

**Response to Comments from ANSI Executive Standards Council
As emailed to NERC by Jim Thompson on December 11, 2002**

NERC is pleased to respond to the following comments by members of the ANSI Executive Standards Council in an effort to clarify the intent of NERC's standards development process and to secure accreditation of this process by ANSI.

Comment: 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.

Response: NERC commits to file with ANSI, at the time NERC submits a proposed standard to ANSI for approval as an American National Standard, all appropriate ANSI forms and documentation, including PINS, BSR-8, and BSR-9.

Comment: 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;

Response: NERC will add the following clarifying footnote to the heading, "Compliance Administration Elements," found on page 7 of its Reliability Standards Process Manual:

While the compliance administration elements are developed and approved in the NERC process along with the core elements of a standard, the compliance administration elements will not be included in any standard submitted to ANSI for approval as an American National Standard.

Comment: (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;

Response: NERC reliability standards comprise three elements — core elements, compliance administration elements, and supporting information elements — as stated on page 6 of the NERC Reliability Standards Process Manual. When a NERC reliability standard is posted for public comment and subsequently balloted, all three elements of that standard will be subject to public comments and to ballot. As noted in our response to the previous comment, NERC will add a clarifying footnote to page 7 of its Manual indicating that the compliance administration elements of a given reliability standard will not be included in any standard submitted to ANSI for approval as an American National Standard. Further, to the extent ANSI approves a standard submitted by NERC as an American National Standard, NERC will clearly

identify those portions of the published NERC reliability standard that have not been approved as an American National Standard (i.e., the compliance administration elements and the supporting information elements) by including with the standard the following words drawn from section 4.1 of the *ANSI Procedures*:

"The compliance administration elements and supporting information elements of this NERC reliability standard are not part of the approved American National Standard."

Comment: (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.

Response: See response to the previous comment.

Comment: 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.

Response: The procedure does not preclude a member of the Ballot Pool from raising a comment during the ballot process that was not raised by that member or another member of the Ballot Pool during the public review, as the commenter suggests in his interpretation. The Manual states, "The member of the Ballot Pool should [emphasis added] submit any comments on the proposed standard during the public comment period and should not [emphasis added] raise new issues during the balloting process ...". This language is suggestive, not restrictive. It is intended to encourage participants to bring forward all their comments during the public comment process, so that the comments can be addressed in revisions to the draft, rather than wait until a standard is being balloted and only then raise comments. Members of the Ballot Pool are entitled to raise any comment at any time in the process, including when the standard is posted for ballot.

Comment: (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.

Response: See response to previous comment.

Comment: 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.

Response: First, a proposed standard that is balloted and receives one or more negative votes with comments will not be revised prior to conducting a second or recirculation ballot, as implied in the comment above. When a proposed standard is posted for a second ballot, NERC will include all comments received with the initial ballot, whether they accompanied affirmative or negative votes, as well as responses to all the comments that accompanied negative votes. That way, all members of the Ballot Pool will have the opportunity to see all comments before voting on the recirculation ballot. If the standard fails on the second ballot, all comments received, whether they accompanied affirmative or negative votes, will be considered in redrafting the standard.

Comment: 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..."

Response: NERC does not believe that the last paragraph on page 16 is missing any words. The complete sentence referred to by the commenter reads, "If there are no negative votes with reasons from the first ballot, then the results of the first ballot shall stand." Earlier on page 16, the Manual states, "A standard will be approved if the sum of fractional affirmative votes from all segments divided by the number of voting segments is greater than 0.667." This criteria for approval applies to both the initial ballot and the recirculation ballot, if one is necessary. Therefore, if there are no negative votes with reasons, and a recirculation ballot is unnecessary, the standard will be considered "approved" if the weighted vote is greater than 0.667.

Comment: 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.

Response: The Manual requires that if there are substantive changes to the standard, the standard must be re-posted for a new comment period to enable the industry to review the changes prior to ballot. The intent of allowing votes to be counted on an "exception" basis on the second or recirculation ballot is to simplify the process for the balloters. If this becomes a major issue, NERC can look to modify the process to require all members of the Ballot Pool to vote a second time on the recirculation ballot.

Comment: 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.

Response: Section 1.2.1 of the ANSI Procedures state, "Participation shall be open to all persons who are directly and materially affected [emphasis added] by the activity in question." As noted in previous responses to comments by the ANSI Subcommittee on Accreditation, as well as in response to one of the public comments, NERC believes that its process is open to all who are directly and materially affected by the kinds of standards NERC develops. NERC reliability standards will apply to those that operate and plan bulk electric systems, and as such do not directly and materially affect vendors, consultants, prime contractors of generation or transmission facilities, and academics. All of these entities, as stated in previous NERC responses, may participate actively by attending meetings and commenting on proposed standards, but do not have a right to vote unless they join a segment for which they qualify (e.g., small end user.) We have not created a separate segment for those entities.

Regarding the qualification process being "exclusionary," we now have over 350 entities in the Registered Ballot Body, with all nine segments having at least 5 registered entities. That means all nine segments have voting status. Also, each of the nine segments has named its representatives to the Standards Authorization Committee. While we appreciate the commenter's concern, our actual experience demonstrates that our process is neither cumbersome nor exclusionary.

Comment: (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;

Response: See response to previous comment.

Comment: (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.

Response: As noted in the response above, the concerns expressed by this commenter have not materialized. Regarding the concern about transmission owners with less than 200 circuit miles, these entities are typically smaller utilities that qualify either as Load Serving Entities (Segment 3) or, in some cases, as Transmission Dependent Utilities (Segment 4). Based on the number of registrations in both of these segments, and the absence of any complaints by entities that own less than 200 miles of transmission, NERC believes this issue to be moot in actual practice.

The nine industry segments were developed by electricity industry participants themselves, along the lines of self-identified interest groups within the electricity industry. The purpose of having these several different segments is to assure all interest groups the opportunity for meaningful participation in the standards development process. Without these defined segments, there is the potential that certain smaller interests could be effectively excluded from the process by being overwhelmed by larger companies and interests. All nine segments have met the requirement for five registered participants for a segment to become operative, so there is no possibility of a member of a segment being prohibited from voting. Moreover, the requirement does not apply on a vote-by-vote basis at the drafting committee level.

Comment: (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;

Response: See previous responses to the issues raised in this comment. To reiterate, and as defined on page 6 of the Manual, NERC Reliability Standards comprise the following:

- **Technical standards** related to the provision, maintenance, operation, or state of electric systems will likely contain measures of physical parameters and will often be technical in nature.
- **Performance standards** related to the actions of entities providing for or impacting the reliability of bulk electric systems will likely contain measures of the results of such actions, or the nature of the performance of such actions.
- **Preparedness standards** related to the actions of entities to be prepared for conditions that are unlikely to occur but are critical to reliability will likely contain measures of such preparations or the state of preparedness, but measurement of actual outcomes may occur infrequently or never.

As such, NERC Reliability Standards will not “directly and materially” affect manufacturers of equipment and contractors as do other standards that ANSI may be accustomed to and which have been submitted for approval as ANS.

As mentioned in earlier responses, the requirement for five members to join a segment before it is recognized has not been a barrier. All nine segments have more than five members and are fully participating in NERC’s standards development process. We have not established a separate segment for vendors or equipment manufacturers, but those entities are entitled to register and vote in any segment for which they qualify. Large equipment manufacturers most likely would qualify for the large customer category; software vendors would most likely qualify for the small customer category.

Comment: (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?

Response: The commenter states that, “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?” NERC received a very limited set of comments when it filed its process with ANSI for accreditation. In fact, only three organizations raised any issues at all: Reliant Resources, Encana Power, and Public Service Electric and Gas. Reliant Resources has joined two segments, the Electric Generator segment and the Electricity Brokers, Aggregators & Marketers segment. Public Service Electric and Gas has joined four segments, the Transmission Owner segment, the Load-Serving Entity segment, the Electric Generator segment, and the Electricity Brokers, Aggregators & Marketers segment. Encana Power is eligible to join at least the Electric Generator segment and perhaps others. One major electrical equipment manufacturer has already joined the large customer segment.

As stated at the beginning of the segment qualification guidelines in NERC’s Standards Manual: “The segment qualification guidelines are inclusive; i.e., any entity with a legitimate interest in the electric industry that can meet any one of the guidelines for a segment is entitled to belong

to and vote in that segment.” Despite commenters’ statements to the contrary, NERC believes that there is a place for any affected person or entity within NERC’s nine segments. Two of the three entities that submitted comments on NERC’s application are already members of multiple segments. The third commenter is eligible to join at least one segment, but has not yet taken the step of registering. If there are other entities that have voiced concern about their ability to participate fully in NERC’s standards development process, NERC is unaware of them.

Comment: (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.

Response: As stated in response to the prior comment, the opening statement of the segment description is one of inclusion: “The segment qualification guidelines are inclusive; i.e., any entity with a legitimate interest in the electric industry that can meet any one of the guidelines for a segment is entitled to belong to and vote in that segment.” That statement governs all that follows it. A vendor can register to join any segment that it qualifies for. The most likely segment that vendors will qualify for is the Small Electricity Users segment. The qualifications for that segment, as listed on page 35 of the Manual, are:

- a. Service taken at below 50 kV.
- b. A single customer with an average aggregated service load (not purchased for resale) of less than 50,000 MWh annually, excluding cogeneration or other back feed to the serving utility.
- c. Agents, state consumer advocates, or other advocate groups can represent groups of small customers.

Large equipment manufacturers may well qualify for the large customer segment. One such manufacturer has already joined that segment.

Comment: 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 state "should not raise new issues" it is not clear to the reviewer what would occur if a voter does raise new issues.

Response: As noted in response to an earlier comment, voting members are not prevented from raising any issues or making comments at any time in the process. What the Manual states is that members of the Ballot Pool should submit their comments during the comment process, and not wait to do so only after the standard is posted for ballot. The purpose for

encouraging comments at early stages of the process is so that the comments and concerns can be addressed effectively during the drafting and revision process. If a voter raises new issues only after the proposed standard is posted for ballot, these comments will be treated just like any other comments. The goal of the NERC standards development process is to identify the issues and concerns at an early stage in the process so that once the standard is balloted, most if not all concerns have already been effectively considered during the drafting.

Comment: 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);

Response: NERC agrees to comply with ANSI's patent policy.

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

Response: The formal description of the responsibilities of the Standards Process Manager is included in the Manual.

Comment: 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.

Response: The number of segments and weighted-segment voting model was developed through an industry consensus process. PSE&G was part of the minority that did not support the consensus decision. Most of the industry supported the current nine-segment model, with the understanding that the model would be reviewed after we have some experience to determine whether adjustments should be made. NERC believes that having its independent Board of Trustees review the process for efficiency and effectiveness should be far more comforting than reacting to the opinions of one industry stakeholder. On matters of this type, it is the practice of the independent Board of Trustees of NERC to obtain the advice of the broadly representative NERC Stakeholders Committee before acting.

David R. Nevius
NERC Vice President