

MEMORANDUM

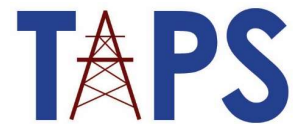
TO: Ken DeFontes, Chair
NERC Board of Trustees

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: April 26, 2023

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' April 5, 2023, letter requesting policy input in advance of the May 11, 2023, NERC Board of Trustees meeting.



MEMORANDUM

TO: Ken DeFontes, Chair
NERC Board of Trustees

FROM: Brian Evans-Mongeon
Terry Huval
Roy Jones
John Twitty

DATE: April 26, 2023

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 5, 2023, letter to MRC Chair Jennifer Flandermeyer in which the Board of Trustees (Board) requests MRC input concerning efforts to address effectiveness and efficiency in connection with NERC's engagement with stakeholders. In particular, the Board requests MRC input on the following three questions:

1. How can we promote improved alignment between the subject matter experts, the MRC, trade associations, industry leadership, and NERC on key standards ballots?
2. What can the Board, the MRC, or trade associations do to better identify the value of the standards developed by the industry to be supported by the industry?
3. Given past outreach efforts with stakeholders, what other considerations for engagement should the Board consider?

The SM-TDUs respond generally 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 May 10-11, 2023.

Summary of Comments

- The SM-TDUs share the Board's goal of improving the standards development process, although we draw different conclusions than the Board from the recent failed ballot on the proposed changes to the Standards Processes Manual (SPM).
- The SM-TDUs attribute the ballot results, not to a lack of alignment among key stakeholders, but to valid concerns that some of the particular proposed SPM changes could actually be counterproductive to improving the standards process. We are optimistic that Draft 2, which responds to many of these concerns, will be approved by the ballot body.
- The SM-TDUs nonetheless remain concerned that the proposed changes to the SPM and the NERC Rules of Procedure (ROP) neglect the root causes of delays in standards

development. The proposed changes are thus unlikely to significantly accelerate the development of standards that protect reliability by addressing reliability issues clearly, adequately, and appropriately in light of the diverse set of entities and facilities to which they are to apply. We encourage NERC to engage with industry and/or the appropriate committee in a process to identify changes and/or opportunities to make the standard development process more efficient and effective.

- The SM-TDUs greatly appreciate the efforts of the Standards Process Stakeholder Engagement Group (SPSEG), but the SPM ballot results and comments on the ROP demonstrate that the SPSEG should not be considered a substitute for reaching industry-wide consensus. It is vital that stakeholder comments be addressed.
- The SM-TDUs strongly believe that the solution to maintaining the resilience and reliability of the Bulk Power System (BPS) lies in cooperation and collaboration, and we reiterate our commitment to working collaboratively and cooperatively with NERC to improve the effectiveness of the standards process for NERC and all stakeholders.

SM-TDUs' Response

The SM-TDUs share the Board's goal of improving the standards development process. We have consistently endorsed the notion that ERO agility is increasingly important given the rapid changes in the electricity sector and the challenges that such changes pose for the reliability of the BPS. In this regard, the SM-TDUs agree that the recent initial ballot results for proposed SPM revisions present an opportunity to reflect on effective stakeholder engagement in promoting standards efficiency, although we respectfully draw different conclusions than the Board from the SPM vote.

The Board suggests that the failure of the first draft SPM changes to win ballot body approval reflected a lack of "alignment between the subject matter experts, the MRC, trade associations, industry leadership, and NERC," given that "industry and trade association executives" had been "broadly supportive of developing more agile processes." And the Board's three questions suggest that it believes any lack of "alignment" (with respect to the standards process changes and other "key standards ballots") or failure of a proposal to win ballot body approval must be attributable to faulty or inadequate "outreach." The SM-TDUs respectfully question these assumptions.

Again, the SM-TDUs are broadly supportive of a more agile standards development process. But as we have previously articulated, the SM-TDUs are concerned that the *particular methods* proposed by NERC could actually be counterproductive to improving the standards process. A common thread in many of the concerns raised by the SM-TDUs (and members of the sectors they represent) is that certain of NERC's proposals could truncate opportunities for stakeholders to build consensus on proposed standards. As the Board correctly observes, industry participation in developing standards is at the core of NERC's processes. Stakeholder engagement leads to the development of world-class Reliability Standards, just as envisioned by Congress under Section 215 of the Federal Power Act. Ensuring robust stakeholder engagement will promote the core objective of producing consensus-based, technically sound, and fairly enforceable standards that industry is likely to support at FERC, reducing opposition and controversy and speeding the approval process.

The SM-TDUs believe the Draft 2 revisions to the proposed SPM changes are an example of the consensus stakeholder process working as intended – not a failure of that process. While the SM-TDUs (and their sector members) are still reviewing the recently posted revisions, we appreciate the changes proposed by NERC staff, and we are optimistic that Draft 2 will be approved by the ballot body. Refining a proposed standard to achieve industry consensus on a second ballot in this way is by no means unusual – recent examples include the revisions to EOP-12 and to PRC-002. To be sure, requiring a second ballot may be perceived by some as slowing down the process somewhat. In practice, it actually reinforces the SM-TDUs’ view that devoting additional time up-front to achieving consensus on proposed standards (which requires revising a proposal as needed to address concerns raised by stakeholders) promotes the overall effectiveness and efficiency of the standards development process.

While the SM-TDUs are optimistic that Draft 2 of the SPM revisions will secure ballot body approval, we nonetheless reiterate our previous observation that the SPM changes do not address the root causes of delays in standards development. Instead, NERC should seek to facilitate reaching consensus at three stages of standards development: (1) defining the nature and scope of the issue (unless the issue has been identified by a regulatory directive); (2) determining how to address the issue; and (3) drafting clear, enforceable language. Some concrete steps that could promote these goals include:

- Where NERC is aware of an emerging issue, it should consider encouraging or directing the development of technical documentation by appropriate committees or working groups. This effort could inform NERC’s and stakeholders’ assessment of whether the issue should be addressed in a standard or via the use of one of NERC’s other tools. And if a Standards Authorization Request (SAR) is ultimately submitted, the technical justification would already be available, thus saving time during the SAR and standard drafting phases.
- Improved training for Standards Drafting Team (SDT) members on drafting enforceable language.
- Including Compliance Monitoring and Enforcement Program (CMEP) staff in SDT discussions. CMEP staff should not, of course, attempt to influence the content of a standard, but their input regarding how they would interpret language being considered by the SDT could be invaluable.
- Improved/expanded quality review before a proposed standard is posted for ballot.

Further, subject matter expert (SME) perspectives are critical to crafting refinements to proposed standards (and the SPM) during the balloting process in order to develop durable consensus standards that can be fairly and reasonably applied to the range of registered entities that will be subject to the standard. Accordingly, the SM-TDUs question the apparent premise of Question No. 2 that stakeholders do not always recognize the value of standards developed by industry SDTs. Ballot body members devote significant SME time and resources to reviewing and commenting on draft standards. If a significant number of SMEs believe that a draft standard should not be approved, they likely have a serious technical basis for their concerns meriting consideration for further revisions. Accordingly, instead of these concerns being possibly viewed

as eroding the standards development process or diminishing the proposed standards, they should be considered important feedback/input intended to strengthen reliability.

The Board's letter highlights its efforts to obtain stakeholder input on the proposed SPM and ROP changes, including the work of the SPSEG, and, in this regard, perhaps the SPM ballot results do highlight flaws related to how this process has been implemented.

As the Board notes, NERC's interactions with the SPSEG apparently led NERC to believe that it had industry-wide consensus on these items, yet that consensus was not realized at the ballot box or in the ROP comments. We have no doubt that the SPSEG members were engaged in these discussions in good faith and for the right reasons, but the results of this process demonstrate that the SPSEG should not be considered a substitute for reaching industry-wide consensus. The Board also notes that it solicited policy input on the SPSEG recommendations in advance of the Board's November 16, 2022, meeting. The SM-TDUs responded to that request with detailed input on the recommendations, and only some of that input was reflected in the SPM (and ROP) changes posted for industry comment and/or vote. As a result, many of the SM-TDU sector comments on the Draft 1 SPM revisions echoed the issues raised in our November policy input. The changes in Draft 2 are, as noted, largely responsive to the concerns raised regarding the SPM.

The SM-TDUs' November policy input also highlighted significant concerns with the proposed revisions to the ROP, and how they might dilute stakeholder participation in the standards development process. Meaningful conversations between NERC and the industry regarding those concerns did not occur in response to those comments, and the same concerns were therefore reiterated in feedback provided when the ROP changes were posted for comment. We understand that NERC is still reviewing its proposed changes to the ROP, and we hope for and look forward to further dialogue regarding the ROP. For this process to work effectively, NERC and its stakeholders must trust and collaborate with each other.

At least in the context of the proposed SPM and ROP changes, what is needed is not necessarily more or different "outreach" to stakeholders making the case for the current proposals. Rather, we believe that it is vital that stakeholder comments be addressed, augmented by ample respectful dialogue that includes the SMEs who deal with standards development and compliance on a daily basis. Furthermore, we suggest that NERC should seek to maximize the use of in-person meetings, because much more collaboration can occur when the parties are in the same room as opposed to being on the same screen.

Thus, while the SM-TDUs have a different perspective than the Board on the recent SPM vote and related standards process improvement efforts, we strongly believe that the solution to maintaining the resilience and reliability of the BPS lies in cooperation and collaboration. We want to reiterate our commitment to working collaboratively and cooperatively with NERC to improve the standards process for NERC and all stakeholders. There is no doubt that NERC and its stakeholders have more things in common than things that divide them, and we are committed to working with NERC in good faith to find solutions to these sometimes-vexing problems that demand a solution. We all strive for the development of Reliability Standards and governing documents that are clear, concise, and effective. We all hope for a robust, trust-based process in which the best ideas can rise to the top. And we all seek an outcome with shared accountability for us in which we continue to lead the world in stakeholder-driven grid reliability and resilience.