation or curtailed solicitation and consideration of stakeholder feedback. But changes aimed at improving the quality of standards would, in addition to benefitting NERC’s core mission, likely reduce the delays occasioned by failed ballots and the need for major revisions. The proposals would therefore benefit from further exploration and stakeholder dialogue regarding potential improvements along those lines.
- In addition, the proposals would benefit greatly from incorporating additional vetting by the industry stakeholder committees identified in the proposal before a formal package of changes to amend the Rules of Procedure (ROP) and Standard Processes Manual (Manual)

is completed. Each committee should be afforded an opportunity to evaluate how the implementation of the proposals would impact committee operations, as well as future collaboration and coordination activities associated with the Risk Framework.

- The SM-TDUs' ability to assess the proposed ROP and Manual changes is compromised somewhat by the fact that the recommendations are based on an incomplete version of ROP section 321.
- Subject to the additional vetting proposed above, and in an effort to be responsive at this time, the SM-TDUs provide preliminary reaction to certain of the specific recommendations.

General Response

The SM-TDUs appreciate the Board for asking NERC Staff to identify potential improvements to the standards development process, and we appreciate the White Paper's presentation of recommendations in response to the Board's request. As the SM-TDUs have previously observed, nimbler ERO processes are desirable, and ERO agility is particularly important given the rapid changes in the electricity sector and the challenges that such changes can pose for the reliability of the Bulk Power System. Making the standards development process more efficient, while maintaining appropriate stakeholder input, holds promise for increasing ERO agility.

While the SM-TDUs offer some preliminary observations on particular White Paper recommendations below, our principal input is that the recommendations would benefit greatly from additional stakeholder feedback, including vetting by key stakeholder groups such as the Standards Committee, the Reliability and Security Technical Committee (RSTC), the Compliance and Certification Committee (CCC), as well as the Standing Committee Coordination Group (SCCG). The process changes being considered would impact a substantial part of the ERO Enterprise, and it is essential that any reforms effectively promote agility while avoiding unintended consequences that might actually undermine the goal of responding nimbly to emerging challenges to BPS reliability. Soliciting additional insights from affected stakeholders is not only appropriate here but critical to the ultimate success of this proposal. At a minimum, doing so will provide an opportunity to ensure that the Board's objectives are not inadvertently impacted by unforeseen issues.

The SM-TDUs respectfully submit that it is critical to "get it right" before posting the proposed ROP and Manual changes for comment, and before proposing any ROP changes to FERC. And while the SM-TDUs appreciate the chance to provide comments on the White Paper recommendations through the policy input process, the relatively compressed timeline to provide policy input and the lack of opportunity to discuss the proposed changes with other stakeholders limit the SM-TDUs' ability to perform a comprehensive evaluation of the recommendations. We feel that taking the time up front to solicit feedback, consider alternatives, and build consensus will yield a better, and less controversial, end result.

The SM-TDUs believe that a further process to vet the White Paper recommendations would be consistent with NERC Staff's proposed approach: In the White Paper, NERC Staff proposed as "next steps" that it would "provide this paper, along with the recommendations of the SPSEG, to the NERC Board of Trustees in determining which further actions are appropriate." A

Board resolution seeking additional evaluation of the recommendations by the impacted committees, and soliciting additional stakeholder comments, would be fully consistent with this proposal for next steps. As demonstrated by the processes for the creation of the RSTC and the Energy Resource Adequacy efforts, allowing for adequate vetting and dialogue ultimately yields a better result and gains efficiencies.

Responses to Specific Questions

1. Do you agree with the proposed recommendations to revise the NERC Rules of Procedure Section 300?

Proposed Revisions to Section 316: The White Paper recommends revising ROP Section 316 to remove the requirement that NERC maintain American National Standards Institute (ANSI) accreditation for its standard development processes, while retaining the core principles of an ANSI-accredited process in ROP Section 304 and Section 1.4 of the Manual.

Subject to our general response above, the SM-TDUs believe that it may be reasonable to revise Section 316 to remove the specific ANSI accreditation requirement since the current process which allows for waivers and regulatory directives is not consistent with ANSI requirements, provided that the Reliability Standards-setting process remains truly consistent with the ANSI Essential Requirements. We note that at least two of the White Paper's recommendations do not appear to be in full accord with the ANSI Essential Requirements: (1) the proposal to eliminate the final ballot requirement (Recommendation 3c); and (2) tiered minimum comment periods (Recommendation 3d).

SM-TDUs do not perceive the final ballot itself to be a bottleneck; rather, the principal cause of delay at that stage is the process leading up to the final ballot where the Standard Drafting Team (SDT) reviews and replies to comments. For more complicated standards, or where the Standard Authorization Request (SAR) does not properly scope the standards, there can be many comments for the SDT to address. The delays associated with this process would be mitigated by the recommended change to the SAR scope process which will improve the focus of the standards, as well as by additional quality-focused improvements. The final ballot, moreover, serves an important purpose: Allowing voters to change their vote from no to yes based upon the final ballot revisions and the response to previous comments ensures that the final product is as good as it can be, and is supported by as much of the industry as possible.

As for tiered minimum comment periods, the SM-TDUs do not believe that current comment periods have created bottlenecks in the standards development process that warrant curtailing stakeholder feedback; in the experience of SM-TDUs, even in the case of additional comment periods, the full 45-day period is often needed to review a proposed standard and draft helpful comments. And, while the SM-TDUs understand these proposals merely reduce the minimum comment periods and do not mandate reduced timing, the ANSI Essential Requirements include the minimum 45-day comment period (and the final ballot) which can be preserved to meet the intention of retaining the core principles of an ANSI-accredited process. Rather than shortening minimum comment periods across the board, and asking SDTs to be the judge of whether a comment period should be extended, the existing timelines should be retained, and the

Standards Committee should continue to grant waivers shortening comment periods in particular cases where quicker action is needed.

New Rule 322 and Proposed Revisions to Rule 321: The White Paper recommends adding a new Rule 322 to give the Board authority to direct the development of a Reliability Standard where the Board finds that issuing a directive is essential to address an urgent reliability issue. Revisions are also proposed to Rule 321 to reflect the Board’s authority under new Rule 322 to direct the development of a Reliability Standard.

As an important threshold matter, we note that it appears that important provisions of the version of Rule 321 approved by the Board in December 2010 and subsequently approved by FERC in Docket No. RR09-06¹ have been inadvertently lost. Specifically, the version currently in use—including in the proposed redline of Section 300—omits language that was included in an errata filing by NERC in Docket No. RR09-06 on January 10, 2011; it is instead based on the version NERC submitted to FERC in December 2010, which the January 2011 errata filing characterized as “not includ[ing] the most up-to-date versions of the proposed revisions . . . that were approved by the NERC Board of Trustees on December 16, 2010.”² It seems that, due to an administrative mix-up in addressing the multiple sets of ROP revisions FERC had directed during that time period, the December 2010 version of Rule 321, rather than the errata version that had been approved by the Board and FERC, was used as the baseline for subsequent, unrelated compliance filings.³ We understand that NERC Staff intends to include the missing language in any posting of proposed changes to Section 300, but it is unclear whether or how the recommendations of NERC Staff or the SPSEG would have been different had they been aware of this issue from the outset.

In principle, however, and subject to our general response above, the SM-TDUs support ensuring that the Board has adequate authority. An important first step would be to review and clarify the Board’s existing authorities relevant to standards development. Any extension of the Board’s authority to call for the development of a reliability standard, and particularly putting the weight of Rule 321 behind that authority, should only be undertaken if sufficient guardrails can be devised. For example, the circumstances under which the Board would exercise its new authority and the expected process that would precede the directive, such as data gathering, technical conference, and white paper, should be delineated more clearly, and subject to additional procedural protections, such as a requirement that the Board respond in writing to any comments received on a proposed directive (as opposed to merely “considering” such comments). The process for seeking review of a directive should also be as consistent as possible with the FERC process; stakeholders should be permitted to appeal a Board directive to an Applicable Governmental Authority at the time the directive is issued, rather than waiting until a standard has been drafted and filed. And while access to the full set of options set out in Rule 321 is necessary in the case of FERC directives, it may be appropriate to make a subset of those options available in

¹ *North American Elec. Reliability Corp.*, 134 FERC ¶ 61,216 (2011).

² NERC, Errata, Transmittal Letter at 1, *N. Am. Elec. Reliability Corp.*, No. RR09-6-000 (Jan. 10, 2011), eLibrary No. 20110110-5167 (“January 10 errata”). A subsequent errata noted that the January 10 errata should have referred to revisions to “Section 300” rather than “Appendix 4D.” Letter from Holly A. Hawkins, NERC to Kimberly D. Bose, Sec’y, FERC, at 1, *N. Am. Elec. Reliability Corp.*, No. RR09-6-000 (Jan. 11, 2011), eLibrary No. 20110112-5017.

³ See, e.g., NERC, Petition for Approval of Revisions to the Rules of Procedure of the North American Electric Reliability Corporation, Att. 1B (Redlined Versions of the Revised Rules of Procedure, Sections 100 – 1600), *N. Am. Elec. Reliability Corp.*, No. RR12-3 (Nov. 29, 2011), eLibrary No. 20111129-5207.

the case of Board directives. SM-TDUs note, in addition, that care must be taken to avoid unintended consequences; for example, such expanded Board authority could negatively impact stakeholders' willingness to raise legitimate concerns about proposed standards, leading to less effective reliability standards and undermining the ERO stakeholder model.

2. Do you agree with the proposed recommendations to revise the Standard Processes Manual?

As explained in our general response above, the SM-TDUs believe that the specific recommendations for changes to the Manual require further vetting by stakeholders in general and by members of the impacted committees, particularly the Standards Committee, the RSTC, and the CCC. In the meantime, and subject to further stakeholder and committee input, the SM-TDUs offer the following observations on the Manual recommendations.

Revisions to section 1.4 addressing ANSI requirements: As discussed above, it may be reasonable to eliminate the specific ANSI accreditation requirement since the current process which allows for waivers and regulatory directives is not consistent with ANSI requirements, provided that the Reliability Standards-setting process remains truly consistent with the ANSI Essential Requirements. If consensus is reached on such a framework, conforming revisions to the Standard Processes Manual would be appropriate.

Revisions to section 4.2 addressing SARs vetting and informal posting: In general, the SM-TDUs believe it is important that SARs resulting from directives receive industry vetting by relevant subject matter experts (SMEs), and, thus, we believe that any SARs initiated through Board directives are unlikely to be good candidates for informal posting, even if the directive has been subject to notice and comment as contemplated by the recommended ROP changes. While the question of *whether* to respond to a regulatory directive is, of course, not up for debate, stakeholders must decide *how* to respond, which requires a sufficient understanding of the technical issues involved.

Revisions to section 4.12 addressing tiered comment periods: As discussed above, the SM-TDUs question whether tiered comment periods are consistent with ANSI Essential Requirements and/or whether such tiered comment periods would meaningfully improve the speed and agility of the standards development process.

Revisions to section 4.13 to eliminate the final ballot requirement: As discussed above, the SM-TDUs question whether elimination of the final ballot requirement would be consistent with ANSI Essential Requirements and/or whether eliminating the final ballot would meaningfully improve the speed and agility of the standards development process.

Revisions to section 7.2 to allow the Standards Committee to appoint Staff to an interpretation drafting team: The SM-TDUs question the particular need for this proposed change. In our view, the current Interpretation Drafting Team approach has worked well. The SM-TDUs would have some concern that a new team member may necessarily be less familiar with the background of the standard than existing SDT members, which could create inefficiency. At a minimum, if this recommendation is ultimately adopted, the Interpretation Drafting Team should still be composed predominantly of stakeholders, and any appointed Staff members should possess

relevant experience and technical expertise. A more effective way to reduce the strain on stakeholder resources posed by staffing Interpretation Drafting Teams may be to implement changes aimed at improving the clarity of standards up front, thus reducing the need for Interpretations.

Revisions to section 16.0 to allow standards process waivers for Board directives: The SM-TDUs note that a redline of this specific change has not been provided. In any case, the SM-TDUs believe that a change may not be needed here, but we are willing to consider a proposed revision before a formal package of changes is submitted.

3. Do you agree with the proposed recommendations for the Standards Committee, Standing Committee Coordinating Group, and Reliability and Security Technical Committee?

Consistent with our general response above, the SM-TDUs believe that the specific recommendations should receive further vetting by the relevant committees, and such vetting is particularly important for those recommendations that propose changes to the committee processes. In an effort to be responsive, however, the SM-TDUs provide the following observations on the White Paper recommendations.

Recommendations for the Standards Committee: The SM-TDUs generally believe it would make sense for the Standards Committee to appoint a single drafting team to address both the SAR and standard development phases for a project. There still should be an extended period to assemble SMEs with technical expertise to join the SDT even after the SAR drafting team has been finalized.

As to the recommendation that the Standards Committee should provide guidance to SDTs on the role of the SAR in the standards development process, the SM-TDUs are concerned that this may impose a significant burden on the Standards Committee.

The SM-TDUs generally agree with the recommendation that the Standards Committee should consider certain changes in how it administers current processes to facilitate the efficient administration of the SAR phase for projects eligible to be posted for informal comment. As for Standards Committee changes to facilitate the efficient administration of the SAR phase for projects that must be posted for formal comment, the SM-TDUs question whether the Standards Committee should provide guidance on the criteria for “industry support” for a project, rather than spelling out such criteria in a Drafting Team Reference Manual for the SAR drafting team to review.

The SM-TDUs are open to the recommended charter changes regarding the role of the Executive Committee, although we question whether these changes are necessary given that the Standards Committee meets on a monthly basis with posted agendas, and with the opportunity for other meetings. The reliance on the Executive Steering Committee seems unlikely to save significant time, and it would add an additional administrative burden. In addition, the Standards Committee Charter should include language (mirroring the CCC Charter’s) to the effect that “[u]ltimate Committee responsibility resides with its full membership whose decisions cannot be

overturned by the Executive Committee, and which retains the authority to ratify, modify, or annul Executive Committee actions.”

Finally, the SM-TDUs question whether the Standards Committee should be tasked with revisiting drafting team guidance materials to provide SDTs with flexibility as to whether they will develop any implementation guidance. This task may also impose administrative burdens, and such questions could be addressed in the Drafting Team Reference Manual, and the NERC Staff standards facilitator could also play a role in addressing this issue.

Recommendations for the Standing Committee Coordinating Group: The recommendations for the SCCG generally appear reasonable, although it would be important for the SCCG, in reviewing new standards projects, to respect the internal processes of the SDTs so as not to impede efficiency and efficacy. Greater development of the recommendation to explore ways to increase the pool of stakeholders that can perform quality reviews of draft Reliability Standards is also necessary to ensure this recommendation would provide benefits without slowing down the standards development process.

Recommendations for the RSTC: The SM-TDUs generally see merit in the RSTC increasing transparency and stakeholder awareness of its process for endorsing draft SARs prepared by its subcommittees and working groups. The SM-TDUs also see that SARs can be better focused to start with. Leaving the SDT to develop technical justifications and other supporting field tests shouldn’t be in scope for the project teams; doing so results in unnecessary delays. This work is better identified, tracked, and supported in the RSTC process.

4. Do you agree with the proposed recommendation to initiate a review of the Registered Ballot Body criteria?

Subject to our general response above, the SM-TDUs are willing to consider a review of the Registered Ballot Body criteria. As a preliminary observation, we note that it is not clear what is meant by the suggestion to give “consideration to historical participation.” If, for example, this means to suggest that a segment should be eliminated or consolidated if participation by that segment has not been robust, the SM-TDUs do not necessarily agree with any such suggestion. In any event, if this recommendation were to be adopted, NERC Staff should include industry representatives from each segment in its review and develop a written report on its findings and/or proposals.

5. Are there additional recommendations the Board should consider?

SM-TDUs support improving the standards development process and ensuring that NERC can respond appropriately to urgent reliability issues. Changes that aim to improve the quality of standards are more likely to achieve that goal than are revisions that reduce stakeholder participation. As noted in the White Paper (at 4), two related reasons driving some projects’ “extended timeframes” are “the complex nature of the reliability issues being addressed, and differing opinions among NERC’s stakeholders regarding the optimal ways to address those issues.” It follows that such projects are unlikely to be accelerated without improved efforts to clarify the issues and address fundamental disagreements regarding the appropriate approach. Some of the White Paper’s proposals aim to make those sorts of changes, e.g. by expanding participation in the quality review process, but significant opportunities for improvement remain.

For example, one very impactful change would be to ensure that appropriate technical experts are on the SDTs. The SM-TDUs believe that ensuring such technical expertise would go farther to accelerate the standards development process than many of the other White Paper recommendations aimed at limiting bottlenecks. A lack of technical SMEs on SDTs contributes to unclear draft standards that stakeholders cannot support, thus requiring time-consuming rewrites and re-ballots. Care should be taken at the outset in appointing SDT members with the technical expertise to draft appropriate standards that can be passed by industry, while also being able to respond to comments from failed votes to assuage industry concerns and secure passage. This is just one example among many potential improvements; the Board should take the time to explore these ideas with stakeholders to ensure that it is using the most effective and efficient means of achieving its goals.