

**Remarks of
The Honorable Joseph T. Kelliher
Chairman
Federal Energy Regulatory Commission**

**North American Electric Reliability Council
Board of Trustees Meeting**

November 1, 2005

“Implementation of Reliability Provisions of EPAct 2005”

Thank you for inviting me to discuss one of the most important subjects associated with enactment of the Energy Policy Act of 2005, namely the establishment of enforceable reliability standards. The reliability provisions of the Energy Policy Act were among the most significant provisions of the new law.

The Act gave the Commission important new responsibilities to approve mandatory reliability standards and ensure that they are properly enforced. We are mindful of that duty as we issue rules to implement the new law. Our purpose is to faithfully execute the law in the manner Congress intended.

The Commission is moving swiftly to issue final rules to certify an Electric Reliability Organization (ERO), establish reliability standards, and provide for enforcement of those standards. Three weeks after the Energy Policy Act was signed into law, the Commission issued its proposed rule to implement the reliability provisions. We will issue a final rule by the deadline established by Congress. This is one of our top priorities. The final rule will be faithful to clear Congressional intent manifested in the plain words and structure of the law.

The Energy Policy Act gives the Commission the important duty of assuring the reliability of the bulk power system. We will exercise that duty by certifying an ERO, carefully reviewing reliability standards, approving standards that provide for reliable operation of the bulk power system, remanding those that do not, and working to improve reliability standards over time. We will also ensure that reliability standards are properly enforced, including, where appropriate, through regional enforcement of such standards.

Role of Electric Reliability Organization

It is critical that the ERO be a strong organization. A strong ERO will be one that maintains its independence, is adequately staffed to perform its important functions, and exercises careful oversight of the actions of regional entities. Regional entities will perform certain important functions pursuant to delegation agreements, including proposing reliability standards and undertaking enforcement action. However, the ERO must exercise close oversight in these areas to ensure that any proposed standards adequately maintain reliability and do not burden other regions, and that regional enforcement programs are of the highest quality.

Clear Congressional intent is a strong ERO and deference to the ERO by the Commission. I want the ERO to be a strong organization. I encourage you, as NERC prepares an application for ERO certification, to focus on ways to realize this vision, particularly in the area of developing an effective oversight role as it relates to regional entities.

Establishment of Enforceable Reliability Standards

I am committed to faithfully implementing the Energy Policy Act in the manner Congress intended. The law does not provide for absolute uniformity in reliability standards, or a “one size fits all” approach. That much is clear from the plain words and structure of the law. Under the Energy Policy Act, regional entities will propose regional standards or variances to the ERO, which can then propose to the Commission those regional standards that it has approved. Congress would not have provided for consideration of regional standards or variances if it had intended a “one size fits all” approach.

We had both North American and regional reliability standards before enactment of the Energy Policy Act. I expect that we would continue to have both North American and regional reliability standards after issuance of the final rule.

The Energy Policy Act provides for delegation of enforcement authority to regional entities that meet certain statutory tests. The Act also includes special provisions applicable to interconnection-wide entities and establishes a rebuttable presumption in favor of such entities.

The law requires the ERO to rebuttably presume that regional standards or variances proposed by regional entities organized on an interconnection-wide basis meet the statutory standard. It also provides that the Commission will give greater

deference to the technical expertise of regional entities organized on an interconnection-wide basis than other regional entities. Regional standards and variances proposed by other regional entities have no such presumption or deference.

Under the law, the Commission must approve any reliability standard before it becomes enforceable. I am operating under the expectation that it is the Version 0 standards that will be proposed to the Commission for its consideration and review. In the proposed rule, the Commission interpreted the Energy Policy Act to permit the ERO applicant or applicants to propose reliability standards in their certification application. We did that in order to accelerate establishment of enforceable reliability standards.

In anticipation of the filing of Version 0 standards, the Commission has been conducting a constructive review of existing reliability standards. We have been examining the existing Version 0 standards and the relationship of Version 0 standards to regional standards.

That process has been instructive. We have learned that a significant portion of NERC's existing standards – about 25 percent – are in the form of obligations for the regional reliability organization to define regional criteria and procedures necessary to implement the NERC reliability standard. This is particularly true in certain subject areas, such as system planning. In addition, some regional variances have been incorporated into NERC reliability standards when necessary to address physical differences of the interconnections or market protocols used in organized markets.

We have a legal duty under the Energy Policy Act to assure that proposed reliability standards “provide for reliable operation of the bulk power system.” To me, that means carefully reviewing proposed reliability standards and assuring they have technical support and are written so that they are enforceable against “all users, owners, and operators of the bulk power system,” as the law provides. We will, of course, give “due weight” to the technical expertise of the ERO and regional entities organized on an interconnection-wide basis. However, if we determine that a particular standard does not meet statutory requirements, we will not hesitate to take action, such as remanding such standards to the ERO.. In addition, in circumstances where a particular standard requires improvement, we will consider whether to grant “conditional” approval of that standard so that it can be enforced during the period when the Commission or ERO is considering appropriate revisions to strengthen it. We also may seek to identify the need for

reliability standards outside the scope of the Version 0 standards.

In order to help the Commission discharge its legal duty to review proposed reliability standards, I have directed Commission staff to hold a series of technical conferences with industry and stakeholders to review Version 0 standards and regional reliability standards in advance of a filing of reliability standards by an ERO applicant or applicants. My purpose is a thorough and expedited review of proposed reliability standards and accelerated establishment of enforceable reliability standards.

With respect to delegation agreements, I encourage the ERO applicant or applicants to develop uniform delegation agreements to the greatest extent possible. I do that for practical reasons; the submission of widely varying delegation agreements will likely delay consideration of these agreements by the Commission. Any such delay would require the ERO to enforce established reliability standards, rather than regional entities. Delegation agreements would compete for Commission resources with the ERO certification filing and reliability standards submission, if all three are tied together. Delegation agreements should not circumscribe ERO review of regional standards or variances in a manner that is inconsistent with statutory requirements.

In conclusion, the Commission's goal is to faithfully execute the law in the manner Congress intended. We are faithfully implementing the reliability provisions of the Energy Policy Act, and moving swiftly to meet the aggressive deadlines in the law.

I thank you for your attention.