SGIP Catalog of Standards Development Process Statement (DPS): American National Standards published by the National Electrical Manufacturers Association (NEMA)

SGIP Document Number: 2011-013_1, Version 0.7

Document Source: SGIP Project Management Office (PMO)
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Production Date: June 12, 2012
THE SGIP

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1 Background and Purpose

The entity proposing inclusion of a Standard into the Catalog shall provide materials describing the process under which the proposed specification was developed. This document is part of the required information provided to the SGIP as described in section 4.1 step 2 in the Catalog of Standards Process Description document [1].

1.1 Content of the Development Process Statement (DPS)

The National Technology Transfer and Advancement Act (NTTAA) [2] describes characteristics desirable to aid the uptake of technologies developed, in part, with United States government support. OMB Circular A-119 [3] elaborates the definitions and requirements for voluntary consensus standards. Support for these characteristics is therefore encouraged, although not required.

The organization should make statements of support for the maxims “i” through “v” which are quoted below for reference (NTTAA reference, OMB Circular A-119 section 4 “What are Voluntary, Consensus Standards”). Please refer to “ANSI Essential Requirements: Due process requirements for American National Standards” [4] for definitions of terms. If the SSO is ANSI Accredited, provide the reference paragraph number from this reference as the support paragraph.

Properties of Voluntary Consensus Standards:

The organization should indicate how support for each maxim in the excerpt below, from the above-mentioned reference, is achieved for the standard:

a. For purposes of this policy, "voluntary consensus standards" are standards developed or adopted by voluntary consensus standards bodies, both domestic and international. These standards include provisions requiring that owners of relevant intellectual property have agreed to make that intellectual property available on a non-discriminatory, royalty-free or reasonable royalty basis to all interested parties. For purposes of this document, "technical standards that are developed or adopted by voluntary consensus standard bodies" is an equivalent term.

(1) "Voluntary consensus standards bodies" are domestic or international organizations which plan, develop, establish, or coordinate voluntary consensus standards using agreed-upon procedures. A voluntary consensus standards body is defined by the following attributes:

(i) Openness.
(ii) Balance of interests.
(iii) Due process.
(iv) An appeals process.
(v) Consensus.

Additionally, the intellectual property rights associated with use of this standard should be described.
1.2 Standards Setting Organizations (SSO) and the DPS

It is assumed that for any Standards Setting Organization (SSO) there is a common process model that guides all developments of the standards by that body. For this reason, the SGIP maintains a single DPS per SSO. However, there are occasions where there are per-standard circumstances that require additional elaborations. In these cases an additional DPS is constructed to cover the differences. Standards Information Forms (SIF)s point to the correct DPS to use for that standard.

In the sections below italicized text describes the information to be described. Use this text as guidance for completing this DPS. Retain this descriptive text during edits.

2 Definitions

Appeals Process

A written set of procedures that contain an identifiable, realistic and readily available appeals mechanism for the impartial handling of substantive and procedural complaints regarding any action or inaction. [4]

Balance of Interests

Participants from diverse interest categories (stakeholders) are sought to participate in the standards development process with the objective of achieving balance in the process [5].

Consensus

General agreement, but not necessarily unanimity, and includes a process for attempting to resolve objections by interested parties, as long as all comments have been fairly considered, each objector is advised of the disposition of his or her objection(s) and the reasons why, and the consensus body members are given an opportunity to change their votes after reviewing the comments [3].

Due Process

Any organization, company, government agency, or individual with a direct and material interest has a right to participate by expressing a position and its basis, having that position considered, and appealing if adversely affected [5].

Necessary Patent

A patent or patent claim that is necessary or essential to implement a Standard as described and set forth in
the relevant Standards-Setting Organization’s (SSO) governing rules and procedures.

(Note: the SSO may define “Necessary Patents” that are the subject of its IPR Policy differently. The Sponsoring Organization and/or SSO is asked to provide information on the defined terms in this document)

Openness
Participation in the standard development process shall be open to all persons who are directly and materially affected by the activity in question, and the committee’s activities are publicly available [5].

Sponsoring Organization
Organization that creates, manages, and is otherwise responsible for the maintenance of a specification for consideration in the Catalog.

Standard
The term "standard," or "technical standard" as cited in the Act, includes all of the following: (1) Common and repeated use of rules, conditions, guidelines or characteristics for products or related processes and production methods, and related management systems practices. (2) The definition of terms; classification of components; delineation of procedures; specification of dimensions, materials, performance, designs, or operations; measurement of quality and quantity in describing materials, processes, products, systems, services, or practices; test methods and sampling procedures; or descriptions of fit and measurements of size or strength [3].

Standards-Setting Organization (SSO)
Organization that has defined processes and produces and maintains specifications normally called standards, best practices, and guidelines.
3  Properties of Voluntary consensus standards bodies

The National Electrical Manufacturers Association (NEMA) is an Accredited Standards Developer (ASD) by the American National Standards Institute (ANSI). The document governing this process is the Standardization Policies and Procedures of the National Electrical Manufacturers Association, Rev. July 7, 2008, commonly referred to as the NEMA SPP. All details as they relate to this DPS are guided by the SPP, which is audited periodically by ANSI.

A Standard of the National Electrical Manufacturers Association defines a product, process, or procedure with reference to one or more of the following: nomenclature, composition, construction, dimensions, tolerances, safety, operating characteristics, performance, rating, testing, and the service for which it is designed.1

Critical Information about NEMA includes:

URL
http://www.NEMA.org

Legal Status
A private 501(c)6, not-for-profit trade association incorporated in Delaware

Addresses:
National Electrical Manufacturers Association
1300 N. 17th Street, Suite 1752
Rosslyn, VA 22209
Tel: 703.841.3200
Fax: 703.841.5900

International Offices
Beijing, China
Mexico city, Mexico

Mission
NEMA promotes the competitiveness of the U.S. electrical product industry through the development of standards, advocacy in federal and state legislatures and executive agencies, and the collection and analysis of economic data.

Membership
Comprised of Government agencies, Organizations, Companies, Academic and International bodies, and individuals, the American National Standards Institute (ANSI) represents the interests of more than 125,000 companies and 3.5 million professionals.

Affiliations
ANSI Accredited Standards Developer (ASD)
Consejo de Armonizacion de Normas Electrotecnicas de las Naciones en las Americas (CANENA, the Council for Harmonization of Electrotechnical Standards of the Nations in the Americas)

3.1 Standard documents that this DPS applies to

This DPS applies to all American National Standards published by the National Electrical Manufacturers Association (NEMA). A NEMA Standards Publication is a

1 Standardization Policies and Procedures of the National Electrical Manufacturers Association, Rev. July 7, 2008, Section 1, pp. 1.
grouping of related standards covering a product or family of products. Each Standard can be revised individually and the publication maintained by issuance of revisions as they are approved. Major revisions to NEMA Standards Publications, for practical reasons, may require the issuance of an entire new publication. In addition, NEMA Standards Publications and revised Standards contained therein are identified by number and date.

3.2 Openness

As an accredited standards developer by ANSI, NEMA adheres to the guidelines for Openness as described in the ANSI Essential Requirements. Standards meetings hosted by ANSI are open to any members of the committee. Further, standards actions are posted to the ANSI website to notify the general public of NEMA standardization activities that are taking place under the ANSI banner.

3.3 Balance of interests

As an accredited standards developer by ANSI, NEMA adheres to the guidelines for Balance of Interests and Lack of Dominance as described in the ANSI Essential Requirements. These balances are further met through the announcement and declaration process whereby an ANSI committee is formed in NEMA. Under this direction, participants are asked to declare their interests under one of three categories:

- **Producer;** An individual or organization whose principle business activity is that of supplying materials, products, systems, or services for Smart Grid.
- **User;** An individual or organization that specifies and applies smart grid technologies to support its primary business concerning: 1.) the products it manufactures; 2.) the workplace it operates; or 3.) the environmental area in which it has responsibility.
- **General Interest;** An individual or organization that does not fit into the categories above. This category includes the insurance industry, general consulting firms, research institutions, and government representatives.

To further insure this balance, participants may be recruited by NEMA any of the stakeholder categories.

3.4 Due process

As an accredited standards developer by ANSI, NEMA adheres to the guidelines for Due Process as described in the ANSI Essential Requirements. The aspects of due process are ensured by the NEMA Codes and Standards Committee (C&S) as described in Section 8 of the SPP.

The C&S Committee represents a broad cross-section of the senior technical leaders amongst the NEMA membership. The role of C&S is to validate that the ANSI process has been followed, all comments and criticisms have been resolved, the output is consistent with other American National Standards, and they also pursue assent by other concerned subdivisions that the standard may affect. The effective
3.5 An appeals process

As an accredited standards developer by ANSI, NEMA adheres to the guidelines for Appeals Processes as described in the ANSI Essential Requirements. Any entity is welcomed to raise and appeal, the entry point for which is the Codes & Standards Committee as described above. Further appeals may be raised to the Standards and Conformity Assessment Policy Committee (SCAPC), a small group appointed by the NEMA Board of Governors that has responsibility for NEMA’s standardization policies and procedures including the SPP document itself. In extreme cases, a final level of appeal may be made to the NEMA Board of Governors. An additional path for appeals may be conducted through ANSI.

3.6 Consensus

As an accredited standards developer by ANSI, NEMA adheres to the guidelines for Consensus as described in the ANSI Essential Requirements. Consensus procedures are maintained at all levels of custody for an American National Standard developed in NEMA; from the workgroup, through the ANSI Committee, C&S Committee, Standards and Conformity Assessment Policy Committee and the Board of Governors. All along, the consensus process is documented through detailed meeting minutes as recorded by the NEMA staff and validated by the Association Secretary and Legal Counsel.

4 Intellectual Property Rights (IPR)

4.1 Applicable IPR-related policies

The NEMA Patent Policy, as included in Section 3.9 of the SPP is as follows:

3.9 NEMA Patent Policy — Inclusion of Essential Patent Claims in NEMA Standards

There is no objection in principle to drafting a NEMA Standard in terms that include the use of an essential patent claim if it is considered that technical reasons justify this approach. Participants in the development of a NEMA Standard or proposed NEMA Standard are encouraged to identify and disclose early in the standards development process essential patent claims of which the participant has knowledge.

No participant in the development of a NEMA Standard or proposed NEMA Standard shall knowingly conceal from NEMA or the other firms or persons participating in the development of a NEMA Standard or proposed NEMA Standard any patent containing an essential patent claim that the participant (or any Affiliate) owns, controls, or has the ability to license.
Each participant in the development of a NEMA Standard or proposed NEMA Standard is encouraged to bring to the attention of NEMA and the other participants at any time during the development of the Standard any patent(s) or published patent application(s) known to contain an essential patent claim, which (a) the participant owns, controls, or has the ability to license, or (b) is owned by others in the manner set forth in this policy.

3.9.1 Definitions

A. Essential Patent Claim

An “essential patent claim” means a claim contained in a patent or published patent application, the use of which is necessary to create a compliant implementation of the mandatory portions of the normative clauses of the NEMA Standard or proposed NEMA Standard when there is no commercially and technically feasible non-infringing alternative. An essential patent claim does not include any claim that is essential only for enabling technology (technology that may be necessary to make a product that complies with the NEMA standard, but is neither explicitly required by nor expressly set forth in the NEMA standard) or any claim other than that set forth above even if contained in the same patent as the essential patent claim.

B. Knowledge or Known or Knowingly

“Knowledge” or “known” or “knowingly” means or refers to the actual personal awareness by an individual of information relating to a particular matter. Knowledge shall not be deemed to include knowledge held by other personnel of the relevant individual participant’s sponsor or employer; provided however, that such sponsor or employer will not deliberately withhold relevant information from individual participants in NEMA’s standardization activities for the purpose of avoiding disclosure or licensing under this policy.

C. Participant or Individual Participant

“Participant” means a NEMA member of a subdivision authorized under [Sections 7.1 or 7.4 of the SPP] to develop a NEMA Standard, and it also refers to an individual participant. “Individual participant” means the individual person representing or employed by a participant in the development of a NEMA Standard.

D. Affiliate

“Affiliate” means an entity that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with such entity. “Control” means ownership of or ability to
direct more than 50 percent of the voting power of a corporation or other organization.

3.9.2 No Requirement to Search Patent Portfolio

Participants in the development of a NEMA Standard or proposed NEMA Standard do not have an affirmative duty to search their patent portfolio to determine if they own a patent containing an essential patent claim.

4.2 IPR Disclosures and Declarations

The NEMA Disclosure Policy, as included in Section 3.9 of the SPP is as follows:

3.9.3 Disclosures of Essential Patent Claims

To implement the policy of 3.9, the procedures in 3.9.3 - 3.9.8 shall be followed.

3.9.3.1 Self-Disclosure by Patent Holder

A participant in the development of a NEMA Standard or proposed NEMA Standard, on behalf of itself and its Affiliates, shall disclose in writing to NEMA essential patent claims that they own, control, or have the ability to license as expeditiously as possible after that participant recognizes it has an obligation of disclosure under this policy. The disclosure shall be accompanied by the written statement required by 3.9.3.3 below. A participant may also submit to NEMA at any time a written disclaimer as provided in 3.9.3.3A below.

3.9.3.2 Disclosure at Request of NEMA

At the request of any firm or person who states that another identified party owns, controls, or has the ability to license an essential patent claim, NEMA shall request, without coercion, that the identified party, on behalf of itself and its Affiliates, provide the statement required by 3.9.3.3A or 3.9.3.3B below.

3.9.3.3 Written Disclosure Statements

A participant or an identified party providing a written statement under 3.9.3.1 or 3.9.3.2 shall submit a written communication addressed to NEMA’s Vice-President, Technical Services containing either:

A. a statement containing an assurance in the form of a general disclaimer to the effect that such party (including any Affiliate) does not own, control or have the ability to license patents or published patent applications containing essential patent claim(s), but in the event that it is later discovered that such party (including any Affiliate) does own, control or have the ability to license such patents, a license will be made available as prescribed in 3.9.3.3B(c); or
B. a statement:
   (a) identifying the patent registration or application number(s) of the patent(s) or published patent applications that is believed to contain essential patent claim(s);

   (b) identifying the NEMA Standard or proposed NEMA Standard and the part and/or section of the NEMA Standard or proposed NEMA Standard that would include the use of an essential patent claim; and

   (c) containing an assurance that a license to such essential patent claim(s) will be made available by such party (including any Affiliate) to applicants desiring to utilize the license for the purpose of implementing the standard either:

   (1) under reasonable terms and conditions that are demonstrably free of any unfair discrimination; or

   (2) without compensation and under reasonable terms and conditions that are demonstrably free of any unfair discrimination, and

   (3) at the option of the participant or identified party, that such license under (c)(1) or (2) is subject to a condition of reciprocity, where reciprocity means with respect to other parties that have a patent or published patent application containing an essential patent claim, the assurance under (c) is conditioned on their willingness to license their patent(s) containing an essential patent claim on these terms. A participant or identified party who provides an assurance to license without compensation under 3.9.3.3B(c)(2) on a condition of reciprocity, may require a license with compensation on reasonable terms and conditions that are demonstrably free of discrimination if the reciprocating licensee will only license on such terms.

   (d) stating that the assurance contained in the written communication will be brought to the attention of any future assignees or transferees of the essential patent claim, and shall not be circumvented through the sale or transfer of patents.

C. The assurance provided under 3.9.3.3B may be withdrawn when it is established that there are commercially and technically
feasible non-infringing alternatives to creating a compliant implementation of the NEMA standard.

3.9.4 Timing of Disclosure Statements
A participant in the development of a NEMA Standard or proposed NEMA Standard has a continuing obligation to disclose patents or published patent applications containing essential patent claim(s) under 3.9. At the time a NEMA Standard or proposed NEMA Standard is submitted for approval by letter ballot under 7.5 or for a vote under 7.6.2, the participant shall provide the written statement required by 3.9.3.3. NEMA’s letter ballots shall contain a certification requirement for compliance with 3.9, which states: “I hereby certify that [check one]:

☐ I am not aware of patents or published patent applications containing essential patent claims, which I or my employer or sponsor (or an affiliate of any of them) own, control or have the ability to license, but if it is later discovered that I, or my employer or sponsor do own, control or have the ability to license such patents, a license will be made available as required by NEMA’s Standardization Policies and Procedures, 3.9;

☐ I am aware of patents or published patent applications containing essential patent claims, which I or my employer or sponsor (or an affiliate of them) own, control or have the ability to license, and a written statement has been submitted to NEMA as required by NEMA’s Standardization Policies and Procedures, 3.9.

3.9.5 Record of Statement
A record of the patent holder’s statement under 3.9.3 shall be retained in the files of NEMA. The Vice-President, Technical Services shall cause a copy of the written communication to be sent to the firms or persons participating in the development of the NEMA Standard or proposed NEMA Standard that would include the use of an essential claim.

3.9.6 Notice
When NEMA receives from a patent holder the assurance set forth in 3.9.3.3(b)(c) above, the standard shall include a note substantially as follows:

NOTE – The user’s attention is called to the possibility that compliance with this standard could require use of an invention covered by patent rights.

By publication of this standard, no position is taken with respect to the validity of any such claim(s) or of any patent rights in connection therewith. If a patent holder has filed a statement of willingness to grant a license under these rights on reasonable and nondiscriminatory terms and conditions to
applicants desiring to obtain such a license, then details may be obtained from NEMA.

3.9.7 Responsibility for Identifying Patents
NEMA is not responsible for identifying patents or published patent applications for which a license may be required by a NEMA Standard or for conducting inquiries into the legal validity or scope of those patents that are brought to their attention.

3.9.8 Discussions of Patent Issues at Technical Committee Meetings
At technical committee meetings, firms or persons shall not discuss the following:
(a) the construction, validity, or essentiality of patents or patent claims;
(b) specific license rates, licensing costs, terms or conditions, or the relative costs of different technical approaches to the standard; or
(c) the status or substance of ongoing or threatened patent litigation.

5 Document References
[2] National Technology Transfer and Advancement Act (NTTAA),
http://standards.gov/standards_gov/nttaa.cfm
http://standards.gov/standards_gov/a119.cfm
[5] NIST Key Terms in Standardization, Global Standards Information:
http://gsi.nist.gov/global/index.cfm/L1-5/L2-44/A-87
6 Revision History

SGIP Document Number: 2011-013_1

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6.1 Contributors

Identify the contributors and organizational roles of the authors of this DPS.