

MEMORANDUM

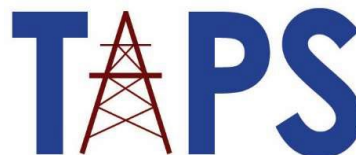
TO: Ken DeFontes, Chair
NERC Board of Trustees

FROM: Desmarie Waterhouse, Senior Vice President of Advocacy and Communications &
General Counsel, American Public Power Association
John Di Stasio, President, Large Public Power Council
Terry Huval, Executive Director, Transmission Access Policy Study Group

DATE: August 2, 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' July 12, 2023, letter requesting policy input in advance of the 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: August 2, 2023

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

The Sector 2 and 5 members of the North American Electric Reliability Corporation (NERC) Member Representatives Committee (MRC), representing State/Municipal and Transmission Dependent Utilities (SM-TDUs), appreciate the opportunity to respond to your July 12, 2023, letter to MRC Chair Jennifer Flandermeyer in which the Board of Trustees (Board) requests MRC input “on any areas that it feels important to bring to the Board’s attention or on which to request additional discussion.” The letter also requests input on “any items on the preliminary agendas for the quarterly Board, Board Committees, and MRC meetings.”

The SM-TDUs’ response to the Board’s broad request for input on matters they feel are important to bring to the Board’s attention are below. We look forward to discussing these issues and other agenda items during the meetings of the Board and the MRC on August 16-17, 2023.

Summary of Comments

- The SM-TDUs are pleased the NERC Standing Committee Coordinating Group (SCGG) was tasked with working on upgrading the Standard Authorization Request (SAR) form and encourage NERC to give stakeholders the opportunity to provide comment on the revised form to optimize the value of the changes that are ultimately approved by the Board of Trustees.
- The SM-TDUs are pleased NERC will create tools to identify and map terms and issues related to current and upcoming projects. A mapping tool, working in conjunction with industry support, can help support better SAR development, encourage the development of supporting technical gap analyses, and facilitate the Standards Committee’s execution of its responsibility to coordinate and prioritize standards development projects.
- The SM-TDUs agree that NERC’s Rules of Procedure do not govern the procedures of Applicable Governmental Authorities, and that the omission of a statement regarding appeals does not limit the ability of Applicable Governmental Authorities to hear challenges to Board actions. Our expectation is that Rule 322 will be triggered only in the rarest of circumstances.
- The SM-TDUs would strongly encourage NERC to reconsider its opposition to seeking federal funding when Congress directs the electric reliability organization (ERO) to conduct studies, such as the interregional planning transfer study. We recognize that acceptance of federal funding can be administratively cumbersome, but given that that this will likely not be the last study Congress directs NERC to perform, we are concerned with the precedent that could be set by NERC not seeking funding for what amounts to an unfunded mandate from Congress and instead using its reserves to partially fund such study.

- The SM-TDUs strongly encourage NERC to assess the resource adequacy effects and operational impacts of the Environmental Protection Agency’s (EPA) proposed rules to regulate carbon dioxide emissions from new, existing, modified, and reconstructed power plants and to communicate the impact to EPA in a timely manner so it can incorporate the information into its development of the final rules.

SM-TDUs’ Response

Reforms to the SAR Form

In our November 2022 Policy Input, we noted that while the Rules of Procedure changes were important, greater efficiency gains would likely come from “front-end” changes to how standards are developed. In particular, the SM-TDUs suggested improving the quality of SARs, clarifying the issues, and addressing fundamental disagreements regarding the appropriate approach to the issues. We appreciated that the Standards Process Stakeholder Engagement Group (SPSEG) recommendations ultimately adopted by the Board embraced the idea of improving the SAR and are pleased that the SCCG was tasked with working on upgrading the SAR form.

We believe that the SCCG effort will be very useful, but additional input from industry could enhance the value of the final SCCG product. Unfortunately, we have heard that the form will not be subject to a full-industry critique or comment period before the updated form is finalized. The SM-TDUs believe that the ERO would greatly benefit from at least one round of stakeholder review in the form of written comments. Once industry comment is provided, those results could be shared with the SCCG as it finalizes the updated form that would be considered by the Board of Trustees.

We cannot overstate the importance of reforming the SAR form, as evidenced by some of the challenges that recent standards projects have had in securing the requisite votes for industry approval. Many in the industry have suggested that some of these projects could have had a better outcome if the information included in the original SAR was more robust. Consideration of industry expertise to support the SCCG’s efforts would optimize the value of the changes that are ultimately approved by the Board of Trustees.

Managing a Multitude of Standards Development Projects

Today, we observe that more than 30 individual reliability standards have been identified in existing projects or upcoming SARs that are in process in various technical committees. Of these, approximately two-thirds relate to the Operations & Planning (O&P) group of standards. In several cases, such as modeling and planning, event reporting, and protection systems, multiple projects are addressing closely related issues, and are thus using similar or identical terminology. However, due to the nature of the individual standards and projects, different definitions of the terms are being used. In addition to the SAR issues noted above, the SM-TDUs believe that some of the recent voting results can be attributed to this sort of inconsistency. The only way for O&P compliance managers and subject-matter experts—who are attempting to deal with 20 projects and SARs—to try to get these inconsistencies resolved is to comment and vote to reject the draft standards.

We welcome NERC staff’s recent statement that they are creating tools to identify and map terms and issues related to current and upcoming projects. The SM-TDUs are encouraged by this proposal and look forward to providing meaningful engagement in the development of the tool. A mapping tool, working in conjunction with industry support, can help support better SAR development, encourage the development of supporting technical gap analyses, and facilitate the Standards Committee’s execution of its responsibility to coordinate and prioritize standards development projects.

The SM-TDUs are also encouraged by the ongoing efforts to identify efficiencies through the MRC’s oversight of the Standards Committee, which will lead to the needed review for each SAR and proper prioritizations of projects once the drafting is authorized by the Standards Committee. This will allow us

to reach a manageable number of active projects so that our subject matter experts can be utilized properly without our resources being spread too thin.

Rule 322

The SM-TDUs appreciate NERC’s recognition, in response to MRC policy input submitted in November 2022, that Rule 322 is to be used only in “extraordinary” circumstances. And we appreciate NERC’s adoption of several changes to Rule 322 suggested by the Large Public Power Council (LPPC) in its March 6, 2023, comments, which the Transmission Access Policy Study Group (TAPS) supported.

NERC has not, however, included language in Rule 322 regarding appeal of a Board decision to Applicable Governmental Authorities. In its July 2023 Consideration of Comments, NERC “notes that affected entities may have other remedies available to it under the laws or regulations of an applicable governmental authority, such as challenging a standard after it is filed for approval with the regulator. Any requirements for such proceedings would be subject to applicable laws or regulations and would be outside the scope of the NERC Rules of Procedure.” The SM-TDUs agree that NERC’s Rules of Procedure do not govern the procedures of Applicable Governmental Authorities, and that the omission of a statement regarding appeals does not limit the ability of Applicable Governmental Authorities to hear challenges to Board actions. Our expectation is that Rule 322 will be triggered only in the rarest of circumstances.

Funding for Interregional Planning Transfer Study

The Fiscal Responsibility Act (P.L. 118-5) directed NERC to study total current transfer capabilities and provide recommendations to strengthen reliability and meet and maintain transfer capability between neighboring transmission regions. The law did not authorize appropriations for NERC to conduct the interregional transfer capability study, which is significantly more resource-intensive than NERC’s ordinary reliability assessments. The SM-TDUs recognize the planned study’s value to policymakers; and we appreciate NERC staff explaining how it intends to shift resources, delay projects, and alter its hiring plans to fund the study in 2023 and 2024, with the goal of not increasing assessments for members in the near term. The SM-TDUs are disappointed, however, that NERC did not seek appropriations from Congress for fiscal year 2024 to fund the study, which is solely being done at the request of Congress.

We recognize that acceptance of federal funding can be administratively cumbersome, and that NERC staff is concerned about results of the study appearing “non-partisan.” However, given that this will likely not be the last study Congress directs NERC to perform, we are concerned with the precedent that could be set by NERC not seeking funding for what amounts to an unfunded mandate from Congress and instead using its reserves to partially fund the study. We suggest that NERC seek congressional funding to restore the reserve amounts used to address this matter. At minimum, in responding to any *future* congressional directives, we would strongly encourage NERC to reconsider its opposition to seeking federal funding.

In addition, it is not clear to us how the deferred hiring of planned staff and decision to instead hire additional staff specific to the NERC study fits in with NERC’s strategic, long-term planning for needed staff and the associated costs that will be borne by NERC members—and ultimately by ratepayers. We would appreciate additional discussion of this issue at the upcoming meetings.

Assessment of Reliability Impacts of EPA’s Proposed Carbon Dioxide Rules for Power Plants

EPA released on May 11, 2023, its proposed rules¹ to regulate carbon dioxide emissions from new, existing, modified, and reconstructed power plants. The proposed rules would regulate new gas-fired combustion turbines, existing coal plants, and certain large and baseload existing gas plants, which if adopted, would have an impact on the reliability of the grid due to the expected retirement of coal and natural fired power plants. It would be consistent with NERC's role as the ERO, and with its past practice, for NERC to assess the resource adequacy effects and operational impacts of EPA's proposed carbon dioxide regulations and communicate the impact to EPA in a timely manner so it can incorporate the information into its development of the final rules.

In 2014, NERC conducted an analysis of the potential reliability impacts to the bulk power system from EPA's proposed Clean Power Plan. We believe that a similar analysis of the impact of EPA's proposed carbon dioxide rules would be appropriate. Baseload generation has been retiring at an accelerated rate due to market conditions, policies, and regulations. Replacement generation has not been built fast enough to replace the lost capacity from these retirements, creating significant operational challenges for NERC and industry to maintain grid reliability in many regions of the country (both in and outside of organized electricity markets). NERC should study whether the new proposed rules are likely to further accelerate power plant retirements, further straining the reliability of the grid.

¹ New Source Performance Standards for Greenhouse Gas Emissions from New and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emissions Guidelines for Greenhouse Gas Emissions from Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule, EPA-HQ-OAR-2023-0072, 88 FR 33240 (May 23, 2023), available at <https://www.epa.gov/stationary-sources-air-pollution/greenhouse-gas-standards-and-guidelines-fossil-fuel-fired-power>.