



Federal Energy Regulatory Commission
March 15, 2007
Open Commission Meeting
Statement of
Chairman Joseph T. Kelliher

Items E-13: Mandatory Reliability Standards for the Bulk-Power System
(Docket No. RM06-16-000)

"Today, the Commission establishes mandatory reliability standards for the bulk power system. Beginning this summer, compliance with reliability standards will be mandatory, not voluntary.

I want to begin by commending Congress for enacting the reliability provisions of the Energy Policy Act of 2005. This was a significant change in law. Previously, compliance with reliability standards had been voluntary. Yet, the voluntary regime proved insufficient. Primary causes of the August 2003 blackout were violations of voluntary reliability standards. Indeed, a common cause of all previous major bulk power system failures was violation of voluntary reliability standards.

In response, Congress granted the Commission authority to establish mandatory reliability standards, and ultimately enforce those standards. Under the Energy Policy Act of 2005, there are three elements to a strong reliability regime. We took the first step last July, when we certified the Electric Reliability Organization. We take the second step today, by approving mandatory reliability standards. We will work with the Electric Reliability Organization and industry stakeholders to strengthen these reliability standards over time, and the scope of reliability standards may expand over time. Indeed, additional reliability standards have been submitted to the Commission for approval since we issued the proposed rule on the standards we adopt today.

However, establishment of mandatory reliability standards will do little to improve reliability without effective enforcement of those standards. Under the regulatory regime established by Congress, we are authorized to approve the delegation of enforcement authority by the Electric Reliability Organization to regional entities. It will be the regional entities that will bear the initial burden of reliability enforcement. However, the Commission retains independent enforcement authority and is ultimately responsible for effective enforcement.

In this final rule, we approve 83 mandatory reliability standards. We also invoke section 215(d)(5) and direct the Electric Reliability Organization to improve 56 reliability standards in coming years. This approach – approving proposed reliability standards that meet the statutory test while acting to strengthen them – assures that we will have mandatory reliability standards in place as soon as possible, while improving them over time. The workplan developed by the Electric Reliability Organization will help identify which standards need strengthening more urgently.

The final rule makes a number of significant changes to the proposed rule, with respect to applicability. First, the Commission agrees to adopt the definition of "bulk electric system" proposed by the Electric Reliability Organization and supported by various parties. The Final Rule explains that, although the statutory definition of "bulk power system" is more expansive, the Commission will rely on the Electric Reliability Organization's definition of "bulk electric system" at this juncture. This will provide greater certainty regarding the scope of facilities subject to the mandatory reliability standards. However, Congress used the term "bulk power system" rather than "transmission facilities" or "bulk electric system." We must assume Congress made that choice with care, and that choice manifests an intent to specify the

Federal Energy Regulatory Commission
March 15, 2007
Chairman Joseph T. Kelliher
Item E-13

applicability of mandatory reliability standards to transmission facilities that are important to maintaining reliability. The Final Rule therefore clarifies that the Commission intends to revisit this matter in future proceedings.

Second, with respect to applicability of the standards to small entities, the Commission accepted the proposal to rely on the compliance registry. Under this approach, only registered entities would be considered "users, owners, or operators" of the bulk power system subject to enforcement of mandatory reliability standards. This will clarify the universe of entities subject to enforceable reliability standards, assure due process, and provide notice. It will also have the practical effect of exempting many small entities. There are provisions however, to register a previously exempted entity if it is later determined that it should be subject to the reliability standards.

However, the Commission does not grant the request for a trial period. It is true that most commenters seek a trial period. Granting the trial period would probably be the popular course. However, the Commission has a unique perspective. Only the Commission is charged with protecting the public interest in this area. To me, protecting the public interest means establishing strong reliability standards and providing for effective enforcement. Congress has given us a duty to establish and enforce reliability standards in order to avoid future blackouts. As a necessary part of that duty, we must promote a culture of compliance. In my view, allowing a trial period, which would effectively postpone enforcement of mandatory standards, is simply inconsistent with that duty.

At the same time, we recognize that the primary burden of enforcing reliability standards will likely fall to the regional entities. We recognize the limits on enforcement resources available to the regional entities and the Electric Reliability Organization. For that reason, we direct the Electric Reliability Organization and any regional entities that receive delegated authority to focus their enforcement resources on the most serious violations during an initial period through December 31, 2007. The Electric Reliability Organization and regional entities are expected to use prosecutorial discretion.

In my view, the actions we have taken regarding applicability of mandatory reliability standards have gone a long way to address the concerns of advocates of a trial period.

Finally, as we are taking another important step in implementation of the Energy Policy Act of 2005, it is important to recognize what the Energy Policy Act did with respect to reliability, and what it did not do. There was evident confusion on this score last summer, as our country set new records for peak power demand in eight regions.

The Energy Policy Act of 2005 did not outlaw blackouts. It did not grant the Commission plenary power to take any action it saw fit to prevent blackouts. What it did do was provide for mandatory reliability standards, backed by new enforcement powers granted the Commission. The Commission was authorized to establish and enforce reliability standards. That is exactly what we are doing today.

It is important that we act today to establish mandatory reliability standards. Last

Federal Energy Regulatory Commission
March 15, 2007
Chairman Joseph T. Kelliher
Item E-13

summer, we experienced new record power demand levels in eight regions of the country. It was the greatest challenge to reliability of the bulk power system since the August 2003 blackout. We do not know what this summer holds in store for us. With our action today, the U.S. is better prepared to meet reliability challenges this summer."