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From: James Thompson [mailto:Jthompso@ANSI.org]

Sent: Wednesday, December 11, 2002 1:40 PM

To: Ron Niebo

Cc: Anne Caldas

Subject: NERC Application/Procedures

Dear Ron:

The ballot of NERC's Application for Accreditation and proposed operating procedures to ANSI's Executive Standards Council (ExSC) has closed. The ExSC has the following comments:

- I know we frequently have the discussion of to what extent must a developer include the administrative requirements for ANSI submittal in its accredited procedures. I'm not sure the statement "we will comply with ANSI procedures" is sufficient. Please clarify whether this statement signifies a commitment to file with ANSI all appropriate ANSI forms and documentation (e.g. PINS, BSR-8, BSR-9, etc) required to obtain approval of a document as an American National Standard. It appears that NERC is seeking ANSI accreditation of the process for developing NERC standards, not American National Standards.
- I would feel more comfortable if they would, as they suggest, add a statement to their Manual clarifying that the compliance aspects are outside the scope of ANSI's accreditation;
- (Related comment) On the issue of compliance requirements in the standard, NERC's response is not detailed enough to provide a level of comfort with their approach. Their procedures need to be sufficiently detailed to provide clear guidance as to how the compliance related issues will be treated on ballots and during public comments. Particularly if a single comment makes reference to both the technical and compliance issues. Additionally, I do not believe that their response is consistent with the requirements of 4.1 of the *ANSI Procedures* which contains specific reference to how non-ANS material must be identified;
- (Related Comment) NERC stated that they do not "intend that ANSI endorse the NERC Compliance Program or any of the compliance measures" (October 17, 2002, page 3). Accordingly, a statement should be added to Organization Standards Manual stating the extent of the ANSI accreditation.
- Page 16 - I can accept their explanation, but I don't believe that's what the procedure states. It says members "...should not raise any new issues during the balloting process except as presented by themselves or another commenter during the public comment period." (Which, in itself, is not clear, because how can the issue be new at the time of ballot if it was raised during public review?). I read that to mean that, if I'm in the Ballot Pool and I (or somebody else) do not raise the comment during public review, I can't bring it up when I formally vote on the proposal. I don't believe that would be appropriate.
- (Related comments) I concur with the comment submitted by the member of the Subcommittee on Accreditation relating to the balloting procedures described on pages 16 and 17 of the Organization Standards Process Manual. The Manual states that each member of the ballot pool may vote on one of the following positions including affirmative, with comment. The next paragraph, however, seems to disallow ballot pool (consensus group) members from submitting comments during the balloting process. Further, the text in the next to last paragraph never mentions the disposition of comments accompanying affirmative votes (i.e. editorial vs. technically substantive) and the need to rebalot changes to the document resulting from technically substantive comments prior to incorporation into the document. The last paragraph on

page 16 appear to omit a phrase such as "and the standard is approved" which should appear following the words "If there are no negative votes with reasons from the first ballot..." Finally, page 17 "Second Ballot" is not clearly worded. If the members are only being asked to review reasons for negative votes, the responses, and any resolution of the differences, and have not submitted a first ballot return, they are still entitled to vote in the second ballot and the results of the second ballot shall determine the status of the standard regardless of the outcome of the first ballot. That means that a member may actually have only voted on those portions related to negatives on the first ballot, without having ever voted on the first ballot, and the document could be approved. The procedures also state that in the second ballot, votes will be counted by exception only, that is, if members do not indicated a vote change, their original vote stands. This reminds me of the "if we don't hear from you, we will assume..." argument which is unacceptable. I would suggest a review of this section of the NERC procedures--these requirement represent the essence of the consensus process and we have an obligation to be sure that the proposed procedures clearly and unambiguously support ANSI's essential requirements.

- I do not like their answer on excluding some interest categories from membership. I'm objecting to the following statement in their description of Selecting Ballot Pool: "Vendors, consultants, prime contractors of generation or transmission facilities, academics, and others may participate actively as standards are developed, but will not be permitted to be voting members of any segment." This seems to effectively exclude them from participation by voting. This violates 1.2.1. In addition I find their qualification process cumbersome and it tends to discourage participation. I know that's vague, but that is how I feel. It also states that a segment must have at least 5 members in order to have voting status. It just seems very exclusionary.

- (Additional comment received on this matter) To exclude from voting certain interests (Appendix B, under Segment Qualification Guidelines), and potentially exclude certain segments with fewer than 5 members (Appendix B, under Registration Procedures), appears to me to violate the "openness" requirement of the *ANSI Procedures*;

- (Additional comment received on this matter) Re: **1.2.1 Openness, of the ANSI Procedures - "... Participation ... shall not be conditional upon membership in any organization, nor unreasonably restricted on the basis of technical qualifications or other such requirements."** The NERC policies related to registration for the Registered Ballot Body along with definition of segments (Appendix B of the NERC Policies) appear to restrict participation of directly impacted parties from the voting consensus body. If a directly and materially affected party is not supported by at least 4 other parties falling under their interest category that individual is not able to participate as a voting member on the Committee. This "rule" appears to be arbitrary and has no apparent validity except to potentially prohibit individual(s) from participating as voting members simply because the segment they represent is not large enough. The definition under Segment 1 limits "Transmission Owners" to "at least 200 circuit miles." There appears to be no segment that would cover transmission owners with less than 200 circuit miles. Without having additional information, it appears a segment of directly and materially impacted market is being arbitrarily excluded from participation.

- (Additional comment received on this matter) NERC's attempt to limit the possible participants as part of the ballot pool is a violation of 1.2.1 of the *ANSI Procedures*. Although the standards may specifically adopted and used certain entities, those entities are not the only interests when it comes to development of an ANS. For instance, manufacturers of equipment are specifically excluded but the standard may very well impose requirements on products that are used as part of the system. As such, they are a directly affected material interest. The same can be applied to contractors of generation and transmission facilities. NERC's theory that five members must be part of the segment in order for a segment to be considered valid is discriminatory. For example, a large trade association may have many members and be a valid

interest. But since there is not four other large associations in the same category, they cannot participate. This would not appear to be an open process;

- (Additional comment received on this matter) Aside from all the other questions that linger with this particular application for accreditation, my foremost concern is what seems to be the exclusionary nature of their process, and its lack of conformance with section 1.2.1 of the *ANSI procedures*. I do not agree with the NERC response to this concern, and in particular their following statement: "NERC standards on the planning and operation of bulk electric systems apply only to the defined industry segments and do not apply to vendors, consultants, facilities contractors, academics or others the way standards of some other standards developers do." (NERC letter dated 17/Oct/2002 to ANSI, page 1). I have no problem with any organization developing standards for use by their own selected constituency (i.e., registered ballot pool), but I am concerned with designating such documents as American National Standards. The proposed process appears to generate consensus viewpoints across their registered ballot pool, but I fail to see how that can then readily be extrapolated across the United States in general. The ANS designation implies that consensus has been achieved among all affected parties, and I remain skeptical that all affected parties will have an adequate opportunity to participate in a fair and equitable manner. NERC indicates that these documents do not apply to certain industry constituencies, and yet these same constituencies are expressing vocal concerns about being excluded from the NERC process? If the documents do not and will not apply to these constituents, why are these groups vocally implying that they do apply? Why, in fact, is the ANS designation valued in this case if these standards will only apply to a very selected group of organizations? What other outside influences are driving the pursuit of the requested ANS designation?

- (Additional comment received on this matter) In NERC's October 17, 2002 response to the Subcommittee's comments an apparent conflict arises. The issue is dealing with the description of the Selecting Ballot Pool which states "Vendors, consultants... will not be permitted to be voting members of any segment". NERC, in addressing the concerns with that statement, states "vendors, consultants... could all qualify as small electricity users ("Small Customers" in responding to EnCana's same concern) and may join and vote in that segment". The conflict is apparent. Can a vendor vote in the Small Customer Segment or not? ANSI Procedures 1.2.1.

- **1.3 (2) of the ANSI Procedures "ASD's shall record and and consider all negative votes accompanied by any comments that are related to the proposal under consideration."** Step 9 of the NERC policies (page 16) appears to go against item 1.3 of the *ANSI Procedures*. Requiring voting members to submit comments during the public review period and not allowing a voter (during the first ballot of the draft standard) to raise "new issues" is not appropriate. The "proposal under consideration" is the draft standard and a voter should not be limited in what they can or can not vote negative on. Although the NERC policies stat "should not raise new issues" it is not clear to the reviewer what would occur if a voter does raise new issues.

- A patent policy and a provision to address publication requirements appear to be lacking (a statement of NERC's agreement to comply with ANSI's patent policy (see clause 1.2.12) for inclusion in NERC's permanent accreditation file would suffice for that comment);

- Is there any written criteria/description of responsibilities in place for the Standards Process Manager?

- The case for reducing number of segments by merging segments (7 to 5)is persuasive (PSEG, page 8). Placing the weight of re-examination of the segments on the NERC Board to review if the process is "working well" doesn't induce much comfort.

Please direct to my attention your written response to each of these comments (E-mail is fine), and I will forward it back to the ExSC for its reconsideration and action. Please feel free to contact me at 212-642-4913 or by responding to this message if you have any questions relating to this matter. Thanks.

Regards,

Jim Thompson
Manager, Standards Developer & ISO/TAG Accreditation Programs
Procedures and Standards Administration
American National Standards Institute