

MEMORANDUM

TO: Ken DeFontes,
Chair, NERC Board of Trustees

Jennifer Flandermeyer,
Chair, NERC Members Representatives Committee

FROM: American Public Power Association
Edison Electric Institute
Electric Power Supply Association
Electricity Consumers Resource Council
Large Public Power Council
National Rural Electric Cooperative Association
Transmission Access Policy Study Group

DATE: May 2, 2024

The American Public Power Association, Edison Electric Institute, Electric Power Supply Association, Electricity Consumers Resource Council, Large Public Power Council, National Rural Electric Cooperative Association, and Transmission Access Policy Study Group (collectively, the Trade Associations) appreciate the opportunity to respond to your April 9, 2024, letter to the members of the Members Representatives Committee (MRC) in which the NERC Board of Trustees (Board) requests MRC input on “ensuring effective and timely strategic input from the MRC.” Your letter specifically asks:

- How can we best leverage the input letter to focus on more strategic topics?
- What suggestions do you have for strategic topics for future input letters that would benefit from MRC input and are not available through other avenues?
- What gaps or opportunities do you see in our processes for receiving MRC and industry input?

Although your letter did not require a written response, the Trade Associations believe that a formal written response will facilitate discussion on how the MRC can provide meaningful input to the Board and establish core principles that will guide those discussions and any resulting improvements.

SUMMARY OF COMMENTS

- Meaningful stakeholder participation creates essential value for the electric reliability organization (ERO), and the MRC has a unique role in ERO governance that cannot be replaced by other committees.
- The Board would benefit from additional opportunities for in-person interactions with the MRC, including having additional in-person meetings and allowing more time for informal interaction.
- Formal, written input from the MRC to the Board is an essential tool for fulfilling the MRC’s mandate. The input letter process therefore must not be eliminated or diminished; it should be strengthened.

- The scope of the MRC’s input to the Board must be co-extensive with the Board’s mandate.
- Stronger collaboration between the MRC and NERC staff and formal responses from the Board will enhance the value of the MRC’s input.

TRADE ASSOCIATIONS COMMENTS

Meaningful stakeholder participation creates essential value for the ERO, and the MRC has a unique role in ERO governance.

Meaningful stakeholder participation is a core part of NERC’s value proposition. In its order certifying NERC as the ERO, the Federal Energy Regulatory Commission (FERC) noted favorably NERC’s comment that “it has always relied on the technical expertise of electric industry volunteers,” and that NERC expects to rely on “the strong support it has built within the industry sectors, with its experienced staff overseeing and facilitating the work of the volunteer technical experts.”¹ Two decades later, industry support for NERC’s work continues to be a defining characteristic of the ERO.

As your letter notes, NERC has matured and the mechanisms for industry to provide timely and effective feedback have improved. The various standing committees and groups are most useful in enabling industry stakeholders to provide technical expertise and input to NERC.² Any changes that would dilute or weaken the role of stakeholder participation must be rigorously avoided.

However, maturity in the other processes outside of the MRC is not a replacement for the processes within the MRC. The MRC, which is composed of NERC members, is representative of something separate, unique, and distinct from the Board-reporting committees and the structures inside those programs and processes. Therefore, whether they have matured or not, those processes are not meant to replace or displace the MRC’s responsibilities nor its input into the operations of the ERO.

NERC’s Bylaws charge the MRC with the “right[] and obligation[] . . . to provide advice and recommendations to the Board with respect to the development of annual budgets, business plans and funding mechanisms, and other matters pertinent to the purpose and operations of the Corporation.”³ The NERC Bylaws add, moreover, that the MRC, which is not a “standing committee,” “is authorized to provide its advice and recommendations *directly* to the Board.”⁴ No other committee or group has the responsibility to advise the Board; nor do they have the authority to make recommendations to the Board, much less to do so directly. The MRC’s role in that respect is unique and irreplaceable.

¹ *N. Am. Elec. Reliability Corp.*, 116 FERC ¶ 61,062, *order on reh’g and compliance*, 117 FERC ¶ 61,126 (2006), *order on compliance*, 118 FERC ¶ 61,030, *order on compliance*, 118 FERC ¶ 61,190, *order on reh’g*, 119 FERC ¶ 61,046 (2007), *aff’d sub nom. Alcoa Inc. v. FERC*, 564 F.3d 1342 (D.C. Cir. 2009).

² Among them, the Compliance and Certification Committee, Personnel Certification Governance Committee, Reliability Issues Steering Committee, Reliability and Security Technical Committee, and the Standards Committee.

³ NERC, Amended and Restated Bylaws, Article VIII, Section 1(c) (eff. Apr. 5, 2021) (“NERC Bylaws”).

⁴ *Id.*, Article III, Section 1 (emphasis added).

The Board would benefit from additional opportunities for in-person interactions with the MRC.

We believe that the MRC is most effective when it has regular and meaningful opportunities to provide its advice and recommendations to the Board through *both* formal, written formats *and* face-to-face meetings.

During the NERC Corporate Governance and Human Resources Committee (CGHRC) open meeting in November 2022, the CGHRC gave a presentation entitled “Building a More Effective and Efficient Governance Process.” Through this presentation, the CGHRC put forth several recommendations to enhance Board-stakeholder communication. Among them were recommendations for more significant breaks during in-person meetings to allow for more enhanced and informal engagement opportunities. Also, at the November 2022 CGHRC meeting, a new cadence for the Board meetings was rolled out.

With over a year of experience with the restructured Board calendar, the Trade Associations recommend re-evaluating the current Board meetings’ cadence, including by considering increasing the number of in-person meetings. Managing the pace of change of the grid is vital to reliability and security, and enhancing engagement with stakeholders is more important than ever.

Furthermore, the Trade Associations recommend providing more time during in-person meetings for informal engagement opportunities. At the most recent Board meetings, the breaks were not long enough to allow for the enhanced engagement contemplated in November.

Formal, written input from the MRC to the Board is an essential tool for fulfilling the MRC’s mandate.

The Trade Associations value the opportunities for in-person meetings that facilitate collaborative conversations between the MRC and Board members. Nonetheless, conversations complement, but do not displace, the need for formal, written input. Written recommendations from the MRC have multiple benefits, including improved transparency, strong deliberation and consultation throughout their development, the opportunity for clarity in messaging, and a public record of the input.

The input letter process is the only existing means through which the MRC can provide formal, written input directly to the Board. That process must not be eliminated or diminished; rather, it should be strengthened.

The scope of the MRC’s input to the Board must be co-extensive with the Board’s mandate.

Your letter expresses a desire to “elevate” the MRC’s input letter to the Board to focus on more “strategic topics.” The subject matter of the MRC’s input to the Board, regardless of whether it remains characterized as *policy* input or is changed to *strategic* input, must ultimately be topics related to the work of the Board.

The Board is entrusted with managing the “business and affairs of the Corporation.”⁵ The scope of the MRC’s advice and recommendations must, therefore, be co-extensive with the subject matter entrusted to the Board.

In recent years, the Board has taken action on individual reliability standards, amendments to NERC’s rules of procedure, the charters and work plans of various committees, and NERC’s business plan and budget. The MRC must be given the opportunity to provide recommendations on all such Board actions.

We further stress the importance of early and meaningful input from the MRC regarding NERC’s *ERO Enterprise Long-Term Strategy*, as well as the upcoming triennial business plan and budget process.

Stronger collaboration with NERC staff and formal responses from the Board will enhance the MRC’s input.

The Trade Associations believe that the value of the MRC’s advice and recommendations to the Board should be enhanced by increasing the level of engagement, rather than by restricting its scope.

First, we urge the Board to establish processes to formally consider and respond to the MRC’s advice and recommendations. While there has often been informal feedback provided by some Board members to some MRC members, we believe that open and transparent responses by the Board to the MRC’s recommendations will improve the quality of future engagement.

Second, we urge NERC staff to improve collaboration with the MRC (and the trade associations that support the MRC members) on issues that are likely to be presented to the Board. The MRC’s advice and recommendations to the Board will be more valuable if the MRC members are better informed about proposals from NERC staff. Added communication will also provide NERC staff with more opportunities to consider the views of the MRC before presenting items to the Board for action.

The *ERO Enterprise Long-Term Strategy* provides a good example of the benefits of early collaboration. While the Trade Associations think it is necessary and appropriate for the MRC to provide formal input on the long-term strategy ahead of the August 2024 meetings, earlier collaboration on the process of developing the strategy would facilitate better awareness by MRC members of the direction NERC staff is taking and provide opportunities for MRC members to give informal feedback on that direction.

⁵ *Id.*, Article III, Section 1.