

October 6, 2011

Mr. William Gallagher, Chairman
NERC Member Representatives Committee
104 Hampton Meadows
Hampton, New Hampshire 03842

Re: Policy Input to NERC Board of Trustees

Dear Bill:

The agenda for the November 2, 2011 Member Representatives Committee (MRC) meeting is chock full of substantive items, several of which will warrant high interest by members of the Board of Trustees (board). The board always is interested in policy input from the committee members on any issue, but would especially like to hear members' views on the following:

Compliance Enforcement Initiative (BOTCC-2 and MRC-9) — NERC filed late last week with FERC its decision to shift how it deals with Possible Violations that pose lesser risks to the bulk power system (BPS). As the filing explains, NERC and the Regional Entities are employing a more comprehensive and integrated risk control strategy that differentiates and addresses compliance issues according to their significance to the reliability of the BPS. In addition, NERC and the Regional Entities are increasing the utilization of their inherent enforcement discretion in the implementation of compliance and enforcement activities. The board will be very interested in the reaction of committee members to this filing and NERC's continuing efforts to improve the efficiency and effectiveness of its compliance enforcement process.

Compliance Application Notices – Status (MRC 10) — NERC continues to work to improve both the process and content of Compliance Application Notices. The board welcomes comments on whether the changes to date are addressing effectively the issues raised at the August meeting.

Status of CIP Standards Version 4 and 5 Implementation Plans (MRC-11) — I understand that a number of concerns have been voiced by the industry regarding the draft implementation plans for Versions 4 and 5 of the CIP Standards regarding duplication of effort and backwards looking compliance requirements. While we do not have formal input from stakeholders until the posting of draft proposals, the board would still like to hear discussion by the MRC on the concerns they have with the staging of these proposed implementation plans. I understand that this discussion will begin in the Standards Oversight and Technology meeting and continue during the MRC meeting.

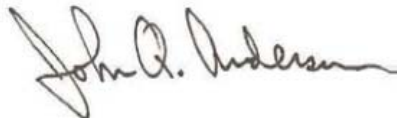
3353 Peachtree Road NE
Suite 600, North Tower
Atlanta, GA 30326
404-446-2560 | www.nerc.com

Bulk Electric System (BES) Definition and Rules of Procedure – Status (MRC-12) — The board is very interested in how the BES Definition project is progressing since the August meeting. I understand that the drafting team took very seriously the board's views and is proposing to address the FERC directive in one phase and the remaining industry issues in a subsequent phase. The board wants to stay actively involved as this effort progresses, and to that end asks the MRC to continue its review and discussion at the November meeting.

Rules of Procedure Changes (MRC-15) — At the August MRC meeting some issues were raised regarding some of the Rules of Procedure changes that were being proposed, namely the provision to impose penalties in the event registered entities failed to respond to NERC data requests. While the proposed changes are still being discussed by NERC and the Regional Entities, and will not be posted for industry comment until after the November meetings, the board would like to hear of any concerns the committee has with the general direction of the proposed changes.

Thank you in advance for providing written comments to Dave Nevius, MRC secretary (dave.nevius@nerc.net) by **October 24, 2011** so they can be packaged and sent to the board members in advance of the meeting.

Thank you,



John Q. Anderson
NERC Board of Trustees Chair

cc: NERC Board of Trustees
Member Representatives Committee



Policy Input to the NERC Board of Trustees

Atlanta

Provided by the Edison Electric Institute

November 3, 2011

On behalf of our member companies, the Edison Electric Institute (EEI) appreciates the opportunity to provide the following policy input to the NERC Board of Trustees. EEI is the trade association representing the investor-owned segment of the electric industry in this country. Our views on NERC-related matters are informed by the CEO Task Force on Reliability, CEO Task Force on Business Continuity, and the Reliability Executive Advisory Committee.

In addition to responding to the request for policy input dated October 6, our comments reflect other current strategic issues that may be discussed at the upcoming meetings in Atlanta.

NERC As A Learning Organization

We are strongly convinced that the most important form of learning can be derived from:

- Understanding those events on the system involving various configurations of equipment and network conditions that unexpectedly cause special problems or challenges
- how personnel make decisions and perform under a broad range of conditions, and
- integration of newer technologies on the system, where there may be very little experience available to reasonably judge potential reliability issues.

In addition to its requirements under Section 215 to develop mandatory reliability standards, conduct the enforcement of those standards, and perform reliability assessments, EEI appreciates that NERC aspires to organize itself to support the electric industry's performance in providing bulk power system reliability. NERC in the past year has begun to deliver "lessons learned" on various issues, and conduct various webinars and technical workshops on a broad range of issues.

EEl understands that these activities may have some modest value for “learning.” This value could be increased at least in part by providing the “lessons learned” in context by NERC making public the event analysis reports that lead to the “lessons learned.”

For almost two years, EEl has focused the Board of Trustees on the Events Analysis program and the need for reform. We understand that changes to the Rules of Procedure regarding Events Analysis are likely to be previewed at the upcoming meetings and look forward to engaging the discussion. Reviewing previous EEl comments, it is imperative that the program a) find a constructive way forward that allows for timely reporting and disclosure of important findings, b) defines a relationship with enforcement that requires transparency and due process, and c) restricts enforcement activities from becoming endless time-consuming ‘fishing expeditions’ for violations. On this last point, EEl understands that some analyses of minor events can extend for years, and while there may be “learning” to be extracted from such endeavors, at some point a reasoned decision needs to be made to either “fish or cut bait,” to either declare a violation or close the case and move on.

NERC is arriving at a critical threshold challenge in its pursuit of the goal of becoming a learning organization. Reconciling the inherent tensions of the competing goals, prudent compliance risk management and the open discussion of company experiences, needs to be plainly addressed, and soon. EEl believes that now is the time for NERC to begin consideration for various alternatives that could relieve some of these tensions. The North American Transmission Forum (NATF) continues to expand its scope of activities and plans a significant expansion in the next three years. Similarly, the North American Generator Forum (NAGF) has begun to develop its structure and processes. Information sharing, learning from system events, discussing new technologies and system configurations and their potential reliability impacts, and developing best practices, all of these can and should be considered as capable of being handled by NAGF and NATF.

Allowing NAGF and NATF to cover these issues could help NERC to sharpen its focus on its core program requirements, managing the development of mandatory standards, and compliance and enforcement. As described in the following comments, there are many matters in NERC’s core program areas that offer opportunities for continuous improvement.

Lessons Learned From The Facilities Ratings Alert

One year ago, NERC issued an Alert on facilities ratings, saying that a vegetation contact by a Transmission Owner suggested that widespread actual field conditions varied significantly from design assumptions – to the point where some facility ratings were considered inaccurate. The Alert recommended that companies carefully examine and reconcile their facilities ratings to actual field conditions.

Companies have broadly supported this initiative and with the benefit of experiences gathered in the year, EEI believes that transparent communications and corrective actions are underway. Summary statistics distributed by NERC show that companies are mitigating discrepancies by physically adjusting structures, revising ratings, or removing clearance or other “underbuild” issues. EEI believes that none of the discrepancies discovered to date in any way suggest a reduction or imminent systemic threat to reliability. Experience further suggests that the existing FERC-approved standards continue to suitably address facilities ratings issues. In addition, EEI encourages NERC in the future to more explicitly consider potential costs and benefits when considering whether or how to communicate these technical issues, and to more carefully consider the appropriate use of Alerts to help ensure that Alerts do not inadvertently impose *de facto* requirements.

Standards Development

Recent changes to the standards development process manual have provided some marginal improvements in the process. EEI supported these changes. Further work is needed, more improvements should be made.

There are many potentially legitimate drivers to explain the length of time needed to achieve consensus in standards development. The issues may be technically difficult to understand and analyze, and there may be multiple issues being addressed that require the coordination with other standards. There may be strong divergent viewpoints within a ballot body on proposals being made. The matter may be defined as a lower priority issue. In addition, drafting teams may have engaged issues with no explicit deadlines. With enforceable standards, drafting teams must now go beyond the technical aspects of a standard and must now consider potential compliance issues that may result from the use of certain

wording or phrases, or the lack of specificity or ambiguity in requirements or measures.

For whatever combinations of explanations, EEI continues to emphasize that the NERC processes need to focus much more aggressively on resource efficiency in management and execution. Companies' subject matter experts own the majority portion of the responsibility with regard to standards development and need to square up to the challenge. However, companies' resources are severely resource constrained, and much stronger process management disciplines are badly needed. The promulgation of regional standards also has become a resource issue. NERC, as the ERO, should ensure that there is an enterprise-wide priority evaluation as many of the same resources are needed to develop regional standards.

Root cause analyses for standards development may provide some benefit here, but such analyses should not be required as a condition for developing a strategic action plan to identify changes that will improve the efficiency of standards development. EEI supports an approach, where stakeholders and NERC management assemble a small team of officer-level personnel to discuss options and deliver to NERC management and the Board of Trustees an action plan early next year. To the extent possible, the team could explore short-term process changes that would not require FERC approval, and those that would require such approval, and that the implementation of such recommendations could be reflected in proposed NERC 2013 budget development.

FAC-003

EEI strongly supports FAC-003 and recommends that the Board of Trustees approve the standard, which will apply to several hundred thousand miles of transmission lines in this country. We believe that the changes offer a substantial improvement over the current version for several reasons. Proposed FAC-003 responds to the directives in Order No. 693 issued in March 2007. It is an initial example of a results-based design that aims first at identifying the reliability objective and then allows companies to establish programs to accomplish that objective in a manner that adapts to localized conditions, topographies, and climates, thus avoiding a micro-managed assembly of one-size-fits-all 'how to' requirements to manage vegetation. It also attempts to differentiate through the proposed VRFs and VSLs those violations that likely would pose greater risks of cascading outages. We believe that the revised proposed standard will improve

companies' abilities to allow for coordinated right of way and line inspections, and adapt their vegetation management plans to cover widely varying conditions, thus improving resource management efficiency while maintaining bulk power system reliability.

Compliance and Enforcement

EEl supports NERC moving ahead with the "find fix track report" (FFTR) enforcement discretion tool with its recent proposal filed at FERC. Joint trade association comments filed on October 21 offered a strong endorsement, which is attached to this policy input document. Properly implemented and carefully monitored for actual results, we believe that FFTR will help companies, NERC, and the regional entities, to improve resource allocation in alignment with reliability priorities. This is a good start and yet we also believe that much more needs to be done. We encourage NERC not only to resist any efforts to add more process to FFTR, but to also strive to reduce process over time. Further, EEl looks forward to reviewing program results with the Board in six months to ensure benefits are realized and that resources are able to devote more time to reliability operations rather than to administrative compliance activities.

Compliance Operations

EEl appreciates the broad range of initiatives that have been undertaken on the goal of delivering compliance guidance to companies. EEl counts approximately five different kinds of compliance guidance that have been developed recently, including RSAWs, CANs, CARS, lessons learned, and case notes. While in general we continue to strongly support such tools and practices on a conceptual level, we comment on some challenges and report to the Board of Trustees some likely next steps that stakeholders will take.

First, we have several times commented on Compliance Application Notices (CANs), engaged NERC staff in various meetings, commented on proposed CANs, and most recently commented on proposed revised CANs and a process document. We were encouraged by NERC's announcement at the Board of Trustees meeting in Vancouver that NERC would restate the guidelines for CANs and would review those CANs already in place. While we have seen some improvements, there are still concerns that remain. For example, NERC has just released a final revised CAN-0016 (Sabotage Reporting procedures under CIP-001) and a final revised process document. EEl with other trade associations are likely

to use the new appeal process to address CAN-0016 and three or four other CANs, where we expect unsatisfactory outcomes. In the final CAN-0016, we continue to strongly believe that NERC has altered the boundaries of the standard.

Regarding the CANs process document, we are deeply troubled by a process where NERC solicits comments on a proposed CAN and completely discards those comments. In the case of CAN-0016, we understand over 70 parties commented that NERC reached beyond the scope of the standard. Yet, NERC rejected those comments without explanation. CAN development must adhere to reasonable due process and CAN-0016 clearly raises basic concerns about the viability of the current CAN implementation process.

Second, a recently proposed Compliance Process Directive (CPD) seeks to address a perceived reliability gap pertaining to transmission facilities that connect generation plants to the larger network. These issues were addressed in a series of recent FERC orders that covered registration appeals, and are reflected by a high-priority standard under development. The proposed CPD lists criteria that would govern decisions for registering entities for the TO/TOP function.

EI will provide comments timely on the CPD by November 15, however, our first impression is that the document ignores current FERC-approved entity registration criteria and provides no other analysis of the declared “reliability gap” that the CPD would address other than to suggest that all of these generator connection facilities must be covered. Instead, we see a one-size-fits-all mandate.

EI asks that the Board of Trustees Compliance Committee seek a more detailed understanding of the reliability gap that would be covered by the proposed CPD and determine to its own satisfaction whether such a gap actually exists. If the need for the CPD is more clearly established, we also ask that any final CPD avoid violating or materially changing the FERC-approved NERC registration criteria.

Entity Risk Assessments

Last year at the Board of Trustees meeting in Phoenix, stakeholders uniformly embraced a broad recognition that NERC should move toward more risk-based approaches to executing its core program missions for standards development,

and compliance and enforcement. This reflected the dual themes of “everything cannot be priority” and “everything does not share the same reliability risks.”

We appreciate that translating these broad goals into actionable decisions is another matter. We applaud compliance operations in seeking to explore various tools and practices to apply to this policy target.

However, we need to raise a growing concern with NERC’s plans to develop “entity risk assessments”. Exactly how these assessments will be conducted, the kinds of materials that will be gathered, the criteria for making or changing determinations, the application of these criteria, and the need for making these assessments in light of the existing audit and spot check tools, all are unknown. EEI asks that the Board of Trustees Compliance Committee engage a more detailed discussion on the need for this particular activity, how it will be managed and practiced, due process issues, the extent of oversight by the Board of Trustees, the resources needed to conduct this work, and its ultimate strategic value in compliance operations.

EEI believes that this proposal needs much more careful consideration. In the nuclear generation industry, for example, we understand that there are five clearly defined risk categories, and companies understand the criteria and actions needed to move up or down. We ask that consideration of such risk assessments developed by NERC to include the costs and benefits for the activity, its importance for the overall missions of compliance and enforcement, process clarity and transparency, and stakeholder involvement. The activity in the nuclear industry involved owners and operators. Similarly, stakeholders should be allowed to participate in the development of the NERC process.

CIP Standards / Version 4 / Version 5

EEI generally supports the proposal by FERC in Docket No. RM11-11 to approve “version 4” of the CIP standards and for FERC to adopt the CIP drafting team work plan by setting a reasonable deadline for filing “version 5” of the standards. We believe that NERC needs to move forward proactively to respond to the full range of directives in Order No. 706. Comments in the docket are due at FERC on November 21, and we expect that the issues could also arise at the November 29-30 FERC technical conference addressing the status of various NERC priorities.

We also recognize that “version 5” is an enormous and complex undertaking. Order No. 706 contains over one hundred directives addressing a broad range of

issues. Many directives are subject to widely varying understandings by technical experts. There could be significant implementation costs, timing concerns, and compliance complexities if there were close proximity of version 4 and version 5 effective dates, which must be carefully considered. The current drafting team plan offers no specific “plan B” for bifurcating divisive issues, thus creating a type of “all or nothing” approach to “version 5.”

For these reasons, EEI believes that it would be extremely useful for stakeholders to work with NERC management and the drafting team to develop a strategic plan and to map a workable pathway to finishing the current project, including consideration of potential alternatives to the current work plan. To this end, we strongly urge NERC to convene an industry group to focus on this issue in advance of November 21.

Bulk Electric System Project

EEI understands the BES project to be on schedule for a timely compliance filing at FERC in early 2012. The initial ballots are concluding and while both the BES definition and related exceptions process did not receive the needed levels of support, EEI expects that both recirculation ballots will succeed. We also understand that various issues raised over the past several months in the project may be combined into a second phase.

Rules of Procedure Changes

The proposed changes to the Rules of Procedure included in the meeting package raise two areas of concern. First, it is difficult to determine exactly what the changes are that are being proposed. While the summary information leads one to believe the proposed changes are minor in nature, a closer inspection indicates the changes are more extensive. EEI requests that NERC provide a clearer red-line version of the proposed changes.

Second, it appears one of the proposed changes involves a proposal to impose monetary penalties for failures to comply with the Rules of Procedure. Stakeholders offered comments two months ago on a first batch of proposed changes to the Rules of Procedure, including this issue. Since Section 215 provides that the Electric Reliability Organization may impose monetary sanctions only for violations of FERC-approved reliability standards, numerous comments raised questions on the legality of such action and also asked for clearer explanations of the drivers for these changes. Based on the MRC agenda item, it

appears that the proposal to impose penalties is still in proposed Rules of Procedure and that the Board of Trustees will be asked to approve them at their February 2012 meeting. Should the Board of Trustees ultimately approve the changes, we expect to challenge their legality in comments in any FERC proceeding where decisions on them are made. We also urge NERC to have greater transparency in making clear the reasons for proposed changes, how stakeholder comments are addressed, and the proposed changes.

EI asks that NERC provide a practical explanation for its proposal. Then, EI can offer alternative constructive solutions and avoid challenging NERC at FERC on the law.

Spare Equipment Database

EI supports the work of the NERC Spare Equipment Database Task Force (SEDTF) and the recommendations made in the Task Force Report regarding implementation and voluntary participation in a database for the purposes of facilitating communication and potential exchange of spare equipment between Transmission and Generation Owners in the case of a High Impact Low Frequency event. As currently proposed, the NERC SEDTF will provide value without being overly burdensome on participants and will adequately protect sensitive information. We encourage NERC to continue to ensure that the database purpose and use remains limited to that which is outlined in the Report and that the confidentiality of the information contained in the database be maintained at the highest possible level.

We appreciate the opportunity to provide these comments and look forward to actively discussing the issues next week in Atlanta.

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

North American Electric Reliability Corporation)

Docket No. RC11-6-000

**MOTION TO INTERVENE AND COMMENTS OF THE EDISON ELECTRIC
INSTITUTE, THE AMERICAN PUBLIC POWER ASSOCIATION, ELECTRICITY
CONSUMERS RESOURCE COUNCIL, THE NATIONAL RURAL ELECTRIC
COOPERATIVE ASSOCIATION, THE TRANSMISSION ACCESS POLICY STUDY
GROUP, THE ELECTRIC POWER SUPPLY ASSOCIATION AND THE LARGE
PUBLIC POWER
COUNCIL**

The Edison Electric Institute (“EEI”), the American Public Power Association (“APPA”), the National Rural Electric Cooperative Association (“NRECA”), the Transmission Access Policy Study Group (“TAPS”), the Electricity Consumers Resource Council (“ELCON”), the Electric Power Supply Association (“EPSA”) and the Large Public Power Council (“LPPC”) (collectively referred to as the “Trade Associations”) submit this joint and several motion to intervene and comments in support of the Petition filed by the North American Electric Reliability Corporation (“NERC”) on September 30, 2011, in this docket asking the Federal Energy Regulatory Commission (“FERC” or “Commission”) for approval of NERC’s proposed new enforcement mechanism known as Find, Fix Track and Report (“FFTR”).¹

JOINT AND SEVERAL MOTION TO INTERVENE

Pursuant to Rules 212 and 214 of the Commission's Rules of Procedure, the Trade Associations move to intervene in this proceeding.

EEI is the association of the nation’s shareholder-owned electric utilities, international affiliates, and industry associates world-wide.

¹ Petition Requesting Approval of New Enforcement Mechanisms and Submittal of Initial Informational Filing Regarding NERC’s Efforts to Refocus Implementation of its Compliance Monitoring and Enforcement Program, Docket No. RC11-6-000 (“the Petition”).

APPA is the national service organization representing the interests of more than 2,000 not-for-profit, publicly owned electric utilities throughout the United States.

NRECA is the not-for-profit national service organization representing approximately 930 not-for-profit, member-owned rural electric cooperatives, including 66 generation and transmission cooperatives that supply wholesale power to their distribution cooperative owner-members.

TAPS is an association of transmission-dependent utilities in more than 30 states, promoting open and non-discriminatory transmission access.

ELCON is the national association representing large industrial users of electricity.

EPSA is the national trade association representing competitive power suppliers, including generators and marketers. These suppliers account for 40 percent of the installed capacity in the United States.

The Large Public Power Council represents 25 of the largest state-owned and municipal utilities in the nation, reflecting the views of the larger, asset owning members of the public power community.

The Trade Associations meet the requirements of Rule 214(b) for intervention. Many of the Trade Associations' members are users, owners, and operators of the bulk-power system and are subject to the Reliability Standards established by NERC, acting as the Commission-certified Electric Reliability Organization ("ERO"), and will be subject to the enforcement mechanisms that are the subject of the Petition. Therefore, the Trade Associations are interested parties with respect to this docket. The Trade Associations' respective members will be directly impacted by the outcome of this proceeding and cannot be adequately represented by another party to the proceedings. The intervention of the Trade Associations is in the public interest. Accordingly,

the Trade Associations respectfully request that the Commission grant their joint and several motion to intervene.

Notices should be sent to the following:

EDISON ELECTRIC INSTITUTE

Barbara A. Hindin, Associate General Counsel
David Dworzak
Director, Reliability Policy
EDISON ELECTRIC INSTITUTE
701 Pennsylvania Avenue, NW
Washington, DC 20004
(202) 508-5019
bhindin@eei.org
Dworzak@eei.org

AMERICAN PUBLIC POWER ASSOCIATION

Susan N. Kelly
Vice President of Policy Analysis and General Counsel
Allen Mosher
Senior Director of Policy Analysis and Reliability
AMERICAN PUBLIC POWER ASSOCIATION
1875 Connecticut Avenue, NW
Suite 1200
Washington, DC 20009
(202) 467-2944
skelly@publicpower.org
amosher@publicpower.org

NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION

Richard Meyer
Senior Regulatory Counsel
Barry Lawson
Associate Director, Power Delivery & Reliability
NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION
4301 Wilson Boulevard
Arlington, VA 22203-1860
(703) 907-5811
Richard.meyer@nreca.coop
Barry.lawson@nreca.coop

TRANSMISSION ACCESS POLICY STUDY GROUP

Cynthia S. Bogorad
Rebecca J. Baldwin
SPIEGEL & MCDIARMID LLP
1333 New Hampshire Avenue, NW
Washington, DC 20036
(202) 879-4000
cynthia.bogorad@spiegelmc.com
rebecca.baldwin@spiegelmc.com

Counsel for Transmission Access Policy Study Group

ELECTRIC POWER SUPPLY ASSOCIATION

Nancy E. Bagot
Vice President of Regulatory Affairs
ELECTRIC POWER SUPPLY ASSOCIATION
1401 New York Avenue, NW
Suite 1230
Washington, DC 20005
(202) 628-8200
NancyB@epsa.org

LARGE PUBLIC POWER COUNCIL

Jonathan D. Schneider
Jonathan P. Trotta
STINSON MORRISON HECKER LLP
1150 18th Street, N.W.
Washington, D.C. 20036
(202) 728-3034
JSchneider@stinson.com
JTrotta@stinson.com

Attorneys for the Large Public Power
Council

**ELECTRICITY CONSUMERS RESOURCE
COUNCIL**

John A. Anderson
President & CEO
John Hughes
Vice President, Technical Affairs
ELECTRICITY CONSUMERS RESOURCE
COUNCIL
1111 19th Street, NW
Suite 700
Washington, D.C. 20036
(202) 682-1390
janderson@elcon.org

COMMENTS

Executive Summary

The Trade Associations strongly support NERC’s decision to revamp how it deals with Possible Violations of reliability standards that pose a lesser risk to the bulk power system (“BPS”). NERC’s Petition for approval of new compliance enforcement mechanisms outlines a promising new strategy to differentiate among and address compliance issues according to their significance to the reliability of the BPS. While all Possible Violations will continue to be found, fixed, tracked and reported to Regional Entities, NERC and the Commission, lesser risk issues that have been corrected (*i.e.*, already mitigated/fixed-in-the-field by the registered entity) will be presented as Remediated Issues in a Find, Fix, Track and Report (“FFTR”) spreadsheet that will be submitted to the Commission in a monthly informational filing.

The Trade Associations strongly support NERC's proposal to exercise discretion in dealing with lesser risk enforcement matters and urge the Commission to accept NERC's petition as a well-designed first step in recognizing a significant and growing problem of resource misallocation in the ERO compliance and enforcement program. Minor administrative, documentation-related, and other violations that pose a lesser risk to reliability need to be addressed quickly and simply, so that NERC, the Commission and the industry can refocus their attention on actual and potential reliability issues, including but not limited to significant violations of reliability standards, that pose a significant risk to reliable operation of the BPS.

The Trade Associations support NERC's analysis that its FFTR proposal is consistent with the Commission's regulations and prior orders, NERC's Rules of Procedure and Commission policies on enforcement discretion. For example, all possible violations will be timely reported to the Commission, as required by 18 CFR Part 39.7(b). All Possible Violations will be identified and mitigated and will become part of the registered entity's compliance history.

NERC's proposal to submit six-month and twelve-month reports on its progress implementing the FFT proposal will provide evidence on the tangible experience of registered entities, NERC and Regional Entities. The initial NERC informational filing in mid-2012 will provide specific information on the status of FFTR and feedback on whether FFTR has begun to shift NERC, Regional Entity and industry resources by increasing the efficiency and effectiveness of documenting compliance and handling minor enforcement matters. The Commission should also consider convening a policy-level technical conference to address the broader goals, priorities, cost impacts, and practical challenges for NERC compliance and enforcement.

The Commission Should Approve the FFTR as a Promising New Approach

The Trade Associations believe that the FFTR approach provides an effective means to handle the preponderance of NERC violations that have little or no impact on the reliability of the BPS. Registered entities are now overwhelmed by the demands of the compliance and enforcement “administrivia” associated with demonstrating compliance with many of the NERC standards. Such minor violations should be resolved quickly and simply so that personnel may devote the substantial resources now dedicated to handling these issues to matters that have a greater impact on BPS reliability. The Trade Associations believe that the FFTR proposal can serve as one remedy for this serious and growing problem and provide a means to re-focus resources on issues more important to BPS reliability.

On a consolidated basis, NERC and the regions propose to spend in 2012 approximately \$92 million on compliance and enforcement activities, almost 45% of the consolidated ERO budget. The current enforcement backlog of over 3,000 pending violations is growing. The average processing time for a NERC violation is not known with precision; however, the Trade Associations understand that it is not unusual for many minor enforcement matters to require two years to reach the Commission as filed Notices of Penalty.

The registered entity resources required to satisfy the broad range of compliance documentation and enforcement-related paperwork and other administrative demands are without doubt several multiples of the consolidated NERC spending. These expenditures include preparation for and participation in compliance audits and spot checks, self-reporting and mitigation plan development and management, violations settlement discussions and negotiations, and a broad range of other compliance monitoring, reporting and data submittals, and the attendant paperwork flow management and coordination within registered entities. The

work requires the involvement of field operations and maintenance personnel, technical subject matter experts, compliance program management, attorneys, outside consultants, and in some cases, senior management. This rough estimate does not include capital expenditures, or operating and maintenance expenses, required to plan and operate the bulk power system, but only the registered entity managerial and administrative overhead expense that supports NERC compliance and enforcement processes. FFTR is an important first step to ensure that the substantial resources devoted to compliance demonstration and enforcement are targeted on those matters that pose the greatest risk to the reliability of the BPS. This approach will better ensure the more effective deployment of NERC's compliance and enforcement resources.

Trade Associations also strongly support NERC's proposal to submit informational reports in six months and twelve months. Those reports will provide specific information on the status of FFTR implementation, and should be structured to enable the Commission and stakeholders to assess the effectiveness of the FFTR tool, its impact on NERC and industry costs, and whether the FFTR tool is yielding a reduction to the compliance violation backlog. The informational filings should also provide information to allow the Commission and stakeholders to understand how the Regional Entities are implementing FFTR. The informational reports will also provide a timely opportunity to identify any mid-course changes to NERC's plans needed to ensure that FFTR achieves its objectives.

Finally, in its filing in this docket, NERC also proposes additional work phases to address other issues in compliance and enforcement. The Trade Associations strongly agree that a broad range of work is needed, and recommend that the Commission convene a technical conference next year to address policy level issues. We outline our concerns and objectives below – but submit that these technical and policy issues are beyond the scope of the actual proposal and any

approvals that may be before the Commission in the instant filing. These long term improvements to NERC's compliance and enforcement program are more properly the subject of a new Commission proceeding, noticed as an AD docket, in which NERC, industry stakeholders, and the Commission can engage in an open dialogue on the direction of the NERC compliance and enforcement program.

Throughout 2009, stakeholders engaged both the Commission and NERC to discuss the problem in standards development that "everything is a priority." Significant efforts have been underway since that time to better define priorities for standards development, and the Commission has expressed general support that such efforts are both needed and timely. Now, NERC rightly has begun to address a similar prioritization issue from the perspective of compliance and enforcement. The present approach of more or less equal treatment of all violations, and the full enforcement of each and every violation under the process that has been developed and practiced to date, in effect creates an inefficient, unsustainable, costly, and unnecessary policy for compliance with the Commission-approved standards.

A Commission technical conference should address the range of policy issues and help focus the scope and content of subsequent NERC work plans and proposals for this core NERC program. We believe that such a technical conference should focus on how compliance and enforcement programs can be designed to create incentives for improved performance, avoid creating distractions for personnel and resources to cover matters largely irrelevant to reliability, address potentially unsustainable compliance-related costs, and ensure efficient program administration. Given the nature of the problem, the attention provided to standards development prioritization last year, and the costs involved, we believe that there is significant merit for using a technical conference process to address compliance and enforcement policy

issues. We envision that such a conference would include the involvement and participation of senior executive officers.

The Trade Associations Support Opportunities for Open Discussion of the FFTR Proposal

Given that the FFTR proposal impacts all users, owners, and operators of the bulk-power system and could result in a shift in the overall approach to NERC enforcement, the free exchange of ideas and concerns by industry participants with the Commission and its staff is essential. Indeed, the proposed FFTR procedure will be a significant topic of discussion at the NERC Board of Trustees (BOT) meetings, including many attended by Commissioners and Staff. The application of the *ex parte* rules to the FFTR proposal would prevent the free flow of information necessary for the Commission to adequately consider the FFTR proposal. The Trade Associations understand that the Commission will issue appropriate notice of the NERC BOT meetings so that Commissioners may participate without excusing themselves from discussion of the FFTR proposal. The Trade Associations appreciate this recognition of the importance of open discussion of the proposal. The Trade Associations also support the Commission considering other opportunities for discussion of FFTR. This may include the upcoming technical conference scheduled for November 29 and 30. By making this suggestion, the Trade Associations do not intend in any way to delay the Commission's consideration and hoped-for approval of the FFTR proposal.

CONCLUSION

For these reasons, the Trade Associations request that the Commission grant the Petition, recognizing the FFTR process as an important new approach to improve the compliance process

to redirect resources to the most important risks to reliability and hold a technical conference next year to discuss progress in achieving that goal.

Respectfully submitted,

/s/ Signed

EDISON ELECTRIC INSTITUTE

David K. Owens
Executive Vice President – Business
Operations
James P. Fama
Vice President– Energy Delivery
Barbara A. Hindin, Associate General
Counsel
EDISON ELECTRIC INSTITUTE
701 Pennsylvania Avenue, NW
Washington, DC 20004
(202) 508-5019

**NATIONAL RURAL ELECTRIC
COOPERATIVE ASSOCIATION**

Richard Meyer
Senior Regulatory Counsel
Barry Lawson
Associate Director, Power Delivery &
Reliability
NATIONAL RURAL ELECTRIC
COOPERATIVE ASSOCIATION
4301 Wilson Boulevard
Arlington, VA 22203-1860
(703) 907-5811

AMERICAN PUBLIC POWER ASSOCIATION

Susan N. Kelly
Vice President of Policy Analysis and
General Counsel
Allen Mosher
Senior Director of Policy Analysis and
Reliability
AMERICAN PUBLIC POWER ASSOCIATION
1875 Connecticut Avenue, NW
Suite 1200
Washington, DC 20009
(202) 467-2944

**TRANSMISSION ACCESS POLICY STUDY
GROUP**

Cynthia S. Bogorad
Rebecca J. Baldwin
SPIEGEL & MCDIARMID LLP
1333 New Hampshire Avenue, NW
Washington, DC 20036
(202) 879-4000

Counsel for Transmission Access Policy
Study Group

ELECTRIC POWER SUPPLY ASSOCIATION

Nancy E. Bagot
Vice President of Regulatory Affairs
ELECTRIC POWER SUPPLY ASSOCIATION
1401 New York Avenue, NW
Suite 1230
Washington, DC 20005
(202) 628-8200

LARGE PUBLIC POWER COUNCIL

Jonathan D. Schneider
Jonathan P. Trotta
STINSON MORRISON HECKER LLP
1150 18th Street, N.W.
Washington, D.C. 20036
(202) 728-3034

Attorneys for the Large Public Power
Council

**ELECTRICITY CONSUMERS RESOURCE
COUNCIL**

John A. Anderson
President & CEO
John Hughes
Vice President, Technical Affairs
ELECTRICITY CONSUMERS RESOURCE
COUNCIL
1111 19th Street, NW
Suite 700
Washington, D.C. 20036
(202) 682-1390

October 21, 2011

Certificate of Service

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the Commission's Rules.

Dated at Washington, D.C. this 21st day of October, 2011.

/s/ Barbara A. Hindin _____

Barbara A. Hindin
Edison Electric Institute
701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2696
202-508-5019



Policy Input to the NERC BOT and MRC – October 24, 2011

The Electricity Consumers Resource Council (ELCON) is pleased to offer the following policy input to the NERC Member Representatives Committee and the Board of Trustees.

In addition to the specific replies to issues listed by NERC Chairman John Q. Anderson, ELCON raises two high-level concerns:

1. Large industrial electricity consumers need a reliable supply of electricity, but it must be at competitive prices. Increasingly, compliance with the growing numbers of NERC standards requires tremendous quantities of resources. NERC must find a way to balance compliance to necessary standards with consumer costs.
2. While entities required to be in compliance with NERC standards want clear and concise standards, increasingly they are concerned that NERC staff, rather than industry stakeholders, are making determinations that in essence become mandatory actions. The approved ANSI-approved standards development process should be followed to the greatest degree possible.

Responses to specific issues raised in Chairman Anderson's letter:

- **Compliance Enforcement Initiative (BOTCC-2 and MRC-9)** – ELCON joined with other trade associations in a FERC filing strongly urging FERC approval of NERC's decision to revamp how it deals with Possible Violations of reliability standards that pose a lesser risk to the bulk power system. Registered entities are now overwhelmed by the demands of the compliance and enforcement "administrivia" associated with demonstrating compliance with many of the NERC standards. ELCON agrees with the other trade associations that the "Find, Fix, Track and Report" (FFTR) proposal can serve as one remedy for this serious and growing problem and provide a means to re-focus resources on issues more important to BPS reliability.
- **Compliance Application Notices – Status (MRC 10)** – Initially, ELCON was a strong advocate and supporter of the CANs process. However, we have become very disappointed with the results. We hoped that positive fixes were on the way, but have not yet seen them. There is very broad industry concerns with the CANs process. ELCON is working with other industry stakeholders to develop a procedure that will provide necessary guidance, respond to industry concerns, and minimize costs.
- **Status of CIP Standards Version 4 and 5 Implementation Plans (MRC-11):** -- The implementation of the CIP standards has become very complex including duplication of effort and backwards looking compliance requirements – thus raising serious resource and cost issues. There is very broad industry concern with how the standards are being implemented. ELCON is working with other industry stakeholders to develop an

implementation plan that will minimize costs while providing guidance and minimizing costs..

- **Bulk Electric System (BES) Definition and Rules of Procedure (MRC 12)** – ELCON is generally pleased with the outcome of what is now called Phase I of the BES Definition project (NERC Project 2010-17), and we urge the Board to endorse the drafting team’s product without qualification. We continue to feel strongly that technical criteria, assumptions or metrics used in definitions or standards be based on sound technical analysis that has been thoroughly vetted by the industry. For example, the continued use of the 20/75-MVA generation thresholds in the BES definition and Statement of Compliance Registry Criteria remains problematic. We urge the Board to reaffirm its unqualified support for Phase II and for the Phase II drafting team to complete its work expeditiously.



Electric Power Supply Association
*Advocating the **power** of competition*

**NERC Board of Trustees
Atlanta, Georgia
November 3, 2011
Policy Input of the Electric Power Supply Association**

On behalf of its member companies, the Electric Power Supply Association (“EPSA”)¹ appreciates the opportunity to provide policy input in advance of next week’s NERC Member Representatives Committee (“MRC”) and Board of Trustees (“BOT”) meetings in Atlanta Georgia. EPSA commends the MRC leadership, the BOT and NERC management for recognizing the value of stakeholders’ policy input in advance of the MRC and BOT meetings and how that input can play an important role in NERC’s successful evolution as the Electric Reliability Organization (“ERO”).

MRC Chair Bill Gallagher provided in his October 6 letter to BOT Chair John Q. Anderson five policy issues for which the BOT seeks comment. Herein, EPSA responds to the policy issues highlighted by the BOT Chair Anderson. Generally the theme of the EPSA comments remain similar to what was communicated to the BOT in preparation for the Vancouver meeting. NERC as an organization should be focused on material programs and processes that increase the ERO’s efficiency and effectiveness, as attested to by material evidence that supports these programs and processes. The new compliance and enforcement initiative is such a program. However, EPSA is concerned that the multitude of new compliance “guidance” initiatives create duplicative processes and confusion that may in fact undermine efficiency and limit the ERO’s effectiveness.

Compliance Enforcement Improvement Initiative

The ERO petitioned the Federal Energy Regulatory Commission (“FERC”) regarding new initiatives that will increase the efficiency of compliance enforcement. EPSA along with the other industry trade associations supported the NERC petition in October 21 comments to FERC. As was highlighted in the October 6, BOT policy input letter the thrust of this initiative is to reduce the violation caseload in light of heightened concerns from both industry and regulators

¹ EPSA is the national trade association representing competitive power suppliers, including generators and marketers. Competitive suppliers, which, collectively, account for 40 percent of the installed generating capacity in the United States, provide reliable and competitively priced electricity from environmentally responsible facilities serving power markets. Each EPSA member typically operates in four or more NERC regions, and members represent over 700 registered entities in the NERC registry. EPSA seeks to bring the benefits of competition to all power customers. The comments contained in this filing represent the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue.

over the growth in the backlog for minor administrative violations. In the FERC pleading EPSA and the other trade associations supported the need for increased efficiency for compliance demonstration. Moreover, the trades expressed their joint support for the ERO addressing this issue and submitting the petition to the Commission. In addition, the associations sought clarity regarding ex-parte concerns and a technical conference to discuss the progress of the initiative publicly.

EPSA has urged the Commission to act favorably on the petition so that the Find, Fix, Track and Report (“FFTR”) process can advance, furthering the efficiency of the compliance process. The new mechanism should serve as an impetus to improve the compliance and enforcement process and allow for more focus on issues that have the greatest impact on reliability. The pursuit of such improvements to the compliance and enforcement program is appropriate and should continue to be stressed. Managing compliance and enforcement is necessary for the ERO to meet its core mission and is further strengthened and defined by such changes.

Compliance Action Notices (CANs)

The Vancouver meeting highlighted a need to revisit the Compliance Application Notice (“CAN”) process to both rewrite CANs Process Document and the CANs issued thus far. EPSA appreciates this commitment to improve CANs and the CANs process. Much as has been documented already to date, industry continues to support the need for compliance guidance within the bounds of existing Standards. Unfortunately, since the inception of the CANs, EPSA members have found that the process and a small number of certain CANs go beyond the bounds of existing Standards.

The CANs process has the potential to appropriately provide guidance to assist company compliance efforts. However, because the process is new and still evolving, there are steps that need to be taken to strengthen the CANs process so that a CAN does not become final unless the CAN provides guidance that is within the bounds of Standards. To assist in that evolution EPSA provides the following recommendations:

(1) As an initial matter and as previously pointed out by EPSA, CANs function as supporting documents under NERC’s Rules of Procedure (“ROP”), but are not currently recognized as such. Recognizing them as supporting documents would align CANs with the existing ROP and increase clarity regarding how CANs fit with Standards. EPSA has recently submitted a letter to the NERC General Counsel about this issue (attached).

(2) CANs that have been reviewed and raise no concerns that they go beyond the bounds of existing Standards should be deemed as final and used as guidance. CANS that require a greater level of review should either be held in abeyance until

that review is completed or slated for the Standard rapid repair process. This would ensure that the majority of draft CANs are made final in a timely manner. These CANs would become quickly available to Compliance and Enforcement Authorities (“CEAs”). In addition, this process would provide sufficient due process while also identifying and providing for needed standard revision.

Status of CIP Standards Version 4 and 5 Implementation

EPSA members recognize the importance of Critical Infrastructure Protection (“CIP”) Standards because the Standards not only address reliability but security issues. The importance of CIP Standards highlights the need to quickly update and improve them. However, the quick pace of CIP Standard drafting has led to two different but concurrent versions that will need to be implemented almost simultaneously. The implementation of different versions over a short period of time creates significant challenges and confusion for industry.

In the spirit of the new compliance and enforcement initiative, there needs to be attention given to how these two versions can be implemented efficiently and reasonably. Given the open-ended questions about CIP 4 and 5 implementation, EPSA members encourage further dialogue among the ERO, Regions and Industry without delay to ensure successful CIP version 4 and 5 implementation.

Proposed New Rules of Procedure

As EPSA stated in its August policy input, the current taxonomy for determining changes for programs, processes and rules should raise and address material problems without undermining ERO efficiency. To ensure efficiency the BOT should be provided with material evidence for any changes considered prior to approving them. ROP changes should all be evaluated based on their material support and ability to increase ERO efficiency. One benchmark for determining adequate support is stakeholder comments. The BOT should ensure that comments are appropriately addressed before approving ROP changes.

The following is from the EPSA August policy input and remains relevant to the questions posed in BOT Chair Anderson in his October letter:

NERC has posted draft ROP revisions for sections 400, 1002 and 1502 that propose to simplify documents, make for more consistent use of defined terms, move provisions to different sections or consolidate sections, provide greater consistency among different documents that address the same topic and create conforming cross references. Additionally, the proposed changes create new authorities to fine entities for not responding to data requests and increase penalties for violations if the entity engages in “frivolous or dilatory action” during a hearing.

EPSA supports efforts to clean up the ROP by making the language more efficient and concise. However, EPSA is concerned about resources being expended on new ROP proposals that address infrequent and immaterial issues.

The new ROP proposals have been characterized during their rollout as rules that will be used infrequently because data requests generally are responded to and hearings occur without delay. Therefore EPSA is concerned that precedent-setting proposed ROPs address items that rarely happen and are not significant. In light of recent ERO priority and resource discussions, making immaterial ROP changes for infrequent events justifies EPSA's concern. New rules should be considered only if there is sufficient justification for the changes. Moreover, the ERO should be focused on material priorities.

Sincerely,

/s/

Jack Cashin

Director, Regulatory Affairs

Electric Power Supply Association



Electric Power Supply Association
Advocating the power of competition

1401 New York Avenue, NW
11th Floor
Washington, DC 20005
202/628-8200
202/628-8260 fax
www.epsa.org

October 25, 2011

David N. Cook
Senior Vice President & General Counsel
North American Electric Reliability Corporation (NERC)
1120 G St. NW, Suite 990
Washington, DC 20005

Dear David,

The Vancouver Board meeting highlighted the Compliance Action Notice (CAN) program and the need to revisit the program and associated processes. As NERC is in the process of revising the CANs program to increase its effectiveness while increasing Standard guidance and information in accordance with Commission Order No. 693, EPSA has comments for your consideration.

EPSA has found while examining the CANs process that there are potential implications for the NERC Rules of Procedure (ROP). These implications often prompt issues that go beyond specific CANs and the CANs process, suggesting the need for potentially revisiting and changing the NERC ROP. Specifically, it appears that the current NERC ROP views CANs as supporting documents for Standards. We would appreciate your views and any clarification you can offer on this interpretation.

From the NERC ROP, (Appendix 3A - of the Standards Process Manual, page 39 (attached)) the definition of "supporting documents" appears to apply to CANs for the following reasons:

1. The NERC Web page for CANS states: "CANS have two purposes: to provide transparency to industry on how an ERO auditor will apply compliance criteria to a NERC Reliability Standard and to establish consistency in the application of compliance criteria across all regions." See <http://www.nerc.com/page.php?cid=3|22|354>.
2. The July 8, 2011 Compliance Application Notice Update states - that "A CAN is not a Reliability Standard or an Interpretation of a Reliability Standard. Further, a CAN cannot modify or change an Interpretation or Reliability Standard." (p. 5) See http://www.nerc.com/files/CAN_Process_Update_20110708.pdf.

3. Appendix 3A (p. 39.) describes supporting documents: "These documents may explain or facilitate implementation of standards but do not themselves contain mandatory requirements subject to compliance review. Any requirements that are mandatory shall be incorporated into the Standard in the Standard development process." This description matches the purpose of CANs. Furthermore, CANs align with the definitions for two of the examples of supporting documents found in the table on p. 39 of the Standards Process Manual:

- **Guideline:** Recommended process that identifies a method of meeting a requirement under specific conditions.
- **Reference:** Descriptive, technical information or analysis or explanatory information to support the understanding and interpretation of a reliability standard. A standard reference may support the implementation of a reliability standard or satisfy another purpose consistent with the reliability and market interface principles.

Properly, these two types of supporting documents are consistent with the Commission's assertion that "(NERC) needs to provide more information and guidance to registered entities concerning compliance and enforcement process" (FERC Order on NERC Three-Year Assessment). As CANs fulfill each of these functions, they should be interpreted to be supporting documents.

Much of the Vancouver discussion on this issue addressed the lack of clarity regarding CANs and their relationship with both Standards and Standard Interpretations. If CANs are recognized specifically as Standard supporting documents, how CANs relate to Standards becomes better defined regarding how they should be used by Compliance Enforcement Authorities (CEAs). Moreover, using CANs as supporting documents would alleviate due process concerns that have been expressed in CANs discussions.

As CANs are on the Atlanta Board of Trustees (BOT) agenda, EPSA believes further clarity is necessary on this issue. Consequently, your thoughts on the questions and issues raised in the letter are appreciated.

Please call if you have any questions.

Sincerely,



Jack Cashin, Director of Regulatory Policy

Cc: Gerry W. Cauley, President and Chief Executive Officer of NERC
Herb Schrayshuen, Senior Vice President & General Counsel of NERC
Mike Moon, Compliance Operations of NERC

NERC Sector 4 – Federal or Provincial Utility
Policy Input to NERC Board of Trustee Request of October, 2011
October 24, 2011

The North American Electric Reliability Corporation (NERC) Sector 4 members appreciate the opportunity to provide written input to the NERC Board of Trustees. Sector 4 held a conference call among its members to discuss the request for policy input and shared several emails to coordinate this input.

1. Compliance Enforcement Improvement Initiatives

Sector 4 members support a goal of improving compliance enforcement and look forward to engaging with NERC and industry to develop and implement improvements. Sector 4 supports the recent FERC filing outlining NERC's approach to Possible Violations that pose lesser risk to the bulk power system. In particular, the improvements should reduce administrative activities that are unrelated to the reliability of the BES. The reductions and improvements should be for both NERC and industry workload, and ultimately focus efforts on critical high priority issues.

2. Compliance Application Notices in the Context of Standards and Interpretations Development

Sector 4 appreciates the effort and priority that NERC staff is placing on developing CANs in an effort to provide more consistency and transparency. As we stated in our previous comments, we view the development of CANs as only a stopgap measure that has the potential to provide considerable risk to industry and NERC, especially if the CAN conflicts with current industry approach and understanding of standard requirements. Also, because the CAN is not an official interpretation, any compliance violations that may result from the use of a CAN may not be recognized in some jurisdictions. Sector 4 appreciates NERC's recognition of industry's concerns, and the discussion at the August MRC and Board meetings. In fact, recent CAN changes now properly assign applicability to the Compliance Enforcement Authority. We also look forward to additional improvements that would result in CANs being used as guidance rather than rigid requirements and interpretations. We would also recommend that NERC provide written feedback to industry on why some industry comments are not acted upon.

3. Status of CIP Standards Version 4 and 5 Implementation Plans

Staging and timing of Version 4 and 5 implementation is critical, and efforts should be taken to reduce duplication of effort and unnecessary investment that could result from premature implementation of Version 4.

NERC Sector 4 – Federal or Provincial Utility
Policy Input to NERC Board of Trustee Request of October, 2011
October 24, 2011

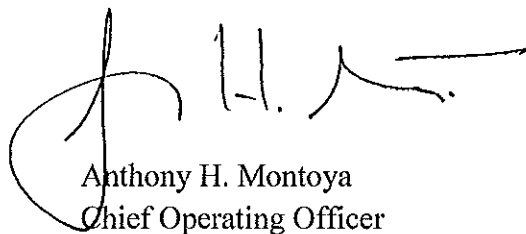
4. MRC BES/ALR Policy Issues Task Force Report to the Board

Sector 4 members support the efforts of the Bulk Electric System (BES) Standard Drafting Team (SDT) activities related to BES/ALR and their efforts to continue work to resolve this.

5. NERC Rules of Procedure Changes

Sector 4 is concerned that ROP's could be used to create mandatory requirements that are outside of the standard development and enforcement process. Specifically, Sector 4 is concerned with Section 414, "Imposition of Fines for Failure to Provide Information Requested Pursuant to the Rules of Procedure", whereby fines unrelated to Electric Reliability Standard enforcement are being contemplated. The establishment of requirements and fines, outside of the Standard development and enforcement process could create serious jurisdictional problems for Sector 4 members. Sector 4 Canadian Provincial Utility representatives encourage the NERC Board to consider comments being provided by the Canadian Electricity Association for additional input on this policy issue.

On behalf of the NERC Sector 4 Members -
Sincerely,



Anthony H. Montoya
Chief Operating Officer
Western Area Power Administration



ISO/RTO Council's (IRC) Policy Input to Board of Trustees ***(Ref. MRC Agenda Items 9, 10, 11 and 15)***

MRC Agenda Item 9 – Compliance Enforcement Initiative

The ISO/RTO Council (IRC¹) supports NERC's request that FERC approve the Find, Fix, Track and Report (FFTR) initiative in its Compliance Monitoring and Enforcement Program (CMEP) as outlined by NERC. The IRC supports NERC's objective of streamlining the processing of possible violations that pose lesser risks to the bulk power system, and supports the use of the FFTR mechanism as a means to achieve that objective.

The IRC agrees with NERC that the FFTR initiative represents "a more flexible approach to enforcing compliance in a manner that truly fosters enhanced reliability rather than draining resources on minutia" while providing "for systematic NERC tracking of region- and industry-wide trends in possible violations/issues to ensure continued reliable operations and compliance with standards...."

The IRC have proposed recommendations in two areas:

1. FERC require NERC to use the NERC stakeholder process in its preparation of the six-month and one-year reports on the initiative, providing an opportunity for public review of those reports once filed.
2. FERC remand the proposed entity risk assessment initiative to NERC, and direct NERC to fully develop that initiative's components and process with industry input.

The IRC finds the entity risk assessment components presented by NERC in its petition to be both vague and subjective, and the manner in which the components are evaluated to be non-transparent. This creates a significant possibility that a Registered Entity may be unfairly saddled with a "risky" reputation without a means to even understand, much less challenge, the manner in which that degree of risk was determined.

¹ The IRC is comprised of the Alberta Electric System Operator ("AESO"), Electric Reliability Council of Texas ("ERCOT"), the Independent Electricity System Operator of Ontario, Inc. ("IESO"), ISO New England, Inc. ("ISO-NE"), Midwest Independent Transmission System Operator, Inc. ("Midwest ISO"), New York Independent System Operator, Inc. ("NYISO"), PJM Interconnection, L.L.C. ("PJM"), Southwest Power Pool, Inc. ("SPP") and New Brunswick System Operator ("NBSO").

Further development of the entity risk assessment components and process, with industry input, is therefore needed to ensure that objective and transparent criteria are in place that will permit conduct of the assessments in a fair, objective, and reviewable manner. Given the potential impact to Registered Entities' compliance posture and liability exposure, the rights and obligations and impact must be fully understood and the process must be completely transparent before it is put into effect. Moreover, FERC should require the addition of a process that will afford Registered Entities an opportunity to challenge their assigned risk levels.

MRC Agenda Item 10 – Compliance Application Notices – Status

The IRC previously commented on its concern that the Compliance Application Notices were imposing new requirements as part of their guidelines to Compliance Enforcement Agents. NERC President Gerry Cauley at the August 3, 2011 Board of Trustees meeting agreed with the concern and indicated that he would initiate revisions to selected CANs to remove requirement language such that CANs contain guideline language and provide examples for evidence only.

These comments are directed towards the revised CANs posted subsequent to Mr. Cauley's statement.

IRC's Comments

The IRC recognizes significant improvement in a number of revised CANs since Mr. Cauley's declaration and thanks Mr. Cauley for his support in this area. The IRC however still finds that some CANs contain or imply requirements not stipulated in standards, and therefore require additional revision to remove such language.

The IRC reiterates its support of a CAN Process that is implemented consistent with the limited intent and scope that recognizes that:

1. The CAN Process is not meant to address "gaps and ambiguities" in the approved standards, and that CANs shall not introduce any new standard, requirement or measure not explicitly mandated by a given standard
 - a. CANS must not be used to implement rights and obligations, policies, best practices or NERC's subjective belief of what is required by a standard where any of the foregoing exceed the scope of the standards;
 - b. CANS must not be used to close perceived "gaps" in standards;

- c. CANS are intended to achieve consistency among auditors with respect to compliance assessments; and should be limited to identifying non-exclusive guiding principles for determining “safe-harbour” evidence that is acceptable to demonstrate compliance (i.e. not defining the one and only measurement of piece of evidence, just guidelines for evidence that if met will demonstrate compliance)
 - d. CANS are temporary CMEP administration aids to facilitate consistent CMEP results that will expire if and when the underlying issue is addressed by an interpretation and/or standard revision implemented through the FERC approved standards development process.
2. The CAN Process is a NERC-staff initiative and not part of the Standards Development Process and therefore not enforceable.
 3. A CAN must not impose data retention or measures that begin BEFORE the effective dates given in the FERC and Canadian authorities’ approvals.
 4. A CAN must not contain language indicating a “possible compliance violation”; a “non-compliance” finding; or a “compliance” finding based on the contents of the CAN. Such language should be removed before any CAN is considered final.

MRC Agenda Item 11 – Status of CIP Standards Version 4 and 5 Implementation Plans

Version 3 of the CIP standards is in effect and the implementation of those standards is well underway. Many entities are already fully responsible for compliance with these standards, while others may still be in implementation. The new Version 4 standard changed the identification requirements for Critical Asset identification from the Risk-Based Assessment Methodology of the Version 3 to a newly established set of “Bright Line” criteria in CIP-002-4. Changes within CIP-003 to CIP-009 V4 are only “conformance changes” to coordinate with the changes in CIP-002-4. FERC has issued a NOPR for comment on their proposal to approve Version 4. A primary concern with the NOPR proposals is that FERC proposes to direct NERC to make the implementation plan for Version 4 a firm “deadline” for implementation. This may be problematic in that entities must remain fully compliant with Version 3 until Version 4 is fully “mandatory and enforceable”. There may be significant differences between the Critical Assets (and, thus, the Critical Cyber Assets) identified in Versions 3 and 4. The entities must carefully bookend compliance for all Critical Assets and Critical Cyber Assets with both versions under the new CIP standards.



These concerns become even more complex when the proposed timeline for CIP Version 5 is considered. The present Version 5 development timeline calls for posting for a concurrent 60 day comment and ballot period beginning in early November 2011. Successive and recirculation ballots are planned for the first half of 2012 as needed, with an anticipated filing of Version 5 with FERC in the third quarter of 2012.

There are significant concerns with the overlap of implementation plans. The implementation of the presently mandatory Version 3 standards, the Version 4 Implementation plan, depending upon the FERC approval (NOPR has been issued), with a resultant Version 4 mandatory status possibly effective even before the completion of all implementation of Version 3, and a possible Version 5 Implementation plan beginning even before Version 4 is fully mandatory and implemented and Version 5 mandatory status beginning even before the completion of the mandatory implementation of Version 4. All of these overlap with the required Audit/Compliance Period for the present cycles and on into the "Next" Audit Cycle.

Unnecessary complexity exists in such a moving implementation. Great care and attention will be required as Registered Entities transition from Version 3 to Version 4, and then subsequently move from Version 4 to Version 5; with overlapping requirements of each.

It is not difficult to postulate the possibility that some Critical Assets may be identified under the bright line criteria of Version 4 that were not identified under the risk-based assessment methodology of Version 3; or even vice versa. Version 5 modifies the bright line criteria by adding different tiers of Critical Assets. Thus, this presents a very complicated and complex set of tasks and demonstration of compliance for differing standards' requirements.

FERC should be encouraged not to make the Implementation Plan of Version 4 a mandatory deadline, given the uncertainties of the development of Version 5 of the CIP standards. The Implementation Plan should be established with flexibilities to coordinate with requirements of Version 5. Perhaps, given the overlapping of the various Implementation Plans, it would be much better and result in less possibility of gaps, if the Implementation of Version 4 were not required, given the very near future of Version 5 requirements.

MRC Agenda Item 15 – Rules of Procedure Changes

For this and future Rules of Procedure (RoP) changes, it would be helpful if NERC would communicate the reasons for the proposed change prior to posting them for comment.

Based on our extensive experience with filing Tariff/Market Rule changes with regulators, NERC should vet concepts regarding RoP changes because:

- a. NERC could use its resources more efficiently. If NERC personnel would first present for discussion RoP concepts and take time to understand areas of agreement/disagreement, and tailor accordingly, then less time needs to be spent drafting RoP changes that are later deemed unnecessary or unwise, but only after having received comment.
- b. Stakeholders could use their resources more efficiently. When Stakeholders are not first briefed on the concepts of the proposal, and the problems the proposal is aiming to solve, it is very difficult to know how to effectively review and comment. This problem is exacerbated when NERC publishes for comment documents several hundred pages long.
- c. Any disagreements will be identified clearly & early. To the extent there is disagreement, it is clearly understood and not the result of misunderstanding. This will facilitate and expedite Regulators' review of the proposed changes.

The EAct mandated commenting periods for changes to the ERO's rules. We believe the reason for this was to ensure industry input was considered. Understanding the problem to be solved before asking Stakeholders to critique a proposed solution would enable targeted, informed comments and more efficient use of resources.



www.lppc.org

The Large Public Power Council

300 North Washington Street, Suite 405, Alexandria, VA 22314
703/740-1750 (phone) • 703/740-1770 (fax)
lppc@lppc.org (e-mail)

MEMORANDUM

To: John Q. Anderson

From: Bill Gaines, Director of Utilities and CEO, Tacoma Utilities, on Behalf of the Large Public Power Council

Subject: October 6, 2011 Letter Requesting Input

Please be advised that on behalf of the Large Public Power Council ("LPPC"),¹ I have reviewed and concur in the response submitted today by the State and Municipal Utility Sector to your October 6, 2011 letter requesting input in advance of the upcoming Members Representative Committee and NERC Board meetings.

¹ LPPC represents 25 of the largest state and municipal utilities in the nation, with members that own approximately 90% of the transmission assets owned by non-federal public power utilities. The council's members are listed below.

Austin Energy (TX) • Chelan County PUD (WA) • CPS Energy (TX) • Clark Public Utilities (WA) • Colorado Springs Utilities (CO)
IID (CA) • JEA (FL) • Long Island Power Authority (NY) • Los Angeles Department of Water and Power (CA) • Lower Colorado River Authority (TX)
MEAG Power (GA) • Nebraska Public Power District (NE) • New York Power Authority (NY) • Omaha Public Power District (NE) • OUC (FL)
Platte River Power Authority (CO) • Puerto Rico Electric Power Authority (PR) • Sacramento Municipal Utility District (CA) • Salt River Project (AZ)
Santee Cooper (SC) • Seattle City Light (WA) • Snohomish County PUD (WA) • Tacoma Public Utilities (WA)



POLICY INPUT TO NERC BOARD OF TRUSTEES

NOVEMBER 3, 2011

Pursuant to the NERC Board of Trustee's request for policy input from the NERC Member Representative Committee for the upcoming November 3, 2011 meeting, the Midwest Reliability Organization ("MRO") Board of Directors respectfully submits the following for consideration by the NERC Board of Trustees.

Compliance Enforcement Improvement Initiatives (BOTCC-2 and MRC-9)

MRO supports this effort. Possible violations from the MRO region comprised nearly 21% of the initial submitted filing. MRO believes that tailoring the compliance and enforcement process to significance and risk is an important step in shifting from a compliance and enforcement-centric ERO model to an engagement-centric ERO model that emphasizes performance. Compliance must be considered in the context of performance. For example, a Registered Entity which has strong internal assurance programs to find and self report problems before they escalate, combined with solid, swift corrective action plans, should be encouraged and not punished through a labyrinth of enforcement administration. The Compliance and Enforcement program must be designed around risk and provide the encouragement and tools necessary for the industry to assure risks are being addressed, which will ultimately improve performance.

Compliance Application Notices – Status (MRC 10)

MRO commends NERC's acknowledgement of the need to improve existing CANs and encourages NERC to consider how it can effectively leverage the expertise of the industry in the development of CANs without compromising the ERO's enforcement function. Additionally, MRO is concerned that CANs are designed for use by Region and NERC staff. If the intent of CANs is to set expectations for compliance, then these expectations should be transparent to those who are subject to them, the Registered Entities.

MRO is also concerned that the Regions will be "hamstrung" as NERC is providing a binding directive on the Regions via the CANs without the same obligation on the industry. Instead, Region staff and those we oversee, the Registered Entities, should share the same expectations related to the application of the standards.

MRO supports a two step approach to bring about more uniform application of the standards in the compliance area which can replace the current CANs:

1. NERC should establish and train to a uniform process for generally applying the standards across the Regions and NERC. In addition, MRO suggests that NERC should





continue to use the quarterly NERC and Region audit staff workshops to address the uniform application of standards.

2. Phase 2 of the NERC compliance enforcement initiative should include the development of application guides and model controls and procedures to meet requirements. MRO is facilitating these efforts in the MRO Region using stakeholder expertise to develop standards application guides to better clarify the application of requirements, the type of evidence needed to demonstrate compliance, and the controls and procedures necessary to “wrap around” the requirements.

Bulk Electric System (BES) Definition and Rules of Procedure – Status (MRC-12)

MRO supports NERC’s efforts to address the regulatory directive. Any other changes regarding the BES definition and related Rules of Procedure can be accomplished later as a separate filing to the regulator.

Rules of Procedure Changes (MRC-15)

MRO supports the non-substantive Rules of Procedure changes and other changes that are required to comply with a regulatory directive. MRO is not supportive of other proposed substantive changes to the Rules of Procedures at this time. Currently, NERC and the industry are facing numerous challenges, including the adoption of a new compliance enforcement initiative. MRO recommends that NERC defer the other Rules of Procedure changes for later in 2012 and, perhaps, include them as part of Phase 2 of the compliance enforcement initiative.

Regional Reliability Standards

MRO notes that two regional standards within the Eastern Interconnection will be presented to the NERC Trustees for approval on November 3, 2011. MRO is again concerned that a proliferation of regional standards will be spread across the Eastern Interconnection – complicating the operations of the bulk electric system by creating un-necessary coordination seams between systems and adding both costs and risk across the interconnection.

Additionally, both proposed regional standards are being addressed through the standards process:

- PRC-006. The continent-wide Under Frequency Load Shedding standard (PRC-006-1) was approved by the Trustees on November 4, 2010 and is pending regulatory approval.





- MOD-025. NERC has a project to merge two standards (MOD-024 and MOD-025) into a single standard (MOD-025-2, Project 2007-09 (“Generation Verification”)).

First, MRO suggests that the Trustees direct NERC staff to coordinate the current standards setting process among the six Regional Entities in the Eastern Interconnection to assure as much uniformity as possible across the interconnection.

Second, MRO suggests that the Trustees direct NERC staff to establish a standards setting process for the Eastern Interconnection. While the Rules permit regional standards, they do not have an explicit requirement for coordination among the Regional Entities within the Eastern Interconnection or an explicit method to permit the Eastern Interconnection to propose and ballot standards through a single process. Further, deference for interconnection-wide standards should apply equally to the Eastern Interconnection as they do to Regional Entities organized within an interconnection (Texas and the West interconnections). Where possible, reliability will benefit from greater standardization across the Eastern Interconnection.





NORTHEAST POWER COORDINATING COUNCIL, INC.
1040 AVE OF THE AMERICAS, NEW YORK, NY 10018 TELEPHONE (212) 840-1070 FAX (212) 302-2782

**NPCC Board of Directors Policy Input to the
November 2, 2011 NERC Member Representatives Committee
and November 3, 2011 NERC Board of Trustees Meetings**

1. Compliance Enforcement Initiative

- a. NPCC supports the Find, Fix, Track and Report (FFT) procedure as a forward advancement in NERC's continuing efforts to improve the efficiency and effectiveness of the ERO's compliance processes for Possible Violations that pose lesser risks to the bulk power system
- b. NPCC recommends that NERC continue to emphasize that FFT candidates are strictly identified by the Regional Entities and that there are no formulaic criteria for FFT designation
- c. NPCC suggests that the filing of FFTs for approval, in order to obtain closure with regard to Possible Violations, would be an appropriate and effective enhancement to the FFT process

2. Compliance Application Notices (CAN) - Status

- a. NPCC supports the suggestions made by the industry for improvement to the process during the posting periods and is actively engaging its Regional Standards Committee in the review of draft CANs
- b. NPCC continues to be concerned that the clarification provided by CANs, which are temporary in nature, can have the unintended impact of expanding a standard and adding to its requirements. Any such changes should be expeditiously captured within a revised standard.

3. Status of CIP Standards Version 4 and 5 Implementation Plans

- a. NPCC supports a phased approach to the implementation of CIP standards, with Version 5 using the Bright line approach to the identification of critical cyber assets that was introduced in Version 4
- b. NPCC suggests that Version 5 of the CIP standards should not result in excess or unneeded expenditures, as it is a furtherance of CIP Version 4 and addresses the remaining FERC Directives found in Order 706

4. Bulk Electric System (BES) Definition and Rules of Procedure - Status

- a. NPCC members have separately submitted their individual comments with regard to the BES Definition
- b. NPCC acknowledges the proposed NERC BES Definition as being responsive to the FERC Order and reiterates its view that cost effectiveness should be a consideration in the implementation, including in the exception process
- c. NPCC, consistent with its commitment to enhanced reliability, will continue to utilize a risk-based analysis to define facilities for which its more stringent Regional criteria apply

5. Rules of Procedure Changes

- a. NPCC does not support the imposition of financial penalties for administrative infractions by registered entities
- b. NPCC strongly recommends that Rules of Procedure changes not preclude NPCC's FERC approved structure for its Hearing Body

Approved by the NPCC Board of Directors at its October 26, 2011 Meeting

**National Rural Electric Cooperative Association (NRECA)
Policy Input to the NERC Board of Trustees (BOT)
October 24, 2011**

NRECA appreciates the opportunity to provide policy input to the NERC BOT regarding several issues that will be discussed at the November 2/3 MRC and BOT meetings.

Compliance Enforcement Improvement Initiatives (BOTCC-2 and MRC 9)

- NRECA, along with APPA, EEI, ELCON, EPSA, LPPC and TAPS, filed joint comments with FERC supporting the NERC FFTR proposal. EEI is including these joint comments with their policy input submittal and NRECA strongly supports the issues addressed in the joint comments.
- Specifically from the joint comments, NRECA supports the need for a six and twelve month report from NERC on the effectiveness of the FFTR process. These reports must provide details describing the extent of the efficiencies gained by industry, NERC and the REs due to the implementation of the FFTR process.
- NRECA also supports the need for a high level policy focused FERC Commissioner-led technical conference in 2012 to further examine the efficiency results of implementing the FFTR process and to more fully review the NERC compliance and enforcement program. This technical conference should review the many elements of the NERC compliance and enforcement program. There is industry concern that there are unnecessary, conflicting and confusing processes/elements in the NERC compliance and enforcement program that are causing industry to not clearly understand where they should focus their attention.
- From an overall compliance and enforcement program view, NRECA is hearing increasing concerns from its members that the costs associated with demonstrating compliance are continuing to increase at excessive rates. Without continued attention on making the NERC compliance and enforcement program much more efficient and effective, associated industry costs will soon become unsustainable. The entire process for how industry is required to document its compliance efforts must be reexamined to ensure that the focus is actually on operating a reliable BES.
- NERC, the REs and industry need to enter into a dialogue to review the long-term viability for NERC to become the lessons-learned organization it aspires to be. Because the NERC governing documents do not provide a way for NERC to be involved in an examination of an event/incident without also focusing on compliance and enforcement matters, NERC may not be in the best position to gather information from industry and produce timely and comprehensive lessons learned for industry. Other options need to be explored for determining the best way to provide industry with needed lessons learned analysis and information.

- NRECA is beginning to hear of concerns with NERC's risk profiling program that is being implemented to determine the extent of an entity's compliance program. The results of this profiling goes toward determining the level of audit an entity will be subject to. The concerns include NERC/RE staff seeking to review sensitive and confidential internal documents, which if not provided, will cause that entity's audit to be more extensive. We believe these early concerns with the program point to a need to take an immediate and careful review of the program before these and other problems become a more significant issue.
- NRECA strongly encourages NERC to continue to explore steps to reduce burdens on stakeholders, RE and NERC staff, while focusing on the issues that are most critical to BES reliability.

Compliance Application Notices (MRC-10)

- NRECA is very dissatisfied with the level of progress that has been made regarding the correction of problems with several CANs and the CAN Process since August BOT meeting. The vast majority of industry comments on the CAN Process and CAN-0016 were not responded to in a satisfactory manner. As an example, approximately 70 respondents commented that the draft revised CAN-0016 (on CIP-001) exceeded the scope of the standard language. In response, NERC apparently disagreed and issued a revised final CAN that interpreted CIP-001 and developed audit schemes that are not represented in the standard language.
- NRECA and other trade associations are likely to submit several CANs for a higher level review as permitted in the revised CAN process. However, since the CEO of NERC is part of the approval process of CANs, it is unclear what evidence – above and beyond comments already submitted on the CAN during the development stage - would convince the CEO to take a different position than he previously took. NRECA and other trade associations will utilize the existing process to see if it is fair and effective for providing an appeal of a CAN. It is possible that further changes may be needed to the CAN Process after we see how the current process works.
- NRECA is concerned that NERC is more focused with making minor adjustments to all the existing final and draft CANs rather than more properly focusing the majority of its attention on the CANs that industry identified as improperly changing and interpreting standards outside of the standards development process. NERC has overwhelmed the industry with requesting comments on twenty-plus draft CANs since the end of August. With industry attention and focus on numerous other NERC standard and compliance activities, issuing this many CANs for industry comment in such a short timeframe is stretching industry resources to the limit. In some cases, it is likely that industry did not have the ability to properly review draft CANs due to other commitments. Industry did not ask for all CANs to be revised. We did ask for the process and the few

problematic CANs we identified to be revised between the August and November BOT meetings. NERC's unnecessary rush to revise all CANs is not indicative of NERC addressing industry's concerns, and NRECA is very disappointed with NERC's direction on these issues.

- Several draft CANs and the revised final CAN-0016 continue to exceed providing compliance audit guidance and have actually interpreted or changed the original meaning of the existing reliability standard outside of the standards development process. This is unacceptable and these missteps must be corrected.
- There needs to be a priority placed on developing a permanent solution to address the vague and unclear language that exists in standards – CANs are not that solution. The appropriate solution is to fix such language in the formal standards development process or through formal interpretations.
- It continues to be unacceptable for an entity to be found in violation of a standard based on a CAN that expands the meaning or requirements of a standard because that CAN did not go through the standards development process, nor did it gain approval from the Registered Ballot Body (RBB), the BOT or FERC.
- The basis for any violation and resulting penalty must be from a standard or interpretation that has received approval from the RBB, the BOT and FERC.

Status of CIP Standards Version 4 and 5 Implementation Plans (MRC-11)

- NRECA is concerned with a number of issues regarding the forthcoming implementation of Version 4 and 5 of the CIP standards. With the issuance of FERC's NOPR on Version 4 of the CIP standards, and the potential approval of these standards, the timeframe for when entities will have to implement these standards may not be far off. While FERC is currently evaluating Version 4, the industry is moving forward with the development of Version 5. The primary need for Version 5 is the need to address the many outstanding FERC directives that were not addressed in Version 4. Version 4 only addressed the FERC directive related to developing bright-line criteria for identifying Critical Assets. With the potential for Version 5 to be approved by industry and the BOT in the third quarter of 2012 and shortly thereafter submitted to FERC for approval, this sets up a situation over the next few years that could require entities to go from Version 3 of the CIP standards to implementing Version 4 and then Version 5 in quick succession.
- NRECA believes the potential for the Version 4 and 5 implementation plans to overlap one another could create a number of problems. The most significant problems could be confusion over what an entity is required to comply with and a lack of clarity for auditors knowing what version of a standard to audit an entity against. In addition, with the constant changing of the CIP standards over the next few years, entities may be faced with unnecessary increases in compliance demonstration

and program costs. It is critical for industry, NERC and the REs to have a detailed plan developed to address the concerns identified above. We ask NERC and the REs to immediately reach out to industry – possibly through the trade associations – to begin developing solutions to these potential problems.

- NRECA requests that NERC meet with the trade association immediately after the November 3 BOT meeting to discuss the development of NERC's and industry's comments to FERC on the Version 4 NOPR.
- NERC must understand that industry cannot continue to be faced with constantly changing CIP standards. There must be an effort to quickly bring these standards to a final and stable state so industry can focus on developing and finalizing their compliance plans and programs related to the CIP standards.

Bulk Electric System (BES) Definition and Rules of Procedure (MRC-12)

- With the affirmative result of the initial ballot of the BES definition, NRECA is hopeful that the likely forthcoming recirculation ballot will maintain that affirmative result. This would provide the BOT with a revised definition that satisfactorily responds to FERC's Order Nos. 743 and 743-A within the timeframe provided by FERC.
- Upon the BES definition drafting team's completion of this first phase of work on the BES definition, NERC needs to continue providing the needed support and priority for the drafting team's efforts on phase 2 of project which is scheduled to begin immediately upon completion of the first phase.

Rules of Procedure (ROP) Changes (MRC-15)

- NRECA remains strongly opposed to NERC assessing penalties for non-standard/compliance related actions. NERC has not provided any evidence or basis for such significant potential changes to its ROP. In addition to opposing these changes, NRECA believes that Section 215 of the Federal Power Act does not provide NERC with such authority. Making such changes to the ROP may make it necessary for industry to consider other steps, including legal options, to prevent these changes from being implemented.
- NRECA also remains strongly opposed to the NERC proposal to increase from 10 to 50 the number of NERC members required to request an ROP modification. Again, NERC has provided no evidence or basis for demonstrating the need for such changes. There appears to be no other purpose for these changes other than to make it more difficult for members to request modifications to the ROP. To date NERC members have never formally requested ROP changes which makes it all the more confusing why NERC has proposed this unnecessary change to the ROP.
- For all future ROP changes proposed by NERC, there must be detailed evidence and support provided for the proposed changes prior to the 45-day comment period. Recent proposed changes to the NERC ROP have

not been accompanied by any evidence/basis. This makes it challenging for industry to understand why changes were proposed and it does not help industry to provide constructive and targeted comments on such changes.

- NRECA appreciates what appears to be an effort to provide industry with an advance opportunity to review and provide feedback to NERC on forthcoming ROP modifications. We hope this will be an ongoing effort.

Barry R. Lawson
Associate Director, Power Delivery & Reliability
National Rural Electric Cooperative Association (NRECA)
703.907.5781
barry.lawson@nreca.coop

MEMORANDUM

From: John DiStasio
Tim J. Arlt

To: Dave Nevius, Secretary
NERC Member Representatives Committee

Subject: Response to Request for Policy Input

Date: October 24, 2011

This response is submitted on behalf of the MRC's State and Municipal and Sector Utilities ("SMUs") to the letter dated October 6, 2011 from NERC Board Chairman John Q. Anderson to Mr. Bill Gallagher, acting in his capacity as Chairman of the NERC Member Representatives Committee (MRC), requesting policy input on topics to be discussed by the NERC MRC and the NERC Board of Trustees at meetings to be held November 2 and 3, 2011.

This response addresses the following five topics raised in Mr. Anderson's October 6th letter, and provides additional thoughts related to general direction and priorities.

- NERC's Compliance Enforcement Initiative to address Possible Violations that pose lesser risks to the Bulk Power System (BPS), and to facilitate increased enforcement discretion (BOTCC-2; MRC-9);
- NERC's effort to revise the process and content of Compliance Application Notices (CANs) (MRC-10);
- NERC's proposed implementation plans for Versions 4 and 5 of the Critical Infrastructure Protection (CIP) Standards (MRC-11);
- NERC's efforts to develop a new Bulk Electric System (BES) definition and Rules of Procedure (ROP) changes responsive to FERC Order Nos. 743 and 743-A (MRC-12); and
- NERC's proposed ROP changes, including a provision to impose penalties in the event a registered entity does not respond to a NERC data request (MRC-15).

The November Board meeting provides a timely opportunity for NERC to assess its strategic direction and priorities for 2012 and beyond, to ensure that we are making effective use of resources to ensure reliable operation of the BPS, now and in the future. SMUs believe that the ERO Enterprise, which encompasses NERC, its Regional Entities and the registered entities and stakeholders that participate in NERC's activities, are at a new crossroad. It is no longer sufficient that we work *harder* on the various standards, compliance, cyber-security and events analysis initiatives we now have under way. Instead we need to create and implement process initiatives that allow us to get things done with less time and fewer resources, to free up

NERC and industry bandwidth to work on more important initiatives. We also need to be cautious about launching new initiatives, to make sure that new projects do not ultimately duplicate the work of other organizations or create multiple processes within NERC.

As discussed below, we applaud NERC for its develop and implementation of the Compliance Enforcement Initiative, but remain concerned that the Compliance Application Notice process is duplicative of the standards process and other NERC compliance tools such as compliance reports, bulletins, directives, and Reliability Standard Audit Worksheets.

The NERC Standards Process is worthy of additional high-level attention. We are interested in exploring process improvements, with respect given to due process, that would allow the industry to reach consensus in support of technically sound standards more expeditiously than today, with less time, effort and expense. It is increasingly common for drafting teams to second-guess their own efforts to write requirements that accomplish reliability objectives based on perception that the enforcement process is focused on compliance, not on reliable operation.

NERC also faces a continuing tension between its goal of becoming a learning organization and its role as an enforcement entity. Event analysis is a fundamental obligation of both NERC and the industry, if we are to learn from our mistakes, to prevent the next wide area BES event from occurring. However, the perception of industry stakeholders is that event analysis and public distribution of lessons learned take a second chair behind preservation of enforcement issues. Finally, SMUs recognize that the electric industry faces a daunting set of emerging issues, some of which are squarely within NERC's statutory mandate and others which are more peripheral to NERC's scope and mission. We need to develop a better strategy and process for policy issue identification and scoping, to ensure that NERC develops timely information for policy makers on emerging issues, without jeopardizing the ERO's ability to accomplish its core mission.

Our input on the specific questions raised in the October 6 letter is this:

1. Compliance Enforcement Initiative (BOTCC-2; MRC-9)

SMUs support NERC's September 30, 2011 filing with the Federal Energy Regulatory Commission (FERC) in Docket No. RC11-6 ("the September 30 Filing") introducing a new enforcement process that permits regional entities to exercise the discretion to treat possible violations that pose lesser risk through "Find, Fix and Track" reports, in place of a formal Notice of Penalty. SMUs believe that the proposed approach holds much potential for reforming the enforcement process to reflect a "risk-based" approach to establishing priorities for compliance and enforcement activities. This will allow the industry to refocus its efforts on achieving reliability excellence through attention to matters that pose the greatest risk to the BES. The new approach also promises to improve caseload processing to reduce the enforcement backlog that is now pending before NERC.

To facilitate implementation of this new process and to provide needed certainty to registered entities as to the mechanics of the proposed compliance enforcement initiative, SMUs urge NERC to establish clear guidelines in order to give regional entities and registered entities reasonably objective direction as to eligibility for "find, fix and track" (FFT) treatment. Such

clearly-defined procedures will guide regions in their implementation of the compliance initiative and ensure some degree of uniformity across regions as to how the process is carried out. SMUs recognize that these guidelines should invest the regional entities with a meaningful discretion in determining which potential violations will be afforded FFT treatment.

As part of the September 30 Filing, NERC introduces what it envisions to be an ongoing initiative to develop an “entity risk assessment” enabling registered entities to enjoy “lesser compliance monitoring,” based on a determination that the entities meet certain criteria for organizations that can be relied upon to manage reliability matters in a demonstrably expert fashion. While SMUs express tentative support this concept, they are very concerned about fairness in implementation. SMUs stress the need for uniformity and objectivity in how qualification for this “lesser compliance monitoring” treatment is determined across the program and between regions. In particular, NERC should develop objective metrics to provided a basis for how such determinations are to be made, how a registered entities’ qualification for “lesser compliance monitoring” treatment will be determined and by whom. SMUs submit that in order for this concept to be administered fairly and effectively, all registered entities must start with a clean slate as of the date this program is implemented, regardless of past compliance history. This will ensure that the new process will be administered without prejudice and will properly account for registered entities’ actions under the newly-developed compliance enforcement initiative.

SMUs look forward to working with NERC and other stakeholders to further refine the mechanics of the proposed approach to enforcement discretion.

2. Compliance Application Notices Content and Process (MRC-10)

SMUs generally support the use of CANs as a helpful tool to resolve uncertainty surrounding certain reliability standards. However, SMUs emphasize that CANs should not be read to identify exclusive means for compliance with reliability standards, where the CANs are designed not simply to interpret the standards but offer compliance techniques. Compliance ultimately is governed by the language of the standard itself and compliance often may be achieved through multiple means. SMUs recognize that the disclaimer associated with each CAN specifies that the CAN does not substitute for standards or establish a definitive interpretation, and that the revisions to the disclaimer included in the recently posted CAN Template Form make further clear that the CANs are not intended to define exclusive methods for compliance. SMUs strongly support this reworded disclaimer, but emphasize that its impact must be impressed upon regional entities’ auditors. The pre-existing disclaimer already included the note that the CANs are not intended to establish conclusive interpretations of standards. Nonetheless, the SMUs’ experience has been that the disclaimer was given limited credence in the field, where registered entity practices that do not follow the example for compliance measures outlined in the CANs are often conclusively presumed to be violations of the applicable standards

SMUs continue to believe that CANs should not supplant the formal standards interpretation process, or be used to forestall needed reform for ambiguous standards. Both the interpretation process and the standards development process used to secure formal revision to the standards employ the full ANSI process, and benefit from formal consideration of

stakeholder comments, unlike the CANs. SMUs do not view a CAN as more than a stopgap measure when formal clarification of, or revision to, a standard is needed.

SMUs appreciate NERC's commitment to improve the CANs process. The CAN stakeholder process has improved opportunity for input, but there remains a good deal of concern among the SMUs as to how receptive NERC ultimately will be to stakeholder comments. SMUs urge NERC to be mindful of the input it receives through the CAN stakeholder process and to take care to address these issues and to modify draft CANs in such a way as to satisfy the concerns voiced by stakeholders. As well, SMUs urge NERC to post stakeholder comments on the CANs at links available when accessing the CANs themselves, enabling registered entities to weigh others' input in developing their views of the meaning of a standard.

3. Implementation Plans for CIP Versions 4 and 5 (MRC-11)

SMUs urge NERC to convene an open discussion with stakeholder groups in order to develop a rational approach to implementation of CIP Versions 4 and 5. There is strong sentiment for doing what is practically feasible in implementing Version 4, while continuing to work on Version 5. The practical consequences of a phased approach, the issue posed by delays in implementation, and the cost and difficulty of approaching implementation in phases should be fully vetted.

4. Bulk Electric System Definition and Rules of Procedure Changes (MRC-12)

SMUs express their strong support for the efforts of the BES drafting team and Rules of Procedure Team to reach industry consensus in support of a technically robust BES definition and workable technical exception criteria. We are optimistic that the draft standard will reach industry approval to allow timely filing of the revised definition, exception criteria and rules of procedure in January 2012. We are equally committed to Phase 2 of this project, to address a number of significant technical issues and concerns that could not be timely addressed by the SDT and industry stakeholders while meeting the regulatory deadlines established by the Commission in Order No.743.

5. Proposed Rules of Procedure Changes (MRC-15)

It is the SMUs' understanding that NERC has proposed to revise its ROP to impose penalties on registered entities that do not respond to NERC data requests. It is not clear to SMUs that failure to respond to NERC data requests is a problem that occurs with sufficient regularity to require a routine process for penalization. Nor is it clear that NERC has the legal authority to impose a financial penalty in such circumstances. SM-TDU's would appreciate more input on this topic. SMUs note that they have been and will continue to be diligent in their response to NERC data requests.

Thank you for the opportunity to provide this input.



An association of transmission-dependent utilities and other supporters of equal, non-discriminatory transmission access and vigorously competitive wholesale electric markets. TAPS members are located in 35 states, including:
Alabama, Arizona, California, Colorado, Connecticut, Delaware, Florida, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Vermont, Virginia, West Virginia, Wisconsin, Wyoming

CONTACTS

John Twitty – Executive Director
417.838.8576
835consulting@gmail.com

Executive Committee

Tom Heller (SD) – Chair
Cindy Holman (OK) - Vice Chair
Jane Cirrincione (CA) – Secretary
Dan Ebert (WI) – Treasurer
Duane Dahlquist (VA)
Frank Gaffney (FL)
Terry Huval (LA)
Steve Kaminski (NH)
Duncan Kincheloe (MO)
Pat McCullar (DE)
Ray Phillips (AL)
Raj Rao (IN)
Jolene Thompson (OH)

Cindy Bogorad

Spiegel & McDiarmid LLP
202.879.4000
cynthia.bogorad@spiegelmc.com

William J. Gallagher

Special Projects Chief
Vermont Public Power Supply Authority
802.244.7678
bgallagher@vppsa.com

Deborah Sliz

Morgan Meguire LLC
202.661.6192
dsliz@morganmeguire.com

Robert Talley

Talley & Associates
202.296.4114
rob@talleyandassociatesinc.com

Transmission Access Policy Study Group

www.tapsgroup.org

October 24, 2011

Via electronic mail to dave.nevius@nerc.net

John Q. Anderson, Chairman
North American Electric Reliability Corporation
116-390 Village Boulevard
Princeton, New Jersey 08540-5731

Re: Response to Letter from John Q. Anderson Requesting Policy Input to NERC Board of Trustees

Dear John:

This responds to your letter of October 6, 2011 soliciting policy input from the Member Representatives Committee on various issues in advance of the November 2-3, 2011 meetings of the MRC and Board of Trustees.

You solicit input with respect to topics including the status of Compliance Application Notices (CANS), the proposed changes to the NERC Rules of Procedure that were discussed at the August MRC meeting, the proposed BES definition, and the Compliance Enforcement Initiative.

CANS

We appreciate NERC's commitment, expressed at the August MRC and Board meetings, to improve CANS. Some improvements have been made since then; for example, the draft revision to CAN-0010 no longer improperly restricts the definition of "annual." Much work remains to be done, however, because a significant number of revised CANS continue to overreach, creating additional or more stringent requirements. For example, the draft revision to CAN-0031 posted on September 23, like the prior version, defines a "physical access point" as any opening over 96 square inches, despite the fact that there is no such definition in the standard. We urge NERC management and staff to continue their efforts to bring existing and new CANS into line with the reliability standards.

Rules of Procedure

While we do not know the status of the changes to the Rules of Procedure that were proposed in June 2011 and discussed at the August MRC meeting, we are concerned by the new Rule 414 proposed in the June posting, under which NERC would assess fines for failure to provide information. As stakeholders have stated in comments to NERC and at the August MRC meeting, the proposal is flawed and should not be implemented. Nothing in the Federal Power Act gives NERC the authority to assess fines for violations of its rules.

This legally dubious measure is likely not needed for entities of any size. Our understanding is that most NERC requests for information get a high

John Q. Anderson

October 24, 2011

Page 2

response rate without the threat of penalties. To the extent the proposal is aimed at obtaining data for planning purposes from small, unregistered entities, it is similarly unnecessary because good planning does not require 100% data.

We suggest that NERC demonstrate a currently unmet need for information that has a clear link to preserving or enhancing the integrity of the Bulk Electric System, before instituting this controversial proposal.

Bulk Electric System definition

We believe that, although minor improvements before the end of the year are possible, the BES definition that recently succeeded in an initial ballot will comply with FERC Order 743, and we support the planned second phase of the BES definition project, which is to address issues such as the technical justification for the threshold for BES generators. The related "Detailed Information to Support BES Exception Requests" failed to win a supermajority in the last ballot. We are hopeful that the Detailed Information will be approved through the standard drafting process in time to be filed at FERC by the January 25, 2012 deadline, and urge NERC to allow that process to continue. If it does not succeed, however, we do not believe that NERC will be required to resort to the "Rule 321" process; instead, NERC should approve the Detailed Information through its Rules of Procedure revision process, as permitted by FERC in Order 743 P 90.

Compliance Enforcement Initiative

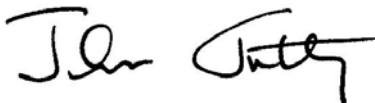
We strongly support NERC's "Find, Fix, Track, and Report" initiative. We expect that the FFTR process will allow NERC, the Regional Entities, and the industry to better focus resources on violations that pose a significant risk to reliability. We look forward to working with NERC to ensure that FFTR is implemented consistently and effectively.

Thank you for considering these concerns. We look forward to discussing these issues in Atlanta next week.

Sincerely,



Terry Huval, P.E
Director, Lafayette Utilities System



John Twitty
Executive Director, Transmission Access Policy Study Group