NERC
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION

# MEMORANDUM

**TO:** NERC Standards Process Input Group

**FROM:** NERC Legal and Standards Departments

**DATE:** March 15, 2012

**SUBJECT:** Comparison of NERC Standards Processes with American National Standards Institute Requirements

The following memorandum responds to your request for an evaluation of the North American Electric Reliability Corporation's ("NERC") standards processes compared to the American National Standards Institute ("ANSI") requirements. This memorandum takes no position on whether any particular changes should be made, nor does it express an opinion as to the acceptability of any particular change to the broader stakeholder community.

## I. Overview

In sum, there is significant discretion to allow for modification of the NERC standards processes while maintaining ANSI accreditation.[1] However, there are indications that in order to maintain such accreditation in the future, NERC will need to submit at least one standard to ANSI for certification as an American National Standard ("ANS").

The following memorandum separates the NERC Standards Processes into two separate categories: (A) Processes that partially exceed the ANSI Essential Requirements, and (B) Processes that entirely exceed the ANSI Essential Requirements given that these processes are not mandated by ANSI.

### A. NERC Standard Processes That Partially Exceed the ANSI Essential Requirements

- Project Initiation
- Comment Periods
- Consideration of Views and Objections
- Successive Balloting
- Weighted-Segment Voting Scheme
- Negative Votes Without Requirements

[1] ANSI Accreditation is defined by ANSI as follows: "The approval by the ANSI Executive Standards Council (ExSC) of the written procedures submitted by a standards developer relative to the development and documentation of evidence of consensus in connection with standards that are expected to be approved as American National Standards. Accreditation by ANSI signifies that the procedures submitted by the standards developer satisfy the essential requirements contained herein." *See* ANSI Essential Requirements at Annex A.

- Ballot Period
- Appeals
- Interpretations Policy
- Expedited Standards Development Process
- Five Year Review

### B. NERC Standard Processes that Entirely Exceed the ANSI Essential Requirements

NERC has unlimited discretion to modify the following processes (including removal from the Standard Processes Manual) without affecting its ANSI accreditation because these processes are outside of the scope of the ANSI Essential Requirements:

- Drafting Team Formation
- Standards Committee
- Informal Feedback
- Quality Review
- Non-Binding Polls
- Errata
- Definitions
- Modifications to Standards Procedure
- Compliance Elements
- Field Tests and Collecting and Analyzing Data
- Variance

## II. American National Standards Institute

ANSI is the only accreditor of U.S. standards developers and according to ANSI, accreditation signifies that the standards developer is committed to an open, fair and time-tested consensus process that benefits stakeholders. ANSI-accredited standards developers are accredited to the requirements contained in the *ANSI Essential Requirements: Due Process Requirements for American National Standards* ("ANSI Essential Requirements").[2]

ANSI's essential requirements for accreditation as a standards developer are:

- Openness
- Lack of Dominance
- Coordination and harmonization

[2] Available here: http://publicaa.ansi.org/sites/apdl/Documents/Standards%20Activities/American%20National%20Standards/Procedures,%20Guides,%20and%20Forms/2012%20ANSI%20Essential%20Requirements%20and%20other%20Updated%20Procedures/2012_ANSI_Essential_Requirements.pdf.

- Notification of standards development
- Consideration of views and objections
- Consensus Vote
- Appeals
- Written Procedures

It is possible for a standards developer to have two separate standards development processes, one by which American National Standards are processed and one by which other standards are processed. The Standard Processes Manual includes processes for developing standards related to confidential issues, and identifies that these "special standards" will not be filed with ANSI for approval.[3] It is possible for NERC to expand on the types of standards developed through a process that would not lead to submission for ANSI approval, and a separate process that would apply to other reliability standards or Glossary terms that would be eligible for ANSI approval. ANSI accreditation does not require application of the ANSI process to all standard processes.

**A. Summary of ANSI Standard Development Process**

The following is a brief overview of the ANSI standard development process; additional information relevant to NERC is included in Section IV below.

Step 1: Notification

The ANSI process requires a notification at the initiation of a project that includes an explanation of the need for the project and identification of the stakeholders likely to be directly impacted by the standard. If comments received within 30 days assert that a proposed standard duplicates or conflicts with an existing standard, a deliberation of representatives from the relevant stakeholder groups must be held within 90 days of the comment deadline.

Step 2: Publication and Public Comment

The ANSI Process requires a minimum 30-day comment period following publication in *Standards Action*.[4]

Step 3: Consideration of Written Comments

The ANSI process requires that prompt consideration must be given to the written views and objections of all participants and that each objector must be advised in writing of the

[3] *See* NERC Standard Processes Manual at p. 34-35.

[4] *Standards Action* is the ANSI's key public review vehicle. Published weekly, it provides members and the public with timely, accurate information and enables effective participation in the standards development process - both in this country and internationally. *See* http://www.ansi.org/news_publications/periodicals/standards_action/standards_action.aspx.

disposition of the objection. Each unresolved objection[5] and attempt at resolution and any substantive changes made in the standard must be reported to the consensus body in order to afford all members of the consensus body an opportunity to respond, reaffirm, or change their vote. Comments that are not related to the proposal under consideration must be documented and considered in the same manner as submittal of a new proposal.[6]

Step 4: Consensus Body Vote

Consensus is demonstrated by a vote of the consensus body. All members of the consensus body must have the opportunity to vote and the standards developer's procedures must state specifically how consensus will be determined.[7] Consensus is defined by ANSI as follows:

> Consensus means substantial agreement has been reached by directly and materially affected interests. This signifies the concurrence of more than a simple majority, but not necessarily unanimity. Consensus requires that all views and objections be considered, and that an effort be made toward their resolution.[8]

## III. North American Electric Reliability Corporation

NERC is the Electric Reliability Organization ("ERO") certified by the Federal Energy Regulatory Commission ("FERC" or the "Commission") to establish and enforce reliability standards for the bulk-power system. NERC is an international body, recognized in nine provinces in Canada and most of the United States. NERC standards are not effective in the United States until approved by the Commission.

Prior to the certification of NERC as the ERO, the Commission addressed the issue of ANSI accreditation in Order No. 672.[9] The Commission stated (at P 269) that:

> Although we are not requiring that the ERO adopt an ANSI-certified approach to meet all of the requirements of section 39.3, we find that ANSI-accreditation is one reasonable means of doing so. We agree with EEI that a process like the ANSI-certified process would ensure openness and balance the interests of stakeholders. However, we are concerned about the time it may take to develop a

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[5] "Unresolved Objection" is defined by ANSI as "[e]ither (a) a negative vote submitted by a consensus body member or (b) written comments, submitted by a person during public review expressing disagreement with some or all of the proposed standard, that have not been satisfied and/or withdrawn after having been addressed according to the developer's approved procedures." *See* ANSI Essential Requirements at Annex A.

[6] *See* ANSI Essential Requirements at Section 2.6.

[7] *See* ANSI Essential Requirements at Section 2.7.

[8] *See* ANSI Essential Requirements, Annex A.

[9] *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards*, Order No. 672, FERC Stats. & Regs. ¶ 31,204, *order on reh'g*, Order No. 672-A, FERC Stats. & Regs. ¶ 31,212 (2006).

Reliability Standard under the ANSI-certified process. The ERO applicant should address in its application the timetable for developing a proposed Reliability Standard under an ANSI-certified or other process, including the timetable for developing a proposed Reliability Standard that is urgently needed. Moreover, the ERO applicant should also propose a process for modifying or replacing a Reliability Standard (even if interim in nature) in the event that the Commission orders the ERO to modify a Reliability Standard.

Pursuant to Order No. 672, accreditation by ANSI is not required to maintain NERC's status as the ERO. NERC must provide for fair representation of all views in its process for developing a Reliability Standard and must ensure due process, openness and a balance of interests, but NERC is not required by the Commission to follow any particular standards process.[10] The NERC Rules of Procedure require NERC to maintain ANSI accreditation, but NERC does have the authority to modify its rules.[11]

Effective March 24, 2003, NERC's operating procedures were approved for accreditation by ANSI.[12] NERC was then accredited under revised procedures on December 20, 2005. Section 4.1.3 of the ANSI Essential Requirements requires standards developers to maintain one or more approved American National Standards ("ANS"), otherwise the developer must submit its accredited procedures for review and approval on a five-year cycle and must provide a justification as to why it has not submitted any standards to ANSI for approval and why its accreditation remains relevant. As a result of this review, ANSI accreditation may be suspended or withdrawn.

To date, NERC has not submitted any standards to ANSI for approval as American National Standards. In 2011, NERC submitted materials explaining why NERC has not submitted any standards for approval and why the accreditation is relevant. NERC's request for continued accreditation was approved, effective September 9, 2011. Unless NERC submits a standard to ANSI for approval, it will be required to re-justify its accreditation in 2016.

In the background materials relevant to NERC's initial accreditation in 2003,[13] it is clear that ANSI endorsement does not extend to the compliance elements that are developed as part of a standard.[14] There are a number of ways in which NERC's processes differ from ANSI's

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[10] *See* Order No. 672 at P 270.

[11] *See* NERC Rules of Procedure, Section 316, Accreditation: "NERC shall seek continuing accreditation of the NERC Reliability Standards development process by the American National Standards Institute and the Standards Council of Canada."

[12] *See* Notice of Approval of ANSI Accreditation Application, available here: http://www.nerc.com/docs/standards/ANSI/March-24-Approval-Letter-from-ANSI.pdf.

[13] Available here: http://www.nerc.com/filez/ansi.html.

[14] *See* NERC Response to Comments from ANSI Subcommittee on Accreditation at 3 (October 17, 2002)(Commenter #2: "I don't believe that it is appropriate for an ANS [American National Standard] to address consequences of non-compliance with the standard." NERC Response: "NERC does not intend to submit to ANSI for approval as an ANS any of the compliance elements that are developed as part of a standard.").

Essential Requirements that reflect fundamental differences relevant to NERC's mission as an organization as set forth below.

## IV. Application of the Essential Requirements of the American National Standards Institute to the North American Electric Reliability Corporation Standard Development Processes

The following NERC processes address various requirements set forth in the ANSI Essential Requirements.

### A. Project Initiation

1. ANSI Requirement

The ANSI process requires notification of standards activity via the Project Initiation Notification System ("PINS"), or its equivalent, at the initiation of a project to develop or revise an American National Standard with a statement that includes the following information:

> (a) an explanation of the need for the project, including, if it is the case, a statement of intent to submit the standard for consideration as an ISO or ISO/IEC JTC-1 standard; and (b) identification of the stakeholders (e.g., telecom, consumer, medical, environmental, etc.) likely to be directly impacted by the standard.[15]

If a developer receives written comments within 30 days from the publication date of a PINS announcement in *Standards Action,* and said comments assert that a proposed standard duplicates or conflicts with an existing American National Standard or a candidate American National Standard that has been announced previously in *Standards Action,* a mandatory deliberation of representatives from the relevant stakeholder groups shall be held within 90 days from the comment deadline. Such a deliberation shall be organized by the developer and the commenter and shall be concluded before the developer may submit a draft standard for public review. If the deliberation does not take place within the 90-day period and the developer can demonstrate that it has made a good faith effort to schedule and otherwise organize it, then the developer will be excused from compliance with this requirement.

The purpose of the deliberation is to provide the relevant stakeholders with an opportunity to discuss whether there is a compelling need for the proposed standards project. The outcome of such a deliberation shall be conveyed in writing by the developer and commenter (ideally as a joint submission) to the ANSI Board of Standards Review for consideration should the developer ultimately submit the related candidate standard to ANSI for approval. In the case of ANSI Audited Designators, the Audited Designator shall review the results of the deliberation prior to designating a standard as an ANS. While the outcome is not

[15] *See* Section 2.5 of the ANSI Essential Requirements.

binding, participants are encouraged to develop a consensus on whether and how the standards development project should proceed.[16]

2. NERC Process

A Standard Authorization Request ("SAR") is the form used to document the scope and reliability benefit of a proposed project for one or more new or modified standards or the benefit of retiring one or more approved standards. Any entity or individual may submit a completed SAR to the NERC standards staff.

The Standards Committee has the authority to post SARs that are limited to addressing regulatory directives, or revisions to standards that have had some vetting in the industry for a 30-day informal comment period with no requirement to provide a formal response to the comments received. For SARs that address the development of new projects or standards, the Standards Committee has the authority to authorize posting the SAR for a formal 30-day comment period. When a SAR is posted for a formal comment period, prompt consideration is given to the written views and objections of all participants.[17]

3. Conclusion

There are several steps in the SAR process implemented by NERC that are not required by ANSI. First, the ANSI process allows for the standards developer, and the standards developer alone, to determine whether a standard is needed. Stakeholders are permitted to comment on whether a proposed standard duplicates or conflicts with an existing standard, but the identification of the need for a standard is solely the responsibility of the standards developer. The ANSI process does not require the standards developer to respond in writing to comments submitted on the standards notification, therefore, the formal comment period provided in the SAR process could be eliminated.

Further, NERC has latitude to decide when it will dissolve a project and begin anew without providing for stakeholder input. For example, following an initial ballot with an extremely low approval rating, NERC could choose to not respond to comments and instead state that comments will be considered in the development of the next draft of the standard. Provided that NERC's communication to stakeholders is clear regarding this process, NERC could start over with the same project and even use the same SAR and draft a new version of the standard. However, in order to implement such a tactic, NERC's Standard Processes Manual would have to provide for this process. Such a modified process would be consistent with NERC's ANSI accreditation.

**B. Comment Periods**

[16] *Id.*

[17] *See* NERC Standards Processes Manual at p. 13.

1. ANSI Requirement

The ANSI process requires that the comment period shall be one of the following:[18]

- A minimum of 30 days if the full text of the revision(s) can be published in *Standards Action*;
- A minimum of 45 days if the document is available in an electronic format, deliverable within one day of a request, and the source (e.g., URL or an E-mail address) from which it can be obtained by the public is provided to ANSI for announcement in *Standards Action;* or
- A minimum of sixty days, if neither of the aforementioned options is applicable.

2. NERC Process

NERC provides for a minimum of two comment periods. The first formal comment period is at least 30-days long. The Standards Committee has the authority to waive this initial comment period if a proposed revision to a standard is minor and not substantive. The second formal comment period is 45-days long and starts after the drafting team has posted its consideration of stakeholder comments and any conforming changes to the standard.[19] NERC's Standard Processes Manual requires the drafting team to consider and respond to all comments submitted during these formal comment periods.

3. Conclusion

The first formal 30-day comment period is not required by the ANSI process and NERC has significant discretion to modify and/or abolish this requirement.

**C. Consideration of Views and Objections**

1. ANSI Requirement

The ANSI process requires that prompt consideration must be given to the written views and objections of all participants on the initial announcement of a standards project or public comment listing. An effort to resolve all objections that include comments that are related to the proposal under consideration must be made and each such objector must be advised in writing of the disposition of the objections and the reasoning involved.[20]

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18 *See* ANSI Essential Requirements at Section 2.5.

19 *See* NERC Standard Processes Manual at p. 16.

20 *See* Section 2.6 of the ANSI Essential Requirements:

> In connection with an objection articulated during a public comment period, or submitted with a vote, an effort to resolve all expressed objections accompanied by comments related to the proposal under consideration shall be made, and each such objector shall be advised in writing (including electronic communications) of the disposition of the objection and the reasons therefor.

2. NERC Process

NERC mandates a specific method for responding to every stakeholder comment submitted in response to a formal comment period or submitted with a ballot that includes a proposal for a specific modification to the standard or its implementation plan posted for comment and approval, pursuant to the chart below:

| If a Comment: | Then | And |
|---|---|---|
| Is unrelated to proposed standard action | Note that comment is unrelated | No further action needed |
| Proposes change that expands project scope | Note that comment is proposing an expansion | Add item to "issues database" for consideration during next update to the standard |
| Proposes a modification based on a technical issue not previously identified | Provide the drafting team's technical analysis of the proposal | If the team accepts the proposal, modify the standard |
| Proposed a modification based on a technical issue previously vetted | Provide a summary of the vetting and resolution previously reached | No further action needed |
| Proposes a modification to provide greater clarity | Provide the drafting team's view as to whether the proposed modification improves clarity | If the team accepts the proposal, modify the standard |

3. Conclusion

The ANSI process does not require NERC to mandate the method by which it will respond to comments. NERC has significant discretion to modify this methodology, however, each objector that includes comments must be responded to in writing, consistent with NERC's ANSI accreditation. NERC has the ability to group comments and submit responses in this manner or to draft a single response that addresses all comments. NERC must respond in writing to each comment, but again, the method by which NERC drafts its response is flexible.

Furthermore, NERC is not required to draft questions for comments by stakeholders. NERC can hold an open solicitation period and accept any comments.

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If resolution is not achieved, each such objector shall be informed in writing that an appeals process exists within procedures used by the standards developer.

**D. Successive Balloting**

1. ANSI Requirement

ANSI requires that when a substantive change is made in a proposed standard, this change must be reported to the consensus body in order to afford all members an opportunity to respond, reaffirm, or change their vote.[21] A "substantive" change is defined by ANSI as "one that directly and materially affects the use of the standard."[22] ANSI provides the following examples of substantive changes below:

- "shall" to "should" or "should" to "shall";
- addition, deletion or revision of requirements, regardless of the number of changes;
- addition of mandatory compliance with referenced standards.

2. NERC Process

NERC provides for a successive ballot process where a substantive change is made in a proposed standard.[23] Pursuant to this process the revised standard is posted for another public comment period and ballot. Comments by the ballot body must be addressed in writing.

3. Conclusion

The successive ballot process is mandated by the ANSI Essential Requirements. However, if a vote on a successive ballot is successful, the standard does not need to be posted for a recirculation ballot. NERC has discretion to eliminate the recirculation ballot following a successful successive ballot and such action is consistent with ANSI accreditation.

**E. Recirculation Ballots**

1. ANSI Requirement

The ANSI process does not specifically require recirculation ballots, however, this requirement is rooted in Section 2.6 of the ANSI Essential Requirements which requires members of the consensus body an opportunity to change their vote following an unresolved objection.

Unresolved objections are deemed to be satisfied by ANSI when the commenter or negative consensus body voter changes their vote in writing (including e-mail). The Executive

[21] *See* ANSI Essential Requirements at Section 2.6. ("Each unresolved objection and attempt at resolution, and any substantive change in a proposed American National Standard shall be reported to the consensus body in order to afford all members of the consensus body an opportunity to respond, reaffirm, or change their vote.").
[22] *See* ANSI Essential Requirements at Annex A.
[23] *See* NERC Standard Processes Manual at p. 19.

Standards Council of ANSI has stated that for public review commenters only, a developer may provide a written response to a commenter with additional text advising them that if the commenter does not notify the developer that their comment remains unresolved by a specified date, the developer may consider their public comment resolved. Again, this does not apply to unresolved objections from the consensus body; the standards developer must obtain a written change of vote in these instances.

2. NERC Process

NERC provides that members of the ballot pool can be presented with a proposed standard that has not been significantly changed from the previous ballot, along with the reasons for negative votes, the responses, and any resolution of the differences. There is no formal comment period concurrent with the recirculation ballot and no obligation to respond to any comments submitted during this ballot.[24]

The Standards Committee determines whether a proposed modification is "substantive." The NERC Standard Processes Manual states that "[a]n insignificant revision is a revision that does not change the scope, applicability, or intent of any requirement and includes but is not limited to things such as correcting the numbering of a requirement, correcting the spelling of a word, adding an obviously missing word, or rephrasing a requirement for improved clarity."

3. Conclusion

NERC's recirculation ballot process is consistent with the ANSI Essential Requirements; however, the language with respect to whether a change is substantive exceeds the ANSI Essential Requirements. Again, a "substantive" change is defined by ANSI as "one that directly and materially affects the use of the standard,"[25] therefore, NERC's definition of substantive is more restrictive than ANSI's requirements.

Further, in NERC's responses to comments it might be prudent to consider the inclusion of language indicating that the commenter's objections are deemed to be satisfied by NERC's response unless they notify NERC otherwise within a specified timeframe.

**F. Weighted-Segment Voting Scheme**

1. ANSI Requirement

ANSI requires evidence of consensus with respect to a vote of the consensus body. Consensus is determined by a standards developer's procedures and all members of the

[24] *See* NERC Standard Processes Manual at pp.19-20.
[25] *See* ANSI Essential Requirements at Annex A.

consensus body must have the opportunity to vote.[26] ANSI defines consensus as the concurrence of more than a simple majority, but not necessarily unanimity.[27]

2. NERC Process

Ballot pool approval of a NERC reliability standard requires:[28]

- A quorum, which is established by at least 75% of the members of the ballot pool submitting a response with an affirmative vote, a negative vote, or an abstention; and
- A two-thirds majority of the weighted segment votes cast shall be affirmative. The number of votes cast is the sum of affirmative and negative votes, excluding abstentions and non-responses.

The following process is used to determine if there are sufficient affirmative votes:

- For each segment with ten or more voters, the following process shall be used: The number of affirmative votes cast shall be divided by the sum of affirmative and negative votes cast to determine the fractional affirmative vote for that segment. Abstentions and non-responses shall not be counted for the purposes of determining the fractional affirmative vote for a segment.

- For each segment with less than ten voters, the vote weight of that segment shall be proportionally reduced. Each voter within that segment voting affirmative or negative shall receive a weight of 10% of the segment vote.

- The sum of the fractional affirmative votes from all segments divided by the number of segments voting shall be used to determine if a two-thirds majority has been achieved. (A segment shall be considered as "voting" if any member of the segment in the ballot pool casts either an affirmative or a negative vote.)

- A standard shall be approved if the sum of fractional affirmative votes from all segments divided by the number of voting segments is at least two thirds.

3. Conclusion

NERC has significant discretion to modify the methodology by which it measures consensus, but this methodology should be consistent with the principles of balance and a lack of dominance by any single interest category to ensure consistency with ANSI accreditation. A two-thirds majority approval rating is not required by ANSI. Again, consensus is defined by ANSI as more than a simple majority, therefore an approval rating of anything more than 51%

[26] *See* ANSI Essential Requirements at Section 2.7.
[27] *See* ANSI Essential Requirements, Annex A.
[28] *See* NERC Standard Processes Manual at pp. 18-19.

would appear to satisfy the literal terms of the ANSI Essential Requirements, but there is some question as to whether ANSI would approve such a tactic.

**G. Negative Votes Without Reasons**

1. ANSI Requirement

Section 2.7 of ANSI's Essential Requirements, Evidence of Consensus and Consensus Body Vote, provides that standards developers "are not required to consider negative votes accompanied by comments not related to the proposal under consideration, or negative votes without comments."

2. NERC Process

NERC's process specifically provides for negative votes without reasons.[29] In the background materials relevant to NERC's accreditation, NERC stated that "we believe all voters have the right to cast any vote they wish, with or without reasons. Only 'no' votes with reasons will result in a recirculation ballot."

3. Conclusion

NERC has significant discretion to disallow negative votes without reasons and such action would be entirely consistent with ANSI accreditation.

**H. Ballot Period**

1. ANSI Requirement

While there is no formal requirement for a minimum ballot period in the ANSI Essential Requirements, informal guidance from ANSI Staff is that the minimum ballot period should be no less than two weeks or 10 business days. This guidance is consistent with Annex B, Section B.1.2.

2. NERC Process

The NERC Standard Processes Manual provides for 10 calendar day ballot windows.

3. Conclusion

NERC may face opposition from ANSI if it attempts to shorten the ballot windows despite the fact that there is no formal requirement stipulating a specific or minimum duration for ballot windows.

[29] *See* NERC Standard Processes Manual at p. 19.

## I. Appeals

1. ANSI Requirement

Section 1.8 of ANSI's Essential Requirements requires standards developers to contain an "identifiable, realistic, and readily available appeals mechanism for the impartial handling of procedural appeals regarding any action or inaction. Procedural appeals include whether a technical issue was afforded due process." Section 2.8 of ANSI's Essential Requirements provides for an appeal at the standards developer level and an appeal to ANSI.

2. NERC Process

The Standards Processes Manual provides for both Level 1 and Level 2 appeals. In addition to this, a procedural objection may also be submitted to the NERC Board of Trustees for consideration at the time the Board decides whether to adopt a particular reliability standard, definition, variance or interpretation.[30]

Level 1 is the required first step in the appeals process. The appellant submits to the Director of Standards a complaint in writing that describes the procedural action or inaction associated with the standards process. If after the Level 1 Appeal the appellant remains unsatisfied with the resolution, as indicated by the appellant in writing to the Director of Standards, the Director of Standards must convene a Level 2 Appeals Panel. This panel consists of five members appointed by the Board of Trustees.[31]

3. Conclusion

The NERC Standard Processes Manual does not explicitly provide for an appeal to ANSI, however, persons who have directly and materially affected interest and who have been or will be adversely affected by any procedural action or inaction by any American National Standard process have the right to appeal to ANSI pursuant to Section 2.8.2 of the ANSI Essential Requirements. NERC has discretion to modify its current appeals process and such action would be consistent with ANSI accreditation.

## J. Interpretations Policy

1. ANSI Requirement

Each standards developer is required to have on file at ANSI an interpretations policy, however, the content of that policy is not specified in the ANSI Essential Requirements. Further,

[30] *See* NERC Standards Processes Manual at p. 30.
[31] *Id.*

at least one ANSI accredited standards developer does not have an interpretation policy included in its procedures.

2. NERC Process

NERC's process for interpretations includes two formal comment periods and adoption by the Board of Trustees and none of these steps are mandated by ANSI.

3. Conclusion

NERC has significant discretion to modify the interpretation process and such action would be consistent with ANSI accreditation. For example, the ANSI policy does not require balloting of interpretations.

**K. Expedited Standards Development Process**

1. ANSI Requirement

None.

2. NERC Process

Under certain conditions where NERC needs to develop a new or modified standard, VRF, VSL, definition, variance, or implementation plan under specific time constrains or to meet an urgent reliability issue, the Standards Committee has authority to approve the following actions to expedite development:

- Shorten the 45-day formal comment period
- Shorten the 30-day period for forming the ballot pool
- Allow significant modifications following the initial ballot without the need for another formal comment period provided the modifications are highlighted before conducting any successive ballot
- Shorten any of the 10-day ballot windows

Following the adoption of a new or modified standard through this expedited process, one of the following three actions must occur:

- If the standard is to be made permanent without additional substantive changes, then a SAR and a proposed standard shall be submitted to the standards staff immediately after the ballot. The project shall be added to the list of approved projects and shall proceed through the regular standard development process, including balloting by stakeholders, without any intentional delay.

- If the standard is to be substantively revised or replaced by a new standard, then a project for the new or revised standard shall be added to the list of projects to be added to the Reliability Standard Development Plan. The project shall be initiated as soon as practical after the ballot and the project shall proceed through the regular standard development process, including balloting by stakeholders, as soon as practical but within two years of the date the standard was approved by stakeholders using the expedited process.

- The standard shall be withdrawn through a ballot of the stakeholders within two years of the date the standard was approved by stakeholders using the expedited process.

The NERC Standard Processes Manual states (at p. 33, n. 28) that "[a]bbreviating the final formal comment period or a ballot window violate ANSI's accreditation requirements. The three actions that may be taken to fully process the expedited standard are intended to demonstrate NERC's commitment to meet ANSI's accreditation requirements."

3. Conclusion

There are certain types of standards for which ANSI approval would be either inappropriate or impossible to attain within the requisite timeframe. Standards required to meet regulatory directives or to address urgent reliability issues are likely candidates for such exclusion from the ANSI process. For these types of standards, NERC has the discretion to simply specify in the Standard Processes Manual that such standards will not be submitted to ANSI for approval as American National Standards.

**L. Five Year Review**

1. ANSI Requirement

An American National Standard is a standard that has been approved by ANSI and meets the criteria set forth in Section 4.2.1.1 of the ANSI Essential Requirements. Section 4.7 of the ANSI Essential Requirements addresses maintenance of such standards and requires standards developers to choose three options: (1) periodic maintenance; (2) continuous maintenance; or (3) stabilized maintenance.

Periodic maintenance is defined as the maintenance of a standard by review of the entire document and action to revise or reaffirm it on a schedule not to exceed five years from the date of its approval as an American National Standard.[32] Continuous maintenance is defined as the maintenance of a standard by consideration of recommended changes to any part of it according to a documented schedule for consideration and action by the consensus body.[33] A standard that is maintained under the stabilized maintenance option shall satisfy the following eligibility criteria:

[32] *See* ANSI Essential Requirements at Section 4.7.1.
[33] *See* ANSI Essential Requirements at Section 4.7.2.

(a) the standard addresses mature technology or practices, and as a result, is not likely to require revision; and
(b) the standard is other than safety or health related; and
(c) the standard currently holds the status of American National Standard and has been reaffirmed at least once; and
(d) at least ten years have passed since the approval or last revision of the standard as an ANS; and
(e) the standard is required for use in connection with existing implementations or for reference purposes.[34]

2. NERC Process

The NERC Standard Processes Manual requires that every standard must be reviewed once every five years from the effective date of the standard or the date of the latest Board of Trustees adoption of a revision to the standard, whichever is later.[35]

3. Conclusion

If NERC were to submit any standards for approval as American National Standards, it would be required to maintain such standards in accordance with the foregoing in order to maintain ANSI accreditation. However, NERC is under no such obligation to maintain non-American National Standards in this manner and is limited only by the terms of the NERC Standard Processes Manual. Therefore, NERC has discretion to modify the application of the five year review process to only American National Standards and such a modification would not be inconsistent with its obligations under the ANSI process.

## V. North American Electric Reliability Corporation Processes That Are Not Addressed by the American National Standards Institute

The following NERC policies are unaddressed by ANSI, and therefore, NERC has significant discretion to modify such provisions in the Standards Processes Manual and such action would generally not conflict with ANSI requirements or ANSI accreditation.

### A. Drafting Team Formation

1. ANSI Requirement

None.

2. NERC Process

[34] *See* ANSI Essential Requirements at Section 4.7.3.
[35] *See* NERC Standard Processes Manual at p. 41.

The NERC Standard Processes Manual addresses the formation of drafting teams to work on developing a new or revised standard. The drafting team is responsible for making recommendations to the Standards Committee regarding the remaining steps in the standards process.

3. Conclusion

NERC has significant discretion to modify and/or abolish the formation of drafting teams and such action would be consistent with ANSI accreditation.

**B. Standards Committee**

1. ANSI Requirement

None.

2. NERC Process

The members of the Standards Committee are elected by their respective segment's stakeholders and consist of two members of each of the stakeholder segments of the Registered Ballot Body. The Standards Committee is responsible for managing the standards processes for development of standards, VRFs, VSLs, definitions, variances and interpretations in accordance with the Standard Processes Manual.[36]

3. Conclusion

NERC has significant discretion to modify and/or abolish both the existence and composition of the Standards Committee and its associated duties.

**C. Informal Feedback**

1. ANSI Requirement

None.

2. NERC Process

The NERC standards development process allows for informal feedback at several stages. For SARs that are limited to addressing regulatory directives, or revisions to standards that have had some vetting in the industry, the Standards Committee can authorize posting a SAR for a 30-day informal comment period with no requirement to provide a formal response to the comments

[36] *See* NERC Standard Processes Manual at p. 8.

received.[37] Drafting teams may also use informal comment periods to collect stakeholder feedback on preliminary drafts of its documents. Such informal comment periods shall have a minimum duration of 30 days and information must be publicly posted. While drafting teams are not required to provide a written response to each individual comment received, drafting teams must post a summary response that identifies how it used comments submitted by stakeholders. The intent is to gather stakeholder feedback on a "working document" before the document reaches the point where it is considered the "final draft."[38]

3. Conclusion

NERC has significant discretion to modify and/or abolish the consideration of informal comments and informal comment periods and such action would be consistent with ANSI accreditation.

**D. Quality Review**

1. ANSI Requirement

None.

2. NERC Process

The NERC Standards Processes Manual requires a quality review of standards to assess whether the documents are within the scope of the associated SAR, whether the standard is clear and enforceable as written, and whether the standard meets the criteria specified in NERC's Benchmarks for Excellent Standards and criteria for governmental approval standards, VRFs and VSLs.

3. Conclusion

NERC has significant discretion to modify and/or abolish the quality review process and such action would be consistent with ANSI accreditation.

**E. Non-Binding Polls**

1. ANSI Requirement

None.

2. NERC Process

[37] *See* NERC Standard Processes Manual at p. 13.
[38] *See* NERC Standard Processes Manual at p. 15.

NERC conducts a non-binding poll of VRFs and VSLs during the last 10 days of the 45-day formal comment period.

3. Conclusion

NERC has significant discretion to modify and/or abolish the use of non-binding polls and such action would be consistent with ANSI accreditation.

**F. Errata**

1. ANSI Requirement

None.

2. NERC Process

The Standards Committee has authority pursuant to the Standard Processes Manual, to correct errors that do not change the scope or the intent of the associated standard and where the correction has no material impact on the end users of the standard. The Standards Committee then submits such corrections to the NERC Board of Trustees for approval.[39]

3. Conclusion

NERC has significant discretion to modify and/or abolish the process for correcting errata and such action would be consistent with ANSI accreditation.

**G. Definitions**

1. ANSI Requirement

None.

2. NERC Process

The NERC Standard Processes Manual provides that any proposal for a new or revised definition shall be processed in the same manner as a standard. Once authorized by the Standards Committee, the definition is posted for at least one 45-day formal comment period and is balloted in the same manner as a standard. Each definition that is approved by the ballot pool is submitted to the NERC Board of Trustees for adoption.

3. Conclusion

[39] *See* NERC Standard Processes Manual at p. 40.

While the ANSI process does not address definitions, given that NERC has historically processed definitions in the same manner as standards, any revisions to this process may be subject to a higher level of scrutiny than would otherwise be warranted. Further, given the framework of NERC's standard process, it is possible to change the meaning and application of standards by altering the meaning of defined terms. Therefore, while there are no ANSI requirements specific to definitions which would suggest that NERC has unfettered discretion to change this process, the reality is that such changes should be evaluated for the potential to alter standards. For these reasons, NERC has discretion to modify the process for defining terms and such action would generally be consistent with ANSI accreditation dependent on the nature of the modifications.

**H. Modifications to Standards Procedure**

1. ANSI Requirement

None.

2. NERC Process

The NERC Standard Processes Manual addresses the manner in which requests to revise the Standard Processes Manual will be considered.[40] The Standards Committee oversees the handling of each request and responds to each sponsor within 30 calendar days. Proposed revisions are posted for a 45-day formal comment period and based on the degree of consensus, the Standards Committee then has the following four options:

- Submit the revised process or processes for ballot pool approval;
- Repeat the posting for additional inputs after making changes based on comments received;
- Remand the proposal to the sponsor for further work; or
- Reject the proposal.

If the proposed revision is approved by the ballot pool, the Standards Committee submits the revised procedure to the Board of Trustees for adoption.

3. Conclusion

NERC has significant discretion to modify and/or abolish the method for revising the Standard Processes Manual and such action would be consistent with ANSI accreditation.

**I. Compliance Elements**

[40] *See* NERC Standard Processes Manual at p. 43.

1. ANSI Requirement

None.

2. NERC Process

NERC Reliability Standards include several compliance elements, including compliance monitoring and assessment processes, time horizons, and VRFs and VSLs.

3. Conclusion

NERC has significant discretion to modify the compliance elements of Reliability Standards and such action would be consistent with ANSI accreditation. This process is outside the scope of the ANSI requirements and reflects a fundamental difference relevant to NERC's mission as an organization.

**J. Field Tests and Collecting and Analyzing Data**

1. ANSI Requirement

None.

2. NERC Process

The NERC Standard Processes Manual provides for field tests and the analysis of data to validate proposed requirements, measures or compliance elements in a reliability standard.[41]

3. Conclusion

NERC has significant discretion to modify its provisions regarding field tests and the collecting and analysis of data and such action would be consistent with ANSI accreditation. This process is outside the scope of the ANSI requirements and reflects a fundamental difference relevant to NERC's mission as an organization.

**K. Variance**

1. ANSI Requirement

None.

2. NERC Process

A variance is an approved, alternative method of achieving the reliability intent of one or more requirements in a standard. No regional entity or bulk power system owner, operator, or

[41] *See* NERC Standard Processes Manual at 25-26.

user can claim a variance from a NERC reliability standard without approval of such a variance through the relevant standard approval procedure for the variance. Each variance from a NERC reliability standard that is approved by NERC and applicable governmental authorities is made an enforceable part of the associated NERC reliability standard.[42]

3. Conclusion

NERC has significant discretion to modify its provisions regarding variances and such action would be consistent with ANSI accreditation. This process is outside the scope of the ANSI requirements and reflects a fundamental difference relevant to NERC's mission as an organization.

[42] *See* NERC Standard Processes Manual at p. 32.