

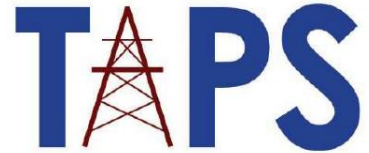
MEMORANDUM

TO: Ken DeFontes,
Chair, NERC Board of Trustees

FROM: Latif Nurani, Senior Regulatory Counsel, American Public Power Association
John DiStasio, President, Large Public Power Council
Tom Heller, Executive Director, Transmission Access Policy Study Group

DATE: July 24, 2024

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’ June 5, 2024, letter requesting policy input in advance of the August 2024 NERC Board of Trustees meeting. We appreciate, in particular, NERC’s recognition of the role of the trade associations and the importance of strengthening engagement with those associations.



MEMORANDUM

TO: Ken DeFontes,
Chair, NERC Board of Trustees

FROM: Brian Evans-Mongeon
Roy Jones
Scott Tomashefsky
Tom Heller

DATE: July 24, 2024

The Sector 2 and 5 members of the North American Electric Reliability Corporation (NERC) Members Representatives Committee (MRC), representing State/Municipal and Transmission Dependent Utilities (SM-TDUs), appreciate the opportunity to respond to your June 5, 2024, letter to the members of the MRC in which the NERC Board of Trustees (Board) requests MRC input on the ERO (Electric Reliability Organization) Enterprise Long-Term Strategy (Strategy) and other items related to the Board's work. Your letter specifically asks:

- Does the Strategy appropriately capture the long-term focus areas and supporting activities for the ERO Enterprise? If not, what key focus areas or supporting high level activities should be added or removed?

SM-TDUs appreciate your letter's follow-up on the discussions at the May 2024 Board Meeting and MRC Meeting. We look forward to continuing our collaboration with the Board to support NERC's mission of assuring the effective and efficient reduction of risk to the reliability and security of the bulk-power system.

SUMMARY OF COMMENTS

- NERC's Strategy should explicitly consider affordability for ratepayers who are the ultimate beneficiaries of NERC's work.
- Continued collaboration with stakeholders is essential.
- NERC should rigorously avoid testing the limits of its statutory authority.
- Efforts to enhance the Compliance Monitoring and Enforcement Program (CMEP) by improving flexibility and reducing administrative burdens will facilitate a focus on improving reliability.
- We appreciate NERC's efforts to harmonize federal reporting requirements and support continued efforts.

SM-TDU COMMENTS

NERC's Strategy should explicitly consider affordability for ratepayers who are the ultimate beneficiaries of NERC's work.

SM-TDUs appreciate the opportunity to provide early feedback into the ERO Strategy. The values and focus areas that are included in the draft document are, at a high level, appropriate; we are looking forward to continuing discussions to shape how those elements of the strategy are implemented.

We are concerned that the Strategy does not explicitly discuss how NERC's actions impact ratepayers. NERC's mission of effectively and efficiently reducing reliability risk is ultimately in service of ratepayers, so the perspective of those ratepayers should be at the forefront of NERC's strategy. When NERC adopts reliability standards, the costs of implementing the reliability and security measures fall on ratepayers. So too do the costs that registered entities incur to demonstrate compliance with reliability standards. And ratepayers ultimately pay the costs of the ERO's growing budget. While NERC's work undoubtedly creates enormous value for ratepayers by reducing the risk to the bulk power system, it also imposes significant costs. NERC's Strategy should explicitly consider those costs to ratepayers.

SM-TDUs urge NERC to specifically adopt a reference to affordability and cost to ratepayers in its Strategy. The best way to do so would be to add to NERC's mission the phrase "balancing reduction of risk with costs to ratepayers."

Continued collaboration with stakeholders is essential.

SM-TDUs commented jointly with other stakeholders in May 2024, urging NERC to strengthen meaningful stakeholder participation across the ERO Enterprise. Such stakeholder participation, including robust engagement with the MRC, is a core part of NERC's identity and one of its unique strengths. We appreciate the productive discussions held during the May 2024 Board and MRC meetings and the follow-up actions described in your June 5, 2024 letter. Such actions will continue the positive trend of improving information exchange between the MRC and the Board, enhancing the value of the policy guidance that the MRC is looked upon to provide.

We also appreciate NERC's recognition of the role of the trade associations and the importance of strengthening engagement with those associations.

We look forward to NERC's proposals on strengthening engagement between the Board, MRC, and industry stakeholders during the fourth quarter. We continue to believe that reinstating a fourth quarter Board meeting open to the public would be a potential solution, especially because industry participants who do not serve on the MRC often attend Board meetings and provide important insights that should not be overlooked or dismissed because of reduced public access to Board members. We also understand the costs and significant staff resources associated with such meetings, so a more cost-effective alternative would be to hold a fourth quarter joint MRC/Board meetings in Washington, DC, similar in structure to the second quarter meetings.

SM-TDUs particularly emphasize the continued value of the stakeholder-driven standards development process. As the pace of standards development increases, SM-TDUs support the goal of more agile standards development. We have been at the forefront of proposing solutions to ensure standard drafting teams use consistent terminology and that standards have unambiguous applicability sections; our suggestions, if implemented, would speed up standards development processes and reduce unnecessary failed ballots.

While we understand the frustration caused by failed ballots, we believe that the vast majority of commenters who vote against standards are doing so in good faith and offering constructive proposals to improve the standards. That high-level of stakeholder participation and contribution is precisely what leads to the development of world-class Reliability Standards, as envisioned by

Congress when establishing Section 215 of the Federal Power Act. Ensuring continued robust stakeholder engagement, without threats of circumventing that process, 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.

NERC should rigorously avoid testing the limits of its statutory authority.

As the grid changes, utilities may need to build new transmission or generation resources to remain reliable. Various regulations, policies, and considerations guide resource adequacy decision-making by utilities. Nevertheless, NERC cannot, directly or indirectly, require utilities to build or enlarge facilities.

Section 215 of the Federal Power Act prohibits NERC (and the Commission) from adopting any requirement to “enlarge [bulk-power system] facilities or to construct new transmission capacity or generation capacity.”¹ It also prohibits NERC from setting for “adequacy...of electric facilities or services.”² SM-TDUs recognize that the bulk-power system must have adequate supply to maintain reliability. But any standard that is targeted at energy assurance and essential reliability functions must remain well within section 215’s boundaries. NERC standards must not be designed to indirectly achieve what Congress has prohibited. Any standard that would require construction of facilities as the only reasonable way to achieve compliance is contrary to text and purpose of Section 215.

Efforts to enhance the CMEP by improving flexibility and reducing administrative burdens will facilitate a focus on improving reliability.

SM-TDUs support NERC’s objective of improving the CMEP process in a way that emphasizes the importance of compliance while reducing administrative burdens.

Improving the CMEP process could yield significant benefits for NERC’s mission. If done effectively, the improvements could increase focus on improving reliability and decrease the resources dedicated to administrative, compliance activities. Furthermore, improvements to the CMEP process could in the long-run have positive upstream impacts on standards development.

SM-TDUs believe that early and meaningful stakeholder participation—through the MRC, the Compliance and Certification Committee (CCC), and the trade associations—will be essential to ensuring that improvements to the CMEP achieve the desired outcomes. Industry participation could be facilitated through the work of the CCC, a committee that is well positioned to solicit industry feedback consistent with procedures articulated in CCC procedure CCCPP-008.

We appreciate NERC’s efforts to harmonize federal reporting requirements and support continued efforts.

Earlier this year, Department of Homeland Security (DHS) Cybersecurity and Infrastructure Security Agency (CISA) sought comment on a proposed rule to implement the Cyber Incident

¹ 16 U.S.C. § 824o(a)(3).

² 16 U.S.C. § 824o(i)(2).

Reporting for Critical Infrastructure Act (CIRCA) reporting requirements. CIRCA directed federal agencies to harmonize cybersecurity reporting requirements so that critical infrastructure industries are not subject to duplicative reporting requirements for cyber incidents. Given that NERC's CIP standards—including CIP-003 and CIP-008—already require certain registered entities to report cyber incidents, it is essential that NERC's requirements be harmonized with CISA's proposed requirements.

SM-TDUs appreciate the comments filed by NERC on CISA's proposed rule, in which NERC emphasized the importance of harmonization and expressed its intention to work with government partners to “avoid unnecessary duplication while ensuring robust cyber security reporting requirements.” But given that there are differences between CISA's proposed reporting requirements and NERC's existing reporting requirements, we urge NERC to work diligently to achieve that objective.