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Current and Possible Future Procedures for
Establishment and Approval of
Electric Reliability Standards

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SUEDEEN G. KELLY, Commissioner
NORA JEAN BROWNELL, Commissioner
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Opening Remarks

CHAIRMAN KELLIHER: Today the Commission holds the first of two technical conferences focused on current and future procedures for establishment and approval of electric reliability standards. Discussions at the conference is to focus on One, the process the Electric Reliability Organization will use in proposing new mandatory reliability standards; Two, the role of regional entities in that process, and Three, how existing reliability standards can be improved over time.

The second conference will be held on December 9th and we'll continue exploring related issues and stakeholder views to ensure successful implementation of the Energy Policy Act of 2005.

These conferences come at a particularly important time. On August 8, 2005, President Bush signed the Energy Policy Act into law. Perhaps the most important responsibility given the Commission by the Energy Policy Act is the responsibility of safeguarding reliability of the bulk power system by certifying an ERO, by carefully reviewing and approving mandatory reliability standards, and ensuring that these standards are properly enforced, and the Commission is committed to faithfully executing these new responsibilities.
I just want to be clear that the Energy Policy Act does not provide for a 'one size fits all' approach towards reliability standards. That much is clear from the plain words and structure of the new law.

Under the Energy Policy Act, regional entities will propose standards to the national reliability organization charged with standards development, the Electric Reliability Organization, which can then in turn propose to the Commission those regional standards it has approved.

Congress would not have provided for consideration of regional standards if it had intended a 'one size fits all' approach. And we had both North American and regional reliability standards before enactment of the Energy Policy Act, and I expect we will continue to have both North American and regional reliability standards after issuance of the Commission's final rule.

Now under the law, the Commission must approve any reliability standard before it becomes enforceable, and we're operating under the expectation that the Version 0 standards 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.

Now in anticipation of the filing of Version 0 standards, the Commission has been conducting a constructive review of existing reliability standards, and we've been examining the existing Version 0 standards as well as the relationship of Version 0 standards to regional standards. And that process has been very instructive. We learned that a significant portion of NERC's existing standards, about 25 percent, are in the form of obligations for the Regional Reliability Organizations to define regional criteria and procedures necessary to implement the NERC reliability standard. And this is particularly true in certain subject areas, such as system planning.

Now, in addition, some regional standards have been incorporated into the NERC regional standards when necessary to address physical differences into the interconnections or market protocols used in organized markets.

The Commission has a legal duty under the Energy Policy Act to assure that proposed reliability standards provide for reliable operation of the bulk power system. And to me that means carefully reviewing proposed reliability standards, and assuring that 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.

Now we will of course give due weight to the technical expertise of the ERO and the regional entities organized on an interconnection-wide basis.

Now the Commission is holding these technical conferences to assure that we fully understand existing reliability standards, and the processes in advance of the filing of reliability standards by an ERO applicant or applicants; and our purpose is a thorough and expedited review of proposed reliability standards and accelerated establishment of enforceable reliability standards.

The Commission's goal, of course, is to faithfully execute the law in the manner that Congress intended; and we're faithfully implementing the reliability provisions of the Energy Policy Act and moving swiftly to meet the aggressive deadlines in the law.

As I conclude, I want to recognize and welcome recognize Kim Warren from Ontario. The Commission recognizes the importance of continued cooperation with our neighbors in Canada, as we share not only a border but potentially an ERO as well. And good governance of the ERO including the approval and enforcement of clear and effective reliability standards will benefit both our
nations. And I look forward to hearing the views of the participants today.

With that, I'll turn it over to Joe.

Introductions

MR. McCLELLAND: Thank you, Mr. Chairman.

Good morning and welcome to the Federal Energy Regulatory Commission. My name is Joe McClelland, and I'm the Director of the Division of Reliability, and I'll be chairing today's technical conference.

As Chairman Kelliher stated, this is the first of two technical conferences that the Commission is hosting pursuant to the recently enacted Energy Policy Act of 2005. Today's conference is entitled Technical Conference for the Current and Possible Future Procedures for the Establishment and Approval of Electric Reliability Standards.

We here at the Commission appreciate the hard work and effort that has been expended by industry and its stakeholders in the development and implementation of its reliability standards. Your leadership and cooperation in this effort will contribute to its success.

I'd like to begin with a few housekeeping items. Please feel free to step in and out of the conference room as necessary; there are restrooms located past the elevators in the left and the right hallways. The Commission will accept comments to this conference through December 8th of
2005. The docket number under which to file the comments
are RM-05-30-000. And as I saw a lot of folks reaching for
pencils, I'll repeat that number: It's RM-05-30-000.

Our first panel is comprised of a cross-section
of the electric utility industry, as well as a
representative from Canada, and it will provide perspectives
about the current industry and regional council roles versus
the future role of the Electric Reliability Organization
with its regional entities.

I'd like to begin with Rick Sergel, President and
CEO of NERC. Now each of you will have ten minutes for
your presentations, and I'll provide you with a fair warning
when we hit the one minute mark. I don't like to do that,
but I will give you a verbal warning. I'd suggest you
start with an introduction; your name, your title, and
briefly state the organization that you represent and who
the members of that organization might be. Let's begin with Rick.
Panel I: RICK SERGEL, President-CEO, North American Electric Reliability Council; MICHAEL G. MORRIS, Chairman-President-CEO, American Electric Power, Inc.; DAVID MOHRE, Executive Director, Energy and Power Division, National Rural Electric Cooperative Association; ALLEN MOSHER, Director of Policy Analysis, American Public Power Association; SAM R. JONES, Vice President-Chief Operating Officer, Electric Reliability Council of Texas, Inc.; TERRY BOSTON, Executive Vice President, Power System Operations, Tennessee Valley Authority; and KIM WARREN, Manager of Regulatory Affairs, Independent Electricity System Operator of Ontario

MR. SERGEL: Thank you, Joe.

Good morning. My name is Rick Sergel, I'm President and Chief Executive Officer of NERC, and we appreciate the opportunity to participate in this technical conference.

A very long time ago, a professor in my MBA program implanted in my management DNA that structure follows strategy. And if we follow that good advice, then decisions on how the Electric Reliability Organization should be structured and how the ERO and other participants in the electricity industry should relate to each other, must flow from the vision one has for the ERO.

And this is NERC's vision for a strong ERO: The
ERO will be an international center for excellence and reliability, it will be open to participation by all, with an interest in the reliability of the bulk power system in North America, and will not be dominated by any particular segment of the industry. The ERO will develop robust, technically sound reliability standards, and will do so through processes that are well understood in advance, and appropriately applied. Those reliability standards will be implemented consistently across North America through effective, regionally-based compliance and enforcement programs.

ERO will support market solutions to reliability problems where that is possible, with the clear understanding that we won't have competition if we don't have a reliable electric system. And the ERO will drive to improve the performance and reliability of the bulk power system. It will do so not just by setting and enforcing standards, but by monitoring, evaluating and measuring the status of the power system. Only through measured improvement can you be assured that the ERO will live up to its promise to support a more reliable electric system.

And finally, the ERO working closely with the regions will accomplish these tasks efficiently and effectively.

Now I believe this vision is completely
consistent with and supported by the new reliability statute that the Congress has adopted, and the Commission is now implementing. And with this vision for the ERO in mind, I'd like to discuss several important questions that are raised by the Commission's rulemaking.

First, all proposed reliability standards must come to the Commission through the ERO. If the ERO is to assure a robust technically-sound set of reliability standards for North America, then the ERO must be in a position to bring its judgment to bear as standards are being proposed. And if the ERO is to assure that standards are developed in a fair, open, balanced and inclusive process, the ERO must be able to assure itself that the processes established to create standards were in fact followed.

Having all proposed standards come to the Commission through the ERO does not mean that every standard must go through the same process. The statute accords a rebuttable presumption to a standard developed by an interconnection-wide organization to be applied on an interconnection-wide basis, and the ERO's procedural rule should take that into account. If an interconnection-wide organization develops a standard in a fair, open, balanced and inclusive process, then it makes no sense for the ERO to start the process all over again when the proposed standard
reaches the ERO.

But the presumption is rebuttable, which means the ERO must make a judgment. And I submit that that judgment should be made on a limited set of factors after an opportunity for interested persons to be heard.

And here's the basic list:

Was the process followed?

Does the standard have adverse consequences outside the region?

Does the standard so fail to provide for reliability that there's a likely and substantial threat to public health, safety, welfare and national security?

Or does the standard impose a serious and substantial burden on competition not necessary for reliability?

And likewise, regional standards should come to the Commission through the ERO. The process for review should be structured to assure that the vision of robust, technically sound standards developed in a fair, open and balanced, consistent and inclusive way is assured for regional standards as well.

Second, the Commission has appropriately recognized the need for an assured source of funding for the ERO's activities in support of reliability. We believe that assured source of funding must be extended to the activities
of the regional entities as well.

We must have consistent and effective compliance, audit and enforcement programs in place across the continent. We will need to establish a process with the regions to ensure that both the ERO and regional budgets are fully adequate to do that job. That will require transparency and a level of consistency both between the ERO and the regions, and among the regions as well.

And third, the bulk electric system spans the international borders to the north and south, and the ERO must have that same reach. The Bilateral Electric Liability Oversight Group has developed the principles to guide the formation. NERC has long had Canadian participation in its programs and it will continue to do so.

I want to highlight two of the recommendations we included in our comments for strengthening the ability of the ERO to meet the vision. The first is that regulation should make clear that all owners, operators and users of the bulk electric system must comply with the Commission's regulations in implementing the Act; approved reliability standards, procedural rules adopted by the ERO and regional entities and requests for data submitted by the ERO.

There is no point to having disputes about whether the ERO or regional entity has the authority to require particular procedures. And if the ERO is to live up
to its promise of driving to improve the performance and reliability of the electric system, then it must be able to obtain the data it needs to do the analysis. The final rule should require users of the bulk electric system to respond to such requests for data.

And the regulation should also require all owners, operators and users of the bulk electric system to register with the ERO and appropriate regional entity. The Act and the regulations proposed in the NOPR charge the ERO and the regional entities with monitoring and enforcing approved reliability standards. The ERO and regional entities must have a mechanism to learn the identity of the owners, operators and users of the bulk electric system in order to ensure that all such entities are complying with the reliability standards. A registration requirement will also aid those who must comply with the reliability standards in gaining a clear understanding of their responsibilities under the standards, and provide the same clarity to those to whom it does not apply.

So the final rule should therefore include a provision requiring owners, operators and users of the bulk power system to register with the ERO and the appropriate regional entity.

And thank you again for the opportunity to participate.
MR. McCLELLAND: You finished early, Rick. Thank you.

COMMISSIONER BROWNELL: More time for questions.

MR. McCLELLAND: That brings up a logistics question. We can hold the questions for all of the panelists or take them individually.

CHAIRMAN KELLIHER: Let's do that, yes.

MR. McCLELLAND: Okay, Mike, the floor is yours.

And I am timing.

MR. MORRIS: Joe, thank you very much. I'm sure I won't take my allotted time, either; but I, like Rick, appreciate the opportunity to be here, Mr. Chairman, and fellow Commissioners.

My name is Mike Morris, President and Chairman and CEO of American Electric Power Company. And more importantly, for the purposes of this meeting, the current Chairman of the Edison Electric Institute.

I know, Joe, you wanted us to mention our members. I hope you didn't mean by name.

MR. McCLELLAND: (Laughing)

MR. MORRIS: I will simply tell you that we are here to represent the investor-owned utilities, and we believe that EEI is speaking of a single mind and a single purpose, and a very important purpose and a very important purpose in this undertaking; and that is to recognize many
of the things that the Chair has said in regard to the Energy Policy Act; and equally important, to dovetail and support the comments that were made by Rick, who is a very important addition to the overall reliability scheme as we go forward jointly to work on what we hope is an extremely successful program that will ensure reliability of the bulk interstate grid as we go forward.

Obviously the opportunity to be here is something that we greatly appreciate. We really do believe that this is a technical and an administrative challenge to ensure that we find a road that allows for this important and influential, and at the top of the planning cycle, ERO which will allow for the implementation of a very strong set of mandatory reliability standards that we, as industry members of the various regional operating organizations, will be able to understand what's required of us and be able to live up to those requirements to the fullest intent of the rules as implemented by the ERO through the auspices of the authority that we hope the Commission will grant to them.

It is very important that the ERO be extremely strong and forceful in the way that they see and implement their role at the top of this planning cycle and structure. It is equally important that we find a way to accommodate the points that are important to the regional characters in the organization who have been in place for a long time and
have added tremendously to the current reliability that we enjoy on this country, but we know that we need to do more.

And to that end, we think it's critically important that you be dutiful, and I know you already are, in your implementation of your responsibilities by putting in place the expectations of what you hope the ERO will bring to you, ultimately approving who that ERO is going to be; and then approving the authority that they will need to delegate to the various regional organizations to ensure that we have some continuity about what we're doing.

Some worry about a transition period and a bridge from here to there. I would simply suggest that we already have very important standards in place; the intent of the Energy Policy Act was to take it from voluntary to mandatory, something that we as an industry strongly believe in.

It's clear that maintenance of the reliability of the system is a national and regional and as well as international event, and we're happy to see our friends here from Canada; and as Rick said, it's very important that we work with our friends south of the U.S. border as well.

That strong ERO will have to recognize the regional differences that are real. And I had the opportunity to share with one of the commissioners before we sat in formal setting here, to a piece of advice that was
given to us by Chairman Thomas of the House Ways and Means Committee when we were negotiating various pieces of the Energy Policy Act; and his advice to us was to bring forward those things that you need in a task sense, not bring forward those things that you want.

And I would suggest to the regional players that they follow that advice; that they bring to the ERO the things that are truly important to be recognized for their regional differences, rather than an entire long list of things that they would like to have happen because it's the way they've always done things.

I think my good friend Earl Nigh has said it very clearly to all of us: This is a cultural transition from a bottoms-up organization and control of reliability to a top-down organization in control of reliability; and one that the Edison Electric Institute believes in.

We always worry, at EEI, how strongly we all believe in the things that we're speaking of; but I can assure you from the CEO meetings that we have had that this is an undertaking that is supported by those CEOs and something that's very important for us to help make sure that it comes to fruition.

We obviously have been working very diligently at EEI at what are called delegation agreements; trying to understand how it is that a regional organization would make
application almost to the ERO to make certain that their regional differences are recognized and become standards. We think it's critically important that that process be followed.

And as you know from comments that you have heard many times before, that supervening authority that the FERC has at the very top of this regional reliability structure is critically important. And if ever any of the members of the regional organizations or any are reluctant to join in this overall national and international scheme, that the ERO would come to you and seek your authority to force that reality to come to pass.

Because as you know, in the reliability game, borrowing from a phrase we all believe so dearly in the nuclear operating world, we're tied to each other, and the best of us is only as good as the worst of us. In the electric grid, we know that to be physically true as well as emotionally a fact that we must live with.

Because if anyone decides to play outside of the rules and because of that endeavor causes an event to happen that begins to cascade over the system as we have seen in the very recent past, it is a very sad story that all of us have to explain after the fact.

So the requirement for the absolutely up-front understanding of "You must be a member, these are the rules
that you must follow, this is the process that's available
to you if you believe that you need some change in that
overarching program of regulatory control. Then bring it
forward, and bring forward your logic for it, and I'm sure
that the ERO will be more than accepting of those issues,
and if in fact they're needed, not just wanted,
accommodations will be made for them." We think that it's
essential that we get to that point.

Equally important in this process is that
transitional period, because we really are going from a
voluntary scheme that some took more seriously than others,
to a mandatory scheme that's going to require absolutely
performance under those mandates. And in that transition
period we may have to edge some people along more pointedly
than maybe others. But notwithstanding that, with a strong
ERO in place, with the FERC oversight and strength
supporting that process, I believe that we have an
opportunity to enhance the reliability of this interstate
highway that moves electrons just like commerce moves on the
interstate concrete highway.

And it's an opportunity that we can't make a
mistake on; and I know how seriously you take that
challenge, as the Commission, and we join you and champion
you in that regard. These are very important times, and we
need to be respectful of the history of these regional
organizations that, for the longest period of time, have really set their standards. I can't imagine that any of those regions will bring forward to the ERO or to the FERC standards that would be less than we're used to. I would expect that many of them would be interested in bringing to the ERO and to the FERC standards that might be higher.

I know that for instance in a regional sense people in a peninsula like Florida or a peninsula like Michigan, other parts of the country, might see their needs to be different and we should be respectful of that again if in fact they are. But if it's just because 'this is the way that we've always operated and this is the way that we would like to continue to operate' then I would expect the ERO to say 'Thank you but no thank you' and I would expect the FERC or hope that the FERC would stand strong in support of that. Because it will be that model that will allow us to get there.

You have heard us say many times before that one of the keys in this endeavor will be the strength with which the field audits are done, and the seriousness with which the public education of the individual companies failing to live up to those standards becomes. Because as many of us have said before, there is a link to the way that we were able to self-police ourselves in the nuclear power operations, but it's different in this sense because it's a
much broader challenge.

But it has always been the sharing of data, the lessons learned, the openness of mistakes that have been made. We have sat at early EEI meetings when we talked about, we need to all get public with our failing to live up to the voluntary standards of the NERC.

MR. McCLELLAND: A minute, Mike.

MR. MORRIS: I didn't think I'd take that long.

(Laughter)

There was some push-back in the early go, but I think that we all truly do understand the seriousness with which we are working today. And it will be that transparency of, we have failed on these points, we have fixed these points, and we will not repeat that failure going forward, that will help give the ERO the strength it needs, and of course ultimately the reliability that you're seeking and that we clearly are seeking because it's important to the commerce of this country.

Thank you.

MR. McCLELLAND: Thank you, Mike.

Dave?

MR. MOHRE: Good morning, everyone. I'm David Mohre, I'm Executive Director of the Energy and Power Division of NRECA, National Rural Electric Cooperative Association.
I was going to make a fancy beginning to my presentation; I'll just say "I'm with him."

(Laughter)

But since I get paid by NRECA I'll also offer a few more comments. Let me begin those comments by saying that NRECA and its members have long been active at NERC; we've been long supportive of NERC's mission; we've been active in the development of standards, our members have complied with those standards despite the fact they were voluntary; and let me just insert something here -- and I agree with what Mike said from the standpoint of, in the deep past sometimes weren't adhered to quite as much as they should have been by everyone -- not cooperatives, however; we always complied --

(Laughter)

In a spirit of full disclosure this morning, I will tell you why I have been on the Board of NERC for a number of years; I was also the secretary-treasurer and member of the executive committee. So that's just a full disclosure issue.

With regard to the current matter, cooperatives strongly, strongly supported legislative efforts over the past five, six, seven, how many years has it been -- to make reliability standards mandatory through a strong, single, national, self-regulating organization. One that has the
authority to develop the standards and also to enforce them. Interestingly enough, I went back and looked at our resolutions. Cooperatives love to do resolutions; and one of the longest-running resolutions the cooperative membership has is one entitled: Support for NERC's Independent Self-Regulatory Organizations. I found that intriguing.

Cooperatives have been and continue to be very active with NERC as it has evolved. Now I think that's very important. We've got four CEOs that are currently on the stakeholders committee; one of our CEOs, Jan Shafer at TriState is chairman; our CEOs are involved in other ways, both with NERC and with the regions. Mike Core is the current chairman of ECAR; Mike Core from Big Rivers Electric Cooperative. Rich Midulla of Seminole Electric Cooperative is the immediate past chair of FRCC. Our employees are also very, very active. The current chair of the Compliance Certification Committee is Bob Harbour of Continental Cooperative Services. The immediate past chair of the Standards Authorization Committee was in fact Ricky Bittle, a name known to many folks at this table.

We are also involved in other ways; 11 percent of the current registered ballot body are made up of cooperative technical staff, and that's interesting, because historically only 12 cooperatives out of 950 cooperatives
have been certified control area operators -- in the old
days, I should say.

There's been significant cooperative
representation, balanced representation as we way, on
planning, the operating, the critical infrastructure
committee. As a matter of fact, Barry Lawson of my staff is
currently Vice Chair-Elect of CIPC itself.

I say this to demonstrate how actively involved
and how important cooperatives feel about NERC and mandatory
reliability standards, and to demonstrate in fact that NERC
is part of the industry.

Let me mention something and skip over a more
detailed explanation. A very important issue to
cooperatives all along has been the separation of the
development of the mandatory reliability standards and the
business standards that NAESB does. That's been
accomplished; there is cooperation, there is coordination,
we think that's very appropriate. I'll skip over other
comments there.

I think it's important to recognize the strong
support for NERC and the movement to the ERO and mandatory
standards is there from cooperatives despite the fact that
far more cooperatives will be captured, if you will, by the
standards due to the functional model of replacing the prior
model.
We think that's fine, and it will require us to be even more involved in both the working groups, the working committees, the ballot body and the ANSI process. We're pleased to do so because as I like to say, Congress got this one right.

We've identified a lot of our specific concerns in our filing in response to the NOPR. I'll just reinforce a couple things here for emphasis.

Congress appropriately entrusted, in our view, appropriately entrusted the actual standards development and enforcement to the ERO, and that's great. But equally important is the importance of FERC itself to have a highly competent technical staff to advise the Commission and also to help in evaluating disputes; because they're going to come up.

But having said that, let me also say that we currently have in place, as Mike said, existing standards. And to the extent -- we believe to the extent the Commission reviews these and thinks they ought to be amended or replaced or made more clear, that that should be an evolutionary process with the remand back to the ERO, and eventually reconsideration, revision is appropriate by the industry groups, with of course FERC's approval.

We would also like to point out, we believe that Congress made it abundantly clear -- at least that's our
reading -- to, these rules should only apply to those who truly do impact the reliability of the bulk power system. That means those who are newly impacted need to know it, and there should be a process put in place to ensure that, there should be a process put in place to evaluate the arguments in dispute. We need to be sure; we don't want to have a situation where "I didn't know" that that's unacceptable; that has to be done up front.

Along those lines we're somewhat concerned, and we've been talking to NERC right as we go through this process, about inappropriately capturing maybe 2500 to 2700 small distribution entities that, as I like to characterize it, if they tried they couldn't affect the bulk power system. So we think that's important.

We also believe that periodic recertification of the ERO is somewhat consistent with the intent of Congress, and we're not sure it's a really good idea, to start out. It's kind of like a marriage; we view this as a marriage, and the idea that we're going to have a divorce every five years and then get remarried every five years, we're not sure that makes a good relationship happen -- at least my wife told me to say that to you.

(Laughter)

And finally, as I've tried to explain, we feel we have a very balanced and very important input into the
existing NERC process and how it evolves, the ERO evolves; and assuming, a priori, that NERC will be given the mantle, we want to make sure that continues in the future.

And with that, let me say again, he's right, and I thank you.

MR. McCLELLAND: Thank you, Dave.

Let's go to Allen.

MR. MOSHER: Good morning. This time I actually did remember to turn my microphone on; I've forgotten for the last two conferences I've been here.

I'm Allen Mosher, Director of Policy Analysis for the American Public Power Association, which is the trade association that represents the United States state, municipal, and other locally-owned electric utilities for about 2000 municipal and other local electric utilities in the United States. Most of them are distribution systems that are relatively small in scale and have a rather indirect impact on the bulk electric system. But we also count among our members a number of large, vertically integrated utilities that perform all of the different functions and had been involved in each of the different NERC and regional activities that we're going to talk about today.

We serve about 15 percent of the nation's electric customers. We do this through a variety of
mechanisms, some vertically integrated, sometimes
distribution utilities that combine together through
municipal joint action agencies which are power supply
organizations that either own or purchase generation and
transmission to serve the requirements of their member
utilities.

Thus, I have a diverse membership. In large part
they have, and they have different focuses on how they
interact with the system, but they all agree on the
importance, on reliability; APPA has been a long-standing
consistent supporter of the reliability framework that is
reflected in Energy Policy Act of 2005. We are very
pleased, finally, to have the bill in place so we can have
industry-based, enforceable reliability standards that we
all agree on, that we all understand, that have enforceable
metrics that have a compliance system that we all understand
and can work with.

APPA has a lot of members that are also involved
in NERC processes. Dave Mohre's summary includes a number
of cooperatives that are involved in NERC. When he sent me
back to do my own tally of the registered ballot body.
We've got over 100 APPA members that are actually registered
to vote in the various segments of the NERC-registered
ballot body, which is the industry-segment weighted approach
that we use to approve standards.
I'm very pleased by that participation, but there's a flip side on that, that because public power systems, a lot of them are small, they wear multiple hats. One of the most important awards that APPA hands out to its members is something called the seven hats award, because we have member systems that, basically there are just a few people working there, and they have to perform multiple functions. So we should keep in mind that reliability standards compete with every other function that a distribution utility or a medium-sized city has to perform, that we need to make these standards clear and understandable, we need to communicate needs to the industry in a way that is respectful of their time concerns. Complexity is a danger because it may interfere with compliance.

With respect to the reliability role, APPA agrees with NERC's comments, that we've largely got it right. The proposed rule is very good; some minor corrections and additions will be needed, but in general I think we're on a good path that reflects the consensus that we've got in the industry about where we're going. We've had certainly a number of years to try to get that consensus together.

One of the problems we have of course is that we know generally where we want to go, but when you really dig down a bit, the how is a lot less clear. The details are a
lot less clear, once you dig below the general consensus.

As the endless meetings of the post-legislative steering committee has demonstrated, where we have consensus on an issue or we think we do, and then we dig a little bit deeper and well, maybe we really don't agree as much as we thought we did.

The intention is there from every segment of the industry to reach closure on this, to get these standards in place, to get the ERO in place. But the path is likely to be a bit rocky over the next year; we will hit some speed bumps, and we will be, I'm sure -- we, the industry and NERC will be coming back to the Commission and to Canadian regulators to say "Well, we've hit a problem here, we need to work on this a bit."

One particular element of the proposed rule that I wanted to flag for the Commission is where I think the Commission has an ongoing important role to watch closely. I'm very confident that NERC and the regions can come up with sound technical reliability standards; but where you have the intersection of reliability, commercial and regulatory issues, that's typically where NERC falls down, because NERC does megawatts; it doesn't do dollars, or at least it doesn't do dollars very well.

So the Commission needs to continue to pay attention to those kinds of issues where we get that
intersection, and believe me, when we have problems, we'll bring it to your attention. But you need to sort of have an ongoing look at that. But in other respects, I'm hopeful that NERC or the ERO can be the foundation for an industry-driven reliability culture. If we're successful in what we do, the Commission will be able to do this in a hands-off fashion, because we're going to develop the standards and we're going to understand them, we're going to get entities registered, and compliance will take place because people know the rules. And you'll be able to stand there with the big stick and not have to use it; at least that's my goal.

Now as we've all talked about, of course, we've fallen down a number of times recently on reliability. The August 14th outage, of course, is the most recent one. We all agree that we don't want to have that happen again. So I'm not trying to be overly optimistic, but I do have some confidence that NERC can make this process work.

To talk a bit about the standards process that NERC uses and the regions use, and also the compliance, we're pretty comfortable with the NERC standards development process, which includes the registered ballot body, but also the standards process manual. We think that that can be used successfully as part of the transition to an ERO. I'm less familiar personally with the regional processes, but I know my Western members are very comfortable with the WECC
That goes to a related problem, though, that many of these standards need to be harmonized between what the regions develop versus what NERC develops. There is a problem, if it isn't readily apparent, as Rick Sergel said, how the standards are developed on a regional basis when they basically present the documents: 'Here are our regional standards' to NERC, and it isn't clear how they got to this endpoint; it isn't apparent that the process has been fair, open, balanced, and inclusive, and that it properly addresses all elements of reliability. I don't know whether we can just take what a region produces and then say "Here, FERC, you take a look at it now." There may need to be some due process at the NERC level, although certainly deference to ERCOT and to WECC is appropriate.

One of the stumbling blocks I also anticipate is going to be in the area of registration and personnel training, and there that goes to some of my smaller members. It's not quite apparent now to many of them whether they need to be registered or not; it's a problem that we're going to have to work through over the next year, because again there are about 2,000 municipal systems in the United States; most of them don't have a direct interface with the bulk power system, so it is unclear to some of them whether they need to be registered and whether NERC standards
actually apply to them. And that also relates to, the
development of NERC standards as they reach beyond the
traditional control areas and unbundle the standards through
the NERC functional model, and then impose requirements on
users, quote unquote, of the bulk power system that may not
actually be operators of bulk electric facilities.

I don't know that we'll have a problem, but there
are certainly a number of issues to work through; and as
Rick said earlier, these lines of authority need to be
worked out. The Energy Policy Act does not clearly
delineate who's in whose jurisdiction, who's not. It's
something we're going to have to work through over the next
year.

That has very important cost consequences for
members, because if for example a NERC training standard
applies to a small municipal, that implies that they have to
get their operators trained and certified, which is a
significant expense. So obviously it's not something that
we would undertake lightly.

Let me talk about a couple of the stumbling
blocks we're likely to hit: the regional delegation
agreements are probably the most important single document
that's still in play right now. Regions have different
views on what ought to be in the document. I think each of
them would like to do it their own way, to make the
transition as easy as possible; but as Chairman Kelliher said, the Commission has a good reason to expect considerable standardization there, so that NERC knows, in its relationship with each of the regions, that compliance will take place on a sound basis, so that the delegation will be successful. There is good reason for having a pro forma agreement, and considerable standardization among the regions.

Let me skip over my remaining remarks, and I think I'll go to questions. I think I'm about to run out of time.

MR. McCLELLAND: Yes; this is a timekeeping device.

Thank you, Allen.

Okay, Sam.

MR. JONES: Good morning, ERCOT I guess is before you today in a new capacity; jurisdictional for reliability purposes, but we're certainly not strangers to the table, we work with the Commission in a number of workshops.

I'm Sam Jones, I'm the Executive Vice President and Chief Operating Officer at ERCOT, and since ERCOT Is a little bit new, I'll tell you just a few things. We are the Regional Reliability Council of the North American Electric Reliability Council, NERC. We are organized on an interconnection-wide basis. We're also an independent
system operator that operates as a single control area or single point of control grid within the State of Texas. Our only connection outside the state to the United States is two DC ties into the eastern interconnect with a total capacity of about 820 megawatts. We have a small DC tie into Mexico, CFE, and we do talk to Mexico the utility, but they are not a part of the ERCOT region.

ERCOT has been a strong overseer of the grid in Texas since -- well, really for 64 years, but we have been utilizing computer based control systems since 1983 and working jointly with all the participants.

ERCOT became an independent system operator certified by the Public Utility Commission of Texas under the laws of the State of Texas on December 1, 1996. In connection with that, we also became a totally separate corporation; we are not owned or have any interest in any of our market participants.

We oversee about 38,000 miles of high voltage transmission line, oversee about 70,000 megawatts of generation and had a peak demand this past year of 60,272 megawatts. So we're obviously the baby intersection among the three here in North America.

We have an outstanding record of reliability in the 64 years that the utilities have been interconnected in ERCOT. We don't have any knowledge of any major grid
disruptions or cascading events in our history. Because we're so small we have to be pretty careful in what we do. ERCOT has been a regional member of NERC since 1970. We actively participate on NERC committees; I personally have the honor of chairing the NERC Operating Committee at this time. We intend to continue the support with the ERO, certainly. We support fully the NERC standards development process, and we'll continue that standards development process cooperation with the ERO. We support the standards that are in place, and any future standards that are developed.

We also are a participant in the current NERC voluntary compliance program. The ERCOT ISO has a very active compliance and enforcement group. It's functionally separated from the other ISO functions. They monitor both ERCOT operations activities and those operating activities of our stakeholders that own transmission and generation facilities. ERCOT will continue this level of participation and compliance with the ERO once it's in place, and will apply to be a regional entity for its region.

We will utilize a compliant regional standards development process, but we really don't anticipate the need for a lot of regionally-specific standards. We've been able to work well with the NERC standards program it is today; we do anticipate, however, that we would need a few variances
in particular cases. We currently have two to day in
response to control performance standards; one is a waiver
from one of the standards which really doesn't apply to us,
the other is a different coefficient.

We think that as standards are developed strong
enough for the multi-regional interconnects, that there may
be times when we need a variance to accommodate the ERCOT
grid characteristics, and even the ERCOT competitive markets
that we use to operate the grid.

We think in that case that it's appropriate,
based on our interconnection-wide basis, that we would
develop those standards by our standards process, and then
submit them to the ERO for consideration and recommendation
to the Commission. We think that the ERO staff would review
that regional standard from ERCOT, determine that it doesn't
have effect on other regions in North America, that it meets
other criteria, that it's not weaker than, doesn't dilute
anything, that it's equal or better for our particular
application; then if they agree with the that, then
recommend it to the ERO Board for approval; and if the Board
concurs, then forwarding that to the Commission for review
and possible approval at that time.

We don't believe that submission of these
regional specific standards to the full NERC ballot body is
appropriate, because the people that vote there outside of
ERCOT really don't have knowledge of our grid characteristics and operations, and probably would be asked to vote on something with which they're not that familiar. I know personally I would have a problem voting on a standard for another interconnect which I'm not intimately familiar with.

The challenges I think that we have, the major challenge we wanted to bring before the Commission is the decision on whether an ISO can be a regional entity. As I mentioned earlier, we are, we do have a very strong compliance and enforcement group. They currently are functionally separated, reporting to the CEO. It meets all the requirements of the Public Utility Commission of Texas and state legislative requirements for functional separation. We hope the Commission will accommodate that in its final rule and allow us to maintain that organization.

Candidly, there is an even stronger affiliate separation rule that was adopted in Texas when we began competition and the electric utilities were allowed to either structurally separate or functionally separate. It's an affiliate unbundling rule, and I'm not enough of an attorney to really tell you the full amount. Our general counsel is very familiar with it.

But it requires even further in that we could, our Board has an independent group; we have both
stakeholders and independent directors on our Board; we'll have five independent directors very shortly. The purpose would be to put the oversight of that compliance group underneath a committee of the independent Board members, use separated areas of office facility, separate accounting systems, separate information systems, and comply with that affiliate unbundling rule.

With that, we again hope the Commission will consider and allow that in the final ruling. With that, we want to thank the Commission for the opportunity to participate in this important undertaking as we go toward the future reliability of the nation's electric grids.

MR. McCLELLAND: Thank you, Sam. I fear I'm frightening the speakers. We still have ten minutes, so there's no need to rush. I will give you fair warning when we are up against the ten minute mark.

Terry, I know you're not shy, and it's your turn.

MR. BOSTON: Thank you, Joe.

I'm Terry Boston, Executive Vice President of Power System Operation with the Tennessee Valley Authority, and I would like to thank the Commission and the Staff for hosting these series of conferences on issues of vital importance to our industry and our nation, and as I sit beside our friends from Canada and the continent as a whole.

TVA's primary relationship with the North
American Electric Reliability Council is through the regional council in the Southeast, SERC. We are dues-paying, card-carrying members of the Southeastern Electric Reliability Council and we are extremely active in participation and the NERC-SERC standard settings, the standing committees, the working groups, and nationwide, the audit process. We have learned as much from audits of others if we have for audits of ourselves.

We are fully expected to be as active and engaged with the ERO as we have been with NERC, and we think NERC should be selected as the nation's Electric Reliability Organization.

TVA is a not-for-profit federal corporation; it is funded entirely by ratepayers dollars, and we have a federal statutory obligation to provide reliable power to our customers at the lowest feasible cost. Last year, our customer outage time was 3.34 minutes across the entire system average for the year. This is the lowest in our history; and for six years in a row, we've had 99.999 percent reliability of our delivery from our transmission system.

With the growth in robotics and electronics in our area, five nines of reliability is what we consider the threshold to support the digital economy. In our last NERC FERC audit, we were recognized for creating a culture of
reliability, which I consider a badge of honor for our operators and our planners; and we strongly supported SERC as it adopted one of the first compliance programs in the nation that featured enforcement backed by financial penalties.

SERC has mercifully been spared the widespread outages that have plagued other regions, beginning with the Northeast blackout of 1965, followed by a cascading outage in Florida in 1976, and followed in 1977, lightning struck lines in New York and cascaded all the way through Long Island. This one was not pretty because of the chaos that was in the streets.

These blackouts led to the highest investment in transmission in the mid-Seventies that had ever occurred; almost ten percent of gross revenues was invested in transmission. And the performance for two decades following that investment was measured quite well by the lack of cascading outages.

Going forward to September 1992, E-PACT is what I call a textbook case of an example of law of unintended consequences. The authors never dreamed it would lead to overreliance on a single fuel, natural gas, for new generation. Nor did they imagine the electrically-sound planning principles which dictated that transmission and generation planning must occur in lock-step, closely
integrated, would be abandoned for the rush to site new
generation near the wellheads and the gas pipelines; and of
course in the Southeast we've seen a lot of that.

Nor did they envision that the investment in
transmission would dry up because few would commit to firm
transactions that would entice new lines to be built.

What followed was one of the toughest periods in
the industry's history; the 14-state blackout that occurred
in 1996 in the Western interconnection followed six weeks
later, before the I think was dry on the report that DOE had
issued to the president saying "We know the root cause, it
won't happen again." It did. We are familiar with the
well-publicized rotating blackouts in California, and the

There have been lesser disturbances. One that
slipped up on me was a lightening interruption that occurred
in the Dakotas and cascaded all the way into Canada, almost
to the Arctic Circle. And mid-August of 2005 this year, we
had a major frequency excursion for about 30 minutes; there
have been five major frequency excursions that have occurred
where people have missed interchange schedules by 2000-3000
megawatts.

I believe that one of the reasons the Southeast
has not had the large scale cascading blackouts is because
SERC members are closely knit and both operators and
planners share data and collectively we have invested about $1 billion per year in transmission.

We strongly believe in the reliability model that had existed through the inception of NERC, and the regional reliability council, a model which has been tested and refined for three decades. Reliability, when you work for it, it works. Despite the recent challenges the electric providers have faced the philosophy and methodology that underpins the industry's approach to reliability have been extremely effective and should not be jettisoned outright for untested approaches.

Today there is optimism, as David Mohre has shared, because "Congress got it right putting reliability in the 2005 bill" but there's also new risks. As we move to the new ERO and the regional reliability entities, TVA believes that change should be incremental and measured. To paraphrase Einstein as I did at the last NERC Board meeting, "Solutions should be as simple as possible, no simpler." We agree with SERT that we should build on the existing structure of standards making, and encourage participants who use, own and operate the grid to be very involved in the standards process.

TVA is committed to accurate and timely reporting of assessment information and data. We'd take any recommendation that comes down from audits of NERC and SERC
very seriously, and when they apply to TVA, we track them to completion.

We also strongly believe in the standards making process, and that it is inclusive. It does take some time, but it establishes the minimum standards we need for reliability. We are very involved in INPO, and we believe an INPO-type transmission, self-improvement organization, driven to excellence as has occurred in the nuclear industry, is doable within the framework that's set forth.

The major challenges we see in implementing the new ERO is keeping our eye on the prize: a strong, reliable power grid and not discarding basic structures that we've built over the last three decades; and clearly, reliability is going to be the fuel for our digital economy.

Dramatic changes for the sake of change risk contributing to the very problem the ERO is being created to prevent. Much as the energy policies of the early 1990s and the subsequent regulatory uncertainty led to the lowest investment in transmission as a percent of total revenue that occurred since the Great Depression.

EPRI estimates the societal cost of power failures grew from $25 billion in 1996 to about $119 billion by 2001. A DOE report by Joe Eto pretty much confirmed that excluding power quality events, came up with an estimated cost to the U.S. of $80 billion.
It's vitally important that we get this right to protect our economy, to protect the customers we serve, and to safely integrate power markets as they evolve; but we must recognize that without reliability we shut down our economy, without reliability we jeopardize our customers and their livelihood, and even their lives on a cold winter day or a hot summer day. And without reliability, there will be no markets, electricity or otherwise.

At the end of the day, Ohm's Law and Kirchoff's Law has and can preempt Kenysian economic theory, and after a decade of experimentation, we've got to get it right for the people we serve, and we are committed to work with the Commission to get it right. Thank you.

MR. McCLELLAND: Thank you, Terry.

Kim?

MR. WARREN: Thank you, and good morning.

My name is Kim Warren. I'm the Manager of Regulatory Affairs for the Ontario Independent Electricity System Operator, and I'd like to thank the Commission for extending their invitation to allow me to participate in today's session.

My comments are made from the following perspectives: My organization, the Ontario Independent Electricity System Operator, the NERC Reliability Coordinator and Control Area Operator for the Province of
Ontario, the enforcement authority respecting compliance with NERC, and NPCC by all entities in Ontario, and an organization that has always been and continues to be both heavily involved in all aspects of NERC and NPCC.

Also, as a member and active participant in the affairs of the Canadian Electricity Association, the organization representing the wholesale electric industry in Canada, and one who has spent almost all of his career in system control centers, making reliability standards in interconnected systems work in real time.

Beyond that, I should like to mention that we're heavily interconnected with our neighboring entities, which includes the States of Minnesota, Michigan, and New York.

Today the situation in Ontario is as follows: NERC and NPCC standards are automatically mandatory in Ontario, under legislative authority, at the moment they are approved. The ISO alone is responsible to NERC and NPCC for compliance by all parties in Ontario. The IESO alone is sanctionable for any violation of a standard in Ontario irrespective of who caused it.

The IESO, in turn, administers NERC and NPCC standards against all Ontario entities including itself, under the authority of the province's Market Rules.

The enforcement arm of the IESO is "ring-fenced" from the remainder of the IESO.
The IESO also has the authority to develop Ontario-specific standards that cannot be less stringent than NERC or NPCC standards, and has done this, for example, with respect to vegetation management.

The Ontario framework was described in considerable detail in our response to the ERO NOPR and suggested as a model that is effective and may have applicability elsewhere.

In the future, under the ERO and the regional entity, the NPCC becomes or is replaced by, the IESO does not anticipate significant changes in this framework. The changes, if any, are likely to be done of the nature of formalizing current arrangements to parallel some of the formalism surrounding the ERO and RE relationships with the Commission, including:

   Recognition of the ERO as a standard setting organization for purposes of developing and enforcing standards that will be mandatory within Ontario;

   A memorandum of understanding between Ontario regulatory, the Ontario energy Board, and the ERO and RE, specifying the relationship respecting matters such as the hearing of appeals by the OEB, of sanctions levied by the ERO or regional entity against the IESO; funding, standards approval and remands.

In effect, the IESO's primary objective in the
transition to the ERO will be to preserve the effectiveness of current arrangements and processes. This is true generally in Canada, where similar to the case in Ontario, NERC and regional standards are generally mandatory and enforceable now.

Regarding the question of challenges from changed processes, we do not anticipate changes within the province of Ontario. We do, however, see some potential for indirect impact from the Commission's new oversight authority. In particular, we have some concern that an enforcement regime with the provision for very substantial financial penalties could drive the industry to develop lowest common denominator standards; i.e., standards that would be directed to minimizing the prospect for being penalized rather than ensuring an adequate level of reliability. Excessive fear of penalties could also tend to slow down approval processes for new standards. Again, a very undesirable outcome.

We are not saying there should not be financial penalties; rather, we suggest the Commission should consider behavioral consequences when addressing the questions of appropriate penalties. We note that NPCC has maintained a very high degree of compliance with very stringent standards without having financial penalties.

Further in this regard we see the question of
regional variations of ERO standards, or alternatively, regional standards that are subsequently approved by the ERO as being essential in avoiding the lowest common denominator concern. It will be a challenge to design processes that are effective in facilitating such variations.

Now I'd like to offer some additional comments from a Canadian perspective. Many of the following points relate to the Bilateral Principles, which have a high degree of acceptance in Canada, and which are referenced extensively in responses by Canadian entities to the Commission's ERO NOPR. The following section reiterates specific examples of the ERO from a Canadian perspective.

The grid is international in scope. Actions that take place in the United States are felt in Canada and vice-versa. the 2003 outage is such an example.

With that in mind, we believe reliability standards must be the same on both sides of the border.

The ERO must be international in nature. The ERO must follow in the steps of NERC, which has operated successfully on an international basis for more than 30 years. As stated, given that the grid is international, we believe that the ERO must be international. To operate successfully, there must be in place a commitment among the respective regulatory and government authorities in the U.S. and Canada to establish a foundation that can function
effectively on an international basis.

The governments must put in place the coordination mechanisms to ensure an effective international ERO. FERC is in the process of establishing rules for the establishment and operation of the ERO now. Such rules will necessarily determine the governance and operation of the ERO, and the relationship between the ERO and the regions. Since the ERO will also operate in Canada, such rules will necessarily have cross-border impact.

NERC is in the process of meeting with various provincial authorities to determine the appropriate processes for ERO recognition and the establishment of enforcement and mandatory reliability standards. While there will inevitably be differences between the process requirements in a Canadian province relative to the requirements given in FERC's ERO rules, it is essential that there be no incompatibility between these two jurisdictions.

Once the ERO is in place, actions taken by a particular government authority could impact entities within the jurisdiction of another government authority, or could undermine the authority of another government authority.

Now is the time to establish coordination mechanisms in a number of areas. They would include coordination on the governance structures of the ERO, on the approval of the ERO and the timing of when the approval will
take effect; coordination on approval of mandatory standards and the timing on when such standards will go into effect; coordination on delegations to regional entities.

The question of remand is a further example of the need for cross-border coordination and how the coordination should occur. Remand is an essential feature of a bilateral relationship that respects sovereign authority of the regulators in two countries. The drafters of your recent Act wisely included this remand feature.

The challenge will be implementing the remand function in a manner that it never takes place, or if it takes place, there is a consensus among regulators on the need for a remand.

We suggest that the exercise of a remand would represent a failure of process. Such a failure would most simply be a failure of the development process that created the standard proposed by the ERO. For example, a standard that was judged ineffective in providing for an adequate level of reliability.

While regrettable, such a failure is not fatal if recognized by all regulators. In this event, the remand by all regulators would send a strong corrective signal to the standard developers to guide their redrafting efforts; i.e., to tighten the standards.

Achieving such unanimity is unlikely to occur by
all regulators acting in isolation. Realistically, there
must be coordination amongst the regulators for them to
reach a common position on a remand. We recognize this is
a challenge for regulators; regulators and law are
independent of each other, and ultimately accountability to
their respective governments, not to each other.
Coordination among regulators must achieve a common voice
while respecting this constraint.

We note that Canadian provinces collectively and
individually are developing memoranda of understanding with
NERC as the respective ERO. Such MOUs will define each
province's relationship with the ERO, an essential part of
the provincial oversight frameworks in Canada. We suggest a
need for a corresponding, explicit definition of a
relationship between and among regulators on the two sides
of the international border to deal with remand and other
matters.

Thank you very much.

MR. McCLELLAND: Thank you, Ken.

At this time, I'd like to turn it over to

questions from the panel.

CHAIRMAN KELLIHER: I'll start with some
questions, but if I'm on of line of questioning that you all
are interested, please jump in and we'll pursue it together.

One of the comments I made in my opening
statement was referring to the fact that about 25 percent of
the Version 0 standards really rely on regional,
implementing criteria if you will. And that's a pretty
complicated relationship, and that's something --
relationship between North America and regional standards is
something that we want to explore here.

Now the Commission can look at that different
ways; let's just call them place -- I don't want to call
them placeholder standards, I don't want to use a pejorative
-- but you look at the relationship, a NERC standard that
really isn't enforceable or isn't complete, if you will,
unless the region acts, unless it's informed by, related to
some regional standard, how do you describe that
relationship? Is the NERC standard in effect a requirement
imposed on the regional body? Is the NERC standard a
placeholder that is only complete and enforceable if the
region acts to fill in the blank, if you will?

Under the law, the standards that the Commission
approves are enforceable against bulk power system users,
operators, and owners, not against the regional entities;
but bulk power system users, operators, and owners. And so
it is a complicated question and I just would love to hear,
particularly from Rick and Mike, but others. How should we
treat the 25 percent of the Version 0 standards that
arguably are not complete but for some regional
implementing criteria?

MR. SERGEL: Certainly the standards that are often called fill-in-the-blank.

CHAIRMAN KELLIHER: I'm not trying to use a pejorative, but if --

MR. SERGEL: Nor am I. I'm just trying to make sure we all understand one another -- that those exist. But I would start with -- but that's a standard, because it requires something. And it may not go as far as we would all like or do everything that we think we might want to do, but it is a standard. It says you have to have one.

CHAIRMAN KELLIHER: It's a requirement --

MR. SERGEL: It's a requirement.

CHAIRMAN KELLIHER: -- on the Regional Reliability Council.

MR. SERGEL: That's exactly right, it's a requirement. It says: you must have an underfrequency program. You must have a black start capability.

It then leaves --

CHAIRMAN KELLIHER: I'm sorry, Rick, it's a requirement on the Regional Reliability Council or in the future, a regional entity, not on the bulk power system user, operator, or owner.

MR. SERGEL: Well, it goes beyond that, because you would find as a part of that that it also would impose
upon a user of the system, of the transmission network, for
example, that they would then comply with whatever their
region has determined as how it's to be done within that
region.

So it does go on and place that requirement on
there. If you want to think that it's the middle that's not
filled in, both the beginning and the end are there; it says
you have to have a program and whatever that program is, a
user is required to abide by it.

I think that going forward, let's talk about
where the end point is. The end point is that we should be
able to have those filed; they should become part of the
standard itself; they should to the greatest extend possible
be driven to consistency. And I think there's agreement
with that, and I think that the process by which that's
done; i.e., somehow empowering regions to be able to have
open processes to be able to do that and/or whether or not
we ultimately end up with national standards that are just
more encompassing, meaning we revise the national standard
itself so it's one for everyone.

I think there's some room for that debate, and in
fact we'll probably end up with some of both. But the
transition to that point is one that we should just try to
move through as quickly as we can; but my preference is that
we ought to be placing that overriding standard in place
despite the fact that it has the limitation of not having
the specificity that we might all like it to have.

CHAIRMAN KELLIHER: Is there any question that
the regional entities would submit those implementing
criteria, if you will, in a timely manner? How can we be
sure that the regions fill in the blanks in a timely manner
so that there isn't a regulatory gap? And that that solid
quarter of the North American standards --

MR. SERGEL: We just want to be clear that they
have filled it in with respect to the requirement that they
have one. Your question goes to them filing it and getting
that process.

CHAIRMAN KELLIHER: Right. I don't think there's
any dispute among the panelists, and if there is, please
say; that a regional standard is only enforceable if it's
submitted and approved through the ERO to the Commission.

Is there any disagreement on that?

Okay. So, but you would expect upon ERO
certification and submission of Version 0 standards, and
approval of delegation agreements, there would be very
timely submission by the regions of their implementing
criteria?

MR. SERGEL: We would expect so, and if we
didn't, we have the authority to initiate it on our own and
would do so.
CHAIRMAN KELLIHER: So you would fill in the blank if they don't avail themselves of the opportunity.

MR. SERGEL: We would start the process to do that.

I think again the only question out there would be to what extent is it appropriate to have a NERC, what I would describe, international ballot body process be the one that determines how that works. And as I said in my comments, I think we want to make sure that we're flexible in what kind of process we use to make that determination.

MR. MORRIS: It seems to me that you've said it exactly right; and that the regions will have no power to do anything unless they've submitted it to the ERO, who in turn has submitted it to you; and if the region believes that they have some rule they're going to follow on their own, nice idea, but it shouldn't fit in this new model. And that really is part of the cultural difference that I spoke a bit about when we started here.

It really is a shift in the way that we do these things, but remember, the regions are just us. I mean, American Electric Power is part of what will become Reliability First along with many other members. So we aren't going to be a bunch of renegades trying not to live up to the national standards; I don't think that's the intent of any of the EEI members, and I'm sure that's true
of the REAs and the APPA members and the rest of us who have
had an opportunity to speak here.

I would hope that there's a dedication and a
seriousness to the commitment, to the strong centrally-
planned, centrally-authoritative body called the ERO with
you there to make sure I worry when you really -- and the
law is very specific about users -- I worry about the users.
I worry about a marketing entity that doesn't want to live
by the rules that are required, and how it is that we would
make certain that they begin to live by those rules; because
it's easy to make an 100 megawatt-hour sale and then put
nothing on the system, because something gets delivered and
something gets billed. And we need to make sure that the
users, too, follow all of these rules as we go forward.

To my friends from Canada in particular, I would
surely like to say that I don't think there's one of us who
will be looking for low standards for fear of enforcement
fines and penalties. That's 180 degrees from the thought
process that I know is there at EEI. I mean, we really are
full supporters of the notion of the mandatory nature of
what we're trying to commit to. Versus the voluntary
nature, which we've all admitted some are better than others
at volunteering. It's always been the case.

But going forward with the mandatory nature of
what we hope the ERO and the FERC will create, there will be
no option. And I really champion my friend from the TVA who mentioned that he and they learned more from the audits than they taught by the audits. And it really is true. The critical element here is to say that you, regional member/operator/user, are doing these things wrong, and if you do them better we'll have better reliability in a national sense. And then you have a period of time to fix that.

And the history of a second follow up audit sometime later, if you have an open issue that you didn't address last time, that's when I think it's important that your organization stands behind the ERO and does whatever has to be done. And if that includes allowing someone not to participate in the system, so be it. Those are the requirements that will improve the reliability to where I know you, the administration, the legislative bodies all want us to get to.

Somebody else mentioned the current day impact of the system being down, billions of dollars -- can't afford it. Can't afford it.

CHAIRMAN KELLIHER: Thanks. David?

MR. MOHRE: I'd like to just mention another aspect of this, and that is while penalties are important and certainly they are, if done correctly -- and I believe this will be done correctly particularly with regarding transparency, the independent NERC Board has already passed,
as you are well aware, a resolution on transparency.

I think that is the other great incentive, and it may be greater than worrying about the financial penalties. Because obviously if it becomes aware, if the street, if you will, becomes aware that certain people aren't living up to the standards, that can have a rather dramatic impact on stock prices and things like that. And that's a huge incentive to not only think good but do good. So that's the other part of the financial thing.

CHAIRMAN KELLIHER: Mike just made a point, and Allen made it in his testimony as well, that E-PACT changed the status quo. That we've had a certain status quo for a long time, E-PACT changed the status quo, and the Commission is faithfully executing a law that itself changed the status quo a bit, and that is going to make some people uncomfortable; but that's the decision Congress made.

On enforcement, that's an area of the new law that's not as well fleshed out as some of the others; how will these standards be enforced? And I think the expectation is there will be perhaps regional delegations in every region, that the regional entities will be the first line of enforcement with ERO oversight of them, and Commission oversight over the ERO and perhaps the regional entity itself.

But if you have ten regions enforcing standards,
how do we assure that regional enforcement is actually
effective? I assume in part through ERO review of the
budgets, the enforcement budgets of the regional entities;
also through some kind of audits, whether they be by the
Commission or the ERO. But what are the other steps we can
take to make sure that regional enforcement is effective and
consistent?

If we make sure the budgets are adequate and
we're auditing them, are those the principal means?

MR. SERGEL: Those are two on an ongoing basis.
I think the third, that may be the most important, is what
comes up front. And that is that as we apply, we have to --
the ERO must convince the Commission that it can in fact
enforce the mandatory standards.

We believe to do that that we will have to
specify to you what those programs will look like in enough
detail that you would be able to be convinced 'yes, that's a
program that's going to be successful and will enforce the
mandatory standards.' And that process of describing it
will provide up front the level, I think, of consistency of
the programs that one would want to have.

And so I think we have to start on the right
foot; we have to start with an expectation of what the
programs are going to look like, if we start from that.
Then the process of audits and budgets and oversight I think
will be enough to not only keep it there, but to be able to improve it over time.

CHAIRMAN KELLIHER: Thank you.

MR. McCLELLAND: Allen, do you want to comment?

MR. MOHRE: Sure. The delegation agreements will presumably include the enforcement programs proposed by the regions; so those need to be looked at closely to make sure that they're similar between regions, so that the ERO can have the expectation and the trust that if things are delegated to regions, to staff there, that they'll get consistent outcomes on a particular violation from region to region.

If you would think about it in terms of, suppose you had a violation in the Midwest and it presumably could be investigated by MRO, or Reliability First, or SERC, or SPP. Whoever does the investigation should come to the same answer on the violation, unless of course there's a difference in a particular regional method of compliance; and that goes to the earlier point about how do you harmonize, particularly within an interconnection, different regional methods of compliance.

They have to fit within the same templates so that when say someone from SERC comes in to assess them on a major outage that takes place in MRO, that they understand what the documents in front of them say, what they mean, and
it's not some implicit meaning that's worked out "Oh, this is what we really meant by this." In fact, it's got to be pretty explicit.

So they need to fit within the same format, be understandable, and so you can be confident of the results of it. And that's the basis on which I'm hopeful that we can get the industry to self-regulate on this, because it's going to be the industry participants that are the most critical part in the enforcement process, because they're going to hold their neighbors to this responsibility to keep the lights on because again, we're all interconnected and we can drag each other down; we're no stronger than the weakest team member.

One final corollary on that is -- well, let me wait, I've said enough.

CHAIRMAN KELLIHER: A quick follow up: If, let's hypothetically say that there's a region, has delegate authority to enforce, and it's doing a consistently bad job. Should there be an ability to decertify the region?

PANEL: Absolutely. And call it back.

CHAIRMAN KELLIHER: And who would do it in the interim? Then the ERO, unless some region proposes to do it on a broader footprint, I suppose.

MR. JONES: Chairman Kelliher, it's important that, as was mentioned, I think the ERO should specify in
its approval or in its approved -- what is expected of a compliance review and enforcement program in the regional entities. Then when the regional entities file to become a regional entity, included as a part of that delegation agreement is a specific plan on how they will accomplish that, which the ERO can review to see that it's adequate. And the Commission can see.

On top of that, once the regional entity begins operation, then I think it's appropriate for that regional entity's program to be audited by the ERO periodically; I believe it's proposed three years in the straw documents I've seen.

But I also think it's important that once that regional entity's program is audited and approved, then that regional group should be the auditing entity within their region, so that they give consistent audits in accordance with their plan to each entity, so each entity gets the same type and quality of audit within the region.

CHAIRMAN KELLIHER: Thank you.

MR. MORRIS: Could I add a quick thought? If you pull back a region's authorities because they have for whatever reason chosen not to implement the way they should, I would think you would pull it back to the ERO and not give it to another region, because then you'll get interregional competition that would really not serve any of us well over
time; and family squabbles are usually fun but not very productive.

To my friend from ERCOT, I would say I think that's a real mistake; I think the audit teams ought to be international in nature so that we can learn from each other. If the only one who audits the WECC regional organization or WECC members, we'll never learn at Reliability First the best practices. And that's again part of what this is all about, is counterculture, counter-learning, international learnings.

So I would argue that the audit team surely could have representation from the home town team just simply because that's needed; but you really do need that cross-pollinization of knowledge.

CHAIRMAN KELLIHER: Thanks.

MR. BOSTON: One quick thought: If you think the incentives are really there, we want ERCOT to be very good; we'd like AEP and Southern to be excellent, because they can cascade through our system.

(Laughter)

The point I'm trying to make is, as the region tries to look at things like under-frequency relaying, which is very highly technical, it is good to have compliance that is very focused within that region because we affect each other more than we would WECC or another part of the
country.

MR. SERGEL: Perhaps I can just shed some light on what would appear to be a slight disagreement that isn't as much of one as you might think. Because today we do two different things at NERC, and with the regions. And one is audit to determine whether you are in strict compliance with what are today voluntary standards; and that's audit for strict compliance. We also have another function which is more of what Mike has been describing, which is that we also go out with teams that are more of a readiness audit or a readiness assessment of your ability to go above and beyond that and to look for those places where people have established areas of excellence, and that's already been referred to with respect to TVA, which has been found to have several of those, and I believe AEP, and I just saw a couple that came through for AEP.

So the nature of the audit itself for strict compliance is a very local, regional process by definition. It's not that it won't benefit from having people from elsewhere. The process of doing a readiness audit for improvement to determine how much above that standard you are so that you're never close, we want you to be excellent and be improving all the time, that is an international process; that does need to be across all of the regions and all the interconnections and all of the countries.
MR. JONES: And ERCOT certainly concurs with that philosophy. In fact, we just underwent our readiness audit just a few weeks ago, and had a team from all across North America on that audit, and it was a good experience for us and for them.

In my audit comments, I was talking about the regional audit specific to the -- district.

CHAIRMAN KELLIHER: Thank you.

Sue?en?

COMMISSIONER KELLY: Yes. On the enforcement topic, I was wondering what you contemplate the relationship to be between the ERO and the regional entities for enforcement. As I look around the country at states and the federal government where there are regional enforcements of the same laws, which basically is the situation here, there seem to be two models.

One, the Department of Justice model where the Attorney General is in charge, and although each region has their attorney general, their U.S. attorneys, those U.S. attorneys really report to the Attorney General, and they coordinate their enforcement activities among each other, and they work with each other; but they answer to the Attorney General.

Contrast that with most states where that's not how it works. Where the state attorney general tends to
have a separate jurisdiction, but regionally and locally there's the police department and the district attorney's office, and they're autonomous, and they have their own enforcement practices and they do not report to or are otherwise, aren't controlled in any way by the state attorney general.

I think that the former approach is the better one. I think there are benefits to everyone from having that kind of a coordination, and also you know where the buck stops.

But what is your thinking about how that enforcement structure would work?

MR. SERGEL: Well, while we believe that the enforcement can and should be delegated to the regions, the ERO must play a strong role in making those programs consistent. It should do that both up front through the delegation agreements and through the specifications of what's expected; it should do it by reviewing budgets; it should do it by training auditors; it should do it by having appeals all come -- from any decisions of enforcement come through the ERO before, and ultimately to the Commission if they would so choose.

But that's another way of ensuring that there's a level of consistency across them, and I think it's very important that we have that. You know, there are lots of
different reasons here, whether it's the budgets, whether it's enforcement, whether it's regional standards, we can't set up a process in which we have forum shopping in which you can just pick the regional entity that has the lowest price and the easiest compliance. I don't think anyone will do that; that is not what I've heard from anyone, and that is not what's expected. I think that everybody expects to set tight, tough standards, expects enforcement of those and expects it consistently. But that needs to be driven from the ERO.

But again having said that, I do believe that should be done at a regional level; we should make that work, and that is our intent.

COMMISSIONER KELLY: Well, I agree with you, but I do think it's important that there be regular, systematic, weekly, monthly accountability to the ERO.

MR. SERGEL: And both in our reply and I believe in the questions that the Commission set out with respect to the NOPR, it talks about audits, and on three year cycles, and certainly all the things we've talked about here, there's going to be an opportunity to formally review not only the performance of regions, but formally review the performance of the ERO to determine how it can improve.

And we happen to think that's a very good thing. I think it's terrific that we'll be able to list those
places where we're doing well and we want to do more of it;
and those things that we're not doing well and that we've
got to get the change done quickly.

COMMISSIONER KELLY: Sam, how do you look at how
the enforcement would take place in the relationship between
the regional entities and the ERO and enforcement? How much
would the regional entities report to, work with the ERO
versus being independent of them?

MR. JONES: Commissioner Kelly, I believe that it
needs to be very close cooperation.

I think as Mr. Sergel pointed out, it's important
that it be very standardized. I think there has to be
flexibility; and in reading the draft of principles for
penalties, I was pleased to see there's varying degrees,
there's allowances for many things, and I think that needs
to be there and I think there needs to be flexibility and
penalties for different standards based on their relative
importance.

But I think it's very important that we all use a
standardized sanction process so that we're not doing it
significantly different in ERCOT than there is in some other
region. That's not only fair, but if one region is overly
either direction, then the members are going to feel like
they're either not adequately taken care of or they're being
too strict. I think it needs to be very uniform.
COMMISSIONER KELLY:  Thanks.

COMMISSIONER BROWNELL:  I have a bunch of questions; so I know that comes as a surprise. And let the record show that I'm actually in agreement with APPA today.

(Laughter)

I'm struggling to understand the process by which regional rules are set. Are there currently criteria that, for example, there are literally physical differences that would dictate a regional change? Do all regional and NERC standards have metrics? Should they have to have metrics? I just don't know, I've never understood how NERC has audited, without clearer standards and metrics, and that is also included in the regional bodies, of which the blackout report was frankly quite critical, so reformation is clearly called for.

So I'm not suggesting we don't need regional entities; but I really don't understand what the process is for justifying regional differences as Allen referenced and I think Mike referenced. It impacts operator training; it impacts lots of decisions; it potentially leads to conflicts and it definitely I think leads to inequities in the enforcement process.

So could you just explain to me either how it works now or how you envision it working in the future?

MR. SERGEL:  Well, let's try a bit of both. I
think that staring with how we would hope that it works in
the future.

We certainly will expect that there will be
national standards. We have the vegetation management
standard that we are working on now, an example of one
that's important, needs to be passed, and is a national
process -- international process, excuse me. Is an
international process and needs to be across all of the
continent.

So we begin with the fact that there will be
those things that are there. Then we get to the question
of, are there real differences? And there are. And they
fall into two kinds. They fall into the kind of, not only
are they real differences, but they don't have anything to
do with reliability. It just turns out that ERCOT only has
one balancing authority, and it doesn't have many of them,
and therefore rules that you have for what many of them do
wouldn't necessarily be the same for them.

So there are things that not only are -- there's
a difference, but it's more administrative, let's say; has
something to do with the rules that are in place. And then
there are some that are undoubtedly physical. I have a
Board member that reminds me all the time that it's not at
all unreasonable that New York City might think that with
buildings, that people are in 50 stories and elevators,
might decide that it wants to handle some aspect of reliability more tightly than we would do it elsewhere. So that's another place where it's perfectly reasonable to assume that there are differences. And the way it should work going forward is that those standards should be brought, the regional standards where they're justifiably different should be brought to the ERO. And if they're brought to the ERO from a process that we've already looked at in advance, which is the way we think it should be done, then you wouldn't even have to repeat it. In other words, we would want to work with the region and with the Commission to determine in advance what needed to be done so that a regional standard that came to us could be deemed acceptable. With the exception of a limited review that we would do to make sure what impact it was having on its neighbors, and was it in fact needed. A description here of wanted versus needed I think was very appropriate. So we would play that role. In going forward, we would expect to do that and we would expect to drive them to consistency over time by saying No, by suggesting what Yes would be, et cetera, and certainly by approving those where there's a real need and/or it's simply administrative and makes sense to everyone. So that's I think how we would expect it to work. But they need to come to the ERO, and then the ERO needs to
both do its job but do it flexibly.

How is it done today? Today it's a little bit from the other direction, meaning people had something in place. They were doing it in a different way, and there is probably a third category meaning some that are just administrative and some that are really necessary and then others that are kind of just different because they were; and just getting as far as NERC has come to have the voluntary Version 0s was a success, but it didn't drive them all to the level of consistency that we might want. So today they come in various forms and with various processes; there's no consistency to how they do it.

MR. MORRIS: Can I just say a couple of things about your question, Commissioner?

COMMISSIONER BROWNELL: Yes.

MR. MORRIS: I think it's important at the threshold we start off with a few principles. One of the most important would be that the regions be few in number. I mean, that's why we began with the collapse of the three into Reliability First, to get fewer regions so that we aren't -- I mean, we're taking it as a given that these regions are going to be there, they're going to do some things; that may or may not be right. So let's have few of them in number.

The regional differences should be few of and by
themselves, and the enforcement latitude should be small. There shouldn't be this wide divergence of "Well, if you don't live up to the vegetation clearing standards in Region X that's okay, but in Region Y that's" -- there shouldn't be any of that.

And then lastly, and this again is the most difficult thing that we collectively will deal with, is the regions follow the ERO, they do not lead the ERO; they follow the ERO. And all of their authority stems from the delegation that the ERO ought to be free to pull back, to the Chair's question, if you aren't doing what you're supposed to do, pull it back. And then maybe collapse rather than, you know, not just give it to somebody else, but collapse for the reason of control. Because again, top-down not bottom-up. This is a very, very different view of reliability that we all believe is essential if we're going to be successful.

COMMISSIONER BROWNELL: But I think it is a seismic cultural change, and I would hope in those delegation agreements, it's very clearly spelled out that there will be a narrow latitude on enforcement, and there will be some principles by which reliability standards are judged so that you don't fall into the category that you mentioned, "we've always done it that way."

And as we transition, I suspect that in the
interim, perhaps there will be more regional differences
that ultimately we would like, and since bureaucracies grow
overnight, and these have had a lot of time to grow, when
you go to make that next incremental step, I suspect it will
be: "But wait a minute, you approved these two years ago."
And I just want to make sure that you build into your
agreements the authority to make those incremental changes
and to guide that transition. I just see people thinking
this is all about codifying the status quo.

MR. MORRIS: And I hope as the ERO will bring
these theories to you, you would either approve or reject
things that make no sense to you. Because the ultimate
structure is in your hands, and we have full confidence that
we really have a meeting of the minds between at least what
EEI would like to see, I think what the ERO would like to
see, and it sounds as though what APPA and what the REAs and
others would like to see.

And I know that's a terrible task to give back to
you, but we didn't give it to you, Congress did; and we
champion you in getting that done, and we want to support
you in every way that we can. But it is important that we
limit the differences, that we limit the numbers, that we
limit the flexibilities to begin with, and that we
absolutely do not codify the existing process. The existing
process didn't work, doesn't work, we all know it. So let's
get on with it, let's fix it, and let's take this opportunity to do it.

COMMISSIONER BROWNELL: And we're happy to say No -- well, I don't have a problem saying No.

MR. MORRIS: I know, I'm very used to it.

(Laughter)

COMMISSIONER BROWNELL: But while I don't think it represents a failure of process, I do think it is not a particularly productive position to be in; and what I heard was a very strong message from all of you that you agree with the changes that we've been talking about, and I think that's good. I'm not sure, given what we hear about rumblings, people already complaining to Congress that perhaps we're taking our job too seriously, I think we need to be consistent in that message. And we just want to give you the tools that you need so we don't end up in a "them and us"; I don't think that's good, either. But you're right, the system is broken, to be sure.

MR. SERGEL: Just coming back to the point of how much specificity in advance. Same thing applies here as it will with respect to enforcement. We have to write down in advance how we would expect regional standards to come to us. When, and what are the conditions under which we think there should be a regional difference; and we're working on that, and that's a collaborative effort to do that. But we
have to have expectations up front that say we expect them
to be filed, we expect them to be filed in this format,
here's the process we would hope you would use, here's the
process by which we're going to review it. And share all
that with the Commission and with the provinces in Canada --
everyone will know in advance.

And then, of course, there will be challenges
making it work over time, but I do believe that many of
these things that today are being talking about so much are
really highly technical and they're going to work themselves
out very, very quickly. But we are going to get to a better
place, because they're all going to be approved. You know,
they're going to be approved, they're going to be mandatory,
they're going to be on file, and they're going to be
enforced, and that's going to be very different than the
situation that we have today.

COMMISSIONER BROWNELL: I have a budget question.

COMMISSIONER KELLY: Before you move to the
budget question. On the standards setting process, and the
adoption of regional standards or incorporation of them, the
concepts that you talked about just now with Nora, do you
see that playing into the rebuttable presumption process?
The differences?

As I looked at your rebuttable presumption
language, Rick, I didn't see that aspect to it. Because if
we don't deal with that --

MR. SERGEL: No, I think we definitely --

COMMISSIONER KELLY: -- then we're going to have a --

MR. SERGEL: -- need to deal with it, and I'll just try to do it again, and then we'll be able to see if there's something that's lacking.

When a regional standard comes to us from an interconnection-wide group that's applying it on an interconnection-wide basis -- so both of those pieces are in place -- what we would hope is that we would have already had an opportunity to look at the process that they used to do that and have already gotten comfortable with it. This isn't something that's after the fact.

And therefore we would then be able to make a determination, rather than sending it to a national ballot body, as was described by Sam, we wouldn't need to do that. We would be able to look at it and simply say, 'Did they follow the process that we looked at before?' that's almost inevitably going to be a Yes.

And then just be able to look at a series of issues. If we are comfortable with those and we would solicit comments from others and determine if somebody else had a problem; but if none of those are the case, then we ought to be able to send that directly to our Board; the
Board would then vote it and it would be submitted to you and to the appropriate provinces where that's necessary.

The rebuttable presumption there simply goes to what are the things that we need to do, and that list just becomes much smaller when it comes with a rebuttable presumption. It's not a zero list, because it still needs to come to the ERO, but it's a smaller list, and again it ought to be known in advance.

COMMISSIONER KELLY: Will you look for differences and best practices?

MR. SERGEL: I would believe that it would be reasonable for us if in fact we saw it being simply different, literally being different from an, almost on an arbitrary basis; meaning it's so small as to not be significant. And I've said before that if we got back some sort of spinning reserve requirement in which it was 45 for everyone and somebody submitted 44.5, well, that's great that they all got to that result; that's not good for lots of other things, not the least of which would be competition. It's not efficient, et cetera. So I do believe that we would have the ability to make those determinations.

But what I wouldn't see us doing is we wouldn't be doing that through a process of resubmitting it to a ballot body, taking long periods of time, and doing it
again. It would be more of a very direct approach of simply
looking at it, making that decision and reaching that
conclusion.

COMMISSIONER KELLY: It's understandable to me, given where we are, that where regions have developed their standards independently of other regions, that there's tension here.

Have you thought about putting a process in place for the future in the development of standards setting so that some of that tension would be eliminated? For example, perhaps having people from the ERO work with people in the regions as they developed standards, so it's not a "we-they" kind of thing but it's more cooperative and more of an opportunity for people to share experiences across the country?

MR. SERGEL: Absolutely. It's an emphatic Yes, which is to say what we would want is to actually play a role in looking what the regional process by which they develop a standard is so that if ERCOT just can know, well, really wouldn't it be nice if you looked at these things in advance so that we didn't have the question of it just being like slightly different.

I wouldn't expect they'd do that today. I think that there isn't anyone who is just being arbitrary; I think most of these things are rooted in some basic differences of
how they've approached it over many, many years; and they
are different because of history not because anybody there
is being the least bit arbitrary.

But the answer to your question is Yes, through a
process that would be defined up front and provide the
opportunity for a lot of regional autonomy, because they
understand what's expected up front.

COMMISSIONER KELLY: Thanks.

COMMISSIONER BROWNELL: I have a budget question.

I have a bunch of budget questions.

In the past, I guess the regions themselves have
controlled in large part what the budget of NERC was. Is
that true? I've never quite understood how it's worked.

MR. SERGEL: This is the first time I can say I
wasn't there, so --

(Laughter)

Certainly -- maybe someone else wants to take a
shot at that.

MR. MOHRE: Let us say there were a lot of
discussions about the budget, as former secretary-treasurer
of the Board. I don't want to answer a complete Yes to your
question, but the regions had a lot of control, yes.

MR. MORRIS: And I would argue, going forward,
I'm not sure that's a good idea. Again, the ERO should set
these standards. The budgetary impact of improved
reliability on the system is something that none of us should argue a great deal about; and again I liken it to, and I know how different this organization is, believe me, I really do understand the differences. But there has never been a time at INPO when a member would say, 'Well, I don't want to have that budget increase.'

We need to do what we need to do to make sure we do this right, and that's going to cost some money. And when you put it over the billions of kilowatt hours that our customers pay, it isn't even mils, it's tenths of mils. So get over the budget issue, and let's be real about what this is about, and do what has to be done and do it right.

COMMISSIONER BROWNELL: And that is just my point; I wonder if Rick, you have enough staff as you play an increased role, and one of the criticisms in the blackout report and from others has been, for example on the audits, it's the industry auditing the industry, and I wonder if you need more technical support so that you can help in fact guide higher standards and guide a more independent audit process, develop the metrics and things to be done as opposed -- I think there ought to be some efficiency gains out of the regions if in fact their role is clarified and crisper. So it may not be a complete add, but you're right, Mike, I mean, what price reliability? Ask the people in New York.
MR. SERGEL: I think that's right; I think there's also an expectation that we're going to be efficient and effective. Be clear: We will come and ask for the budget we need to do that job; and if that's for more, so be it, we'll ask. If we can do it with the people we have, by using more of what is out there and in place already and using it more effectively, then that will be great as well. I think it's a little early to be able to say that.

I will say with respect to enforcement: Do not underestimate the power of these standards being made mandatory on what it means to effectively audit compliance, because that becomes much easier. For everyone for which these standards are mandatory, this now slides over -- and I'll guarantee you Mike has a committee, I know I had one when I was a CEO -- and there's a special place where all the things go where you've broken the law, and --

MR. MORRIS: A special committee.

MR. SERGEL: It is a special committee, and it's not a place you want to be; and unfortunately it happens from time to time. So I can assure you that we're going to vigorously enforce through the regions, but I can tell you that I believe that task is going to be made much easier by the fact that they're mandatory.

MR. MOSHER: If I can follow up. One of the things we have to realize is that we're in this transition
to get these standards clear and on file, both the regional variations and the ERO standards. People are going to make mistakes early on, but I keep going back to the WECC experience with the RMS program, whenever they put in a new standard.

Initially there are a lot of violations that take place; a lot of them are paperwork. A lot because the message didn't get all the way down from the CEO down to the line staff, because he's read -- he's got 17 other things to do and they just haven't worked it through their head this is exactly what they have to do, as in: 'When X happens, I will pick up the phone and call this other person.' They haven't quite worked it through that things have changed.

What I think you'll find is there will be a lot of initial violations, and then it will tail off pretty quickly down to some residual level of recalcitrance. I'm hoping that's the case. Having clarity on the standards will make an immense difference. Having them just be mandatory and publicly disclosed after they are confirmed will clarify the minds of all the CEOs in the country.

MR. SERGEL: Right, and the time from standard to getting the kind of level of compliance that we would all have is just going to be made dramatically shorter; because again, organizations, not just those that are for profit, but organizations in general have a whole process for
abiding by the law.

Everyone knows that regulations get passed that you have to comply with, and you don't just routinely miss them because they're new; that's just not what happens. It just goes off to a special part of an organization that ensures compliance, and it gets done.

COMMISSIONER BROWNELL: And I said -- with regard to some of our own rules -- enforcement is not a game of gotcha, and compliance is the desired outcome here. And I think the mandatory and the public, absolutely. And I've been before the board of a bank on those compliance issues, and it's not a good experience.

One more question on the regional budgets, though. Some of the regions seem to be doing things other than reliability. In the West, I read, they're taking on planning and they're taking on commercial standards for the West -- a mystery to me, by the way.

Are you looking at, as you approve budgets, what actually is dedicate to reliability? You talked, Sam, about separate accounting. I think we're going to need to be looking at that very carefully, as -- I don't know if these organizations should be doing anything other than reliability. That in itself is a question; but if they are, how is it getting paid for? It strike me as odd that it would be paid for under the guise of reliability.
MR. SERGEL: Well, unquestionably, just starting with NERC, it's our view that everything we should do should be with respect to reliability; we should have a single budget, it should all come here. That's our view, because we shouldn't be doing anything else.

COMMISSIONER BROWNELL: And that's true of the region --

MR. SERGEL: We're certainly willing to have the entirety of what we do open to the scrutiny of the Commission and a determination made, but if we find things that don't qualify, then the question is, why are we doing them? At the NERC level, at the international level.

I think as you get to the region, I'm more open to the notion that there may be reasons for them to have expanded roles; that's to be debated as well, and certainly they each have -- there are vastly different models of that.

Suffice to say the part that we want to look at is that which we delegate to them for reliability purposes; that's the part of the budget that we want to be in.

MR. MORRIS: And I would argue that they should do nothing other than that; that's their charge here. De-bottlenecking is a whole different matter, and planning and all the other things that come with it are totally different matters that ought not be inside of the ERO and the reliability issue. It should be solely laser-focused on
that particular path, and if a region came to the ERO with
this grand plan of being everything to everyone, I would
hope the ERO would send it back and say "have a nice day,
that's not going to work."

MR. McCLELLAND: We're running long. Do we have
short questions?

COMMISSIONER BROWNELL: That's all right. I'm
done.

MR. McCLELLAND: Or short answers?

(Laughter)

COMMISSIONER KELLY: I have one short question,
hopefully a short answer.

One of the issues that's been presented through
this rulemaking, and also Sam raised it explicitly today, is
the situation where regional entities are also running the
transmission. ERCOT is one and SPP is one.

In the ideal world, we wouldn't have the enforcer
be the operator. I was wondering what you think. If we
were to change that, allow ERCOT and SPP to enforce, even
though they are the operators, does that also mean that then
if NISO and CAL-ISO and PJM and MISO wanted to be the
enforcers, because they are the operators, that we would
have to say yes to that?

So there's tension here, and so I'd really
appreciate your thoughts.
MR. SERGEL: I think we need to separate that into its two parts, and the first is, are there good policy reasons for keeping them separate where that's possible? I believe there are, I think that should be the policy of the Commission, I don't think the policy should change.

Then you get to the second question which would be: Well, either good reasons permanently or good reasons for a transition, et cetera, that one would be allowed an exception for that for a period of time. I think that's a separate question and I think you've certainly had an opportunity to hear the presentation, there are factual differences that exist in Texas. But I wouldn't want that to then be confused with rolling all the way back, that the policy question itself is somehow in doubt. I think the policy is they should be separate. If in fact the unique circumstances in a particular place suggest some variance from that, then I think that may be appropriate.

MR. MORRIS: Tough question. I don't know how you answer it. We ought not have everybody being both of those roles. ERCOT has always been unique unto itself; SPP, maybe a time that we can find a way to accommodate the needs, but we ought not have that as the model.

MR. MOHRE: We have spent a lot of time thinking and talking about this issue with our members, and we would concur with what's been said.
MR. MOSHER: I think the agreement here also, that ERCOT is a bit different a situation; but we're very uncomfortable with enforcement functions being in transmission organizations, as a general rule.

MR. JONES: Obviously I'm biased.

(Laughter)

And I certainly can't speak in general. I think only -- I can speak in our case. Certainly it's possible for us to structurally unbundle, and we can do that. We can create separate organizations, separate governance, and accomplish the same things we do today. And I think it would increase the cost and the logistics, and if that's what has to be done, then obviously that's what will have to be done. But if it can be accomplished under our model without that, then it is more efficient and less costly.

I'll just say that our commission has extreme visibility. They have actual market monitors sitting in our facilities, with access to our data that they use to not only determine market enforcement, but also reliability enforcement; and we report all reliability actions through them. They actually have introduced reliability changes in there.

We also have extreme oversight by the Texas legislature. In fact, they passed additional legislation in this past session which increased the PUC's oversight of us,
and we meet with them regularly; we were in hearings with
them last week, to meet with them. And so we're a very
transparent and highly observed region, and we think that in
our case that accommodates that functional unbundling, if
it's a strong functional unbundling as I described earlier.

And I would urge you, if you would, to read the
comments of our stakeholders in response to the NOPR, and to
our commission, who also commented in the NOPR process.

MR. WARREN: If I may, I do think that there
should be some sort of a standard, formal-type arrangement
that should be the norm; but I do also think that if any of
these do have a different method, that they should be
comfortable in bringing that forward for a decision by the
regulators and judged on the merits of that proposal.

COMMISSIONER KELLY: Thank you.

CHAIRMAN KELLIHER: I don't have a question, but
I have a brief reaction to Mr. Boston's testimony.

The thrust of your comments seem to be that
competition causes blackouts; and I have to say that I think
that's a bankrupt argument. You state: Since Order 888 and
E-PACT the U.S. has seen a succession of major power
outages.

And that is a textbook example of a logical
fallacy of post hoc, ergo propter hoc. You argue that gas,
you imply or insinuate that gas causes blackouts; that
because we've been building a lot of gas. The two blackouts in '96 were caused, they were related to hydro projects. I think by the logic of your argument, hydro causes blackouts, not gas.

You argue that transmission investment has dried up because of competition. Transmission investment started drying up in the Seventies. And you point out that in one of the Western blackouts -- one of the Western blackouts in '96 that you referred to was caused by Bonneville, a sister agency. And again using your logic, federal utilities cause blackouts.

I just think it's very frustrating to get that kind of testimony. I don't think it's particular helpful. And in any event, Congress must disagree with you, because the Energy Policy Act reaffirms wholesale competition and open access. So I guess it's been decided.

I just want to say, I personally respect you, I don't respect the argument you advanced today. And I think the lesson of the blackouts isn't that competition causes blackouts; it's relying on a regime of voluntary reliability standards contributes to blackouts. And we're getting away from that in the new law and we're trying to get away from that at the Commission. But I didn't want your argument to go unanswered. But look forward to seeing you at lunch now.

(Laughter)
I guess we can call up the second panel. Thank you, gentlemen. Hopefully, I'll see you later.

MR. McCLELLAND: The agenda calls for a 15 minute break, but we are running behind. This is the week before Thanksgiving, it's Friday, folks need flights. So let's as quickly as we can assemble the second panel to the table, let's begin. So I'd say no more than say five minutes. Thanks.

(Brief recess.)
Panel II: PAUL JOHNSON, Director, Transmission System Engineering and Maintenance Management, American Electric Power; EDWARD SCHWERDT, Executive Director, Northeast Power Coordinating Council; WILLIAM F. REINKE, President-CEO, Southeastern Electric Reliability Council, Inc.; KEN WILEY, President-CEO, Florida Reliability Coordinating Council, Inc.; CHARLES YEUNG, Executive Director, Interregional Affairs, Southwest Power Pool, Inc.; and DANIEL SKAAR, President, Midwest Reliability Organization

CHAIRMAN KELLIHER: Ed, you're now our lead testifier, panelist today.

MR. SCHWERDT: Good morning and thank you, Mr. Chairman, the rest of the Commissioners. My name is Ed Schwerdt, I'm the Executive Director of the Northeast Power Coordinating Council

Previous panelists spoke a little about history; our history is that we were formed approximately 40 years ago, as a result of the November 9, 1965 blackout, an anniversary that we just acknowledged. That's 40 years ago. We have a long and very dedicated tradition of creating very specific and I would add more stringent regional criteria to which our members are obligated to comply through participation in the membership agreement. Our membership agreement requires both compliance with all NERC and all
NPCC criteria, not only in their own operation, but in any dealings with any other market participant.

Having said that, on behalf of NPCC, I'd like to express my appreciation for this opportunity to provide comments to all of you relating to the establishment of an electric reliability organization for North America. The process for proposing reliability standards, the role of regional entities and how existing liability standards can be improved over time.

As an overarching consideration, NPCC recommends that the reliability structure of an international ERO should be built on the current NERC and regional reliability framework, incorporating both the federal and state authorities embodied in the legislation. Providing for Canadian authorities and participation at both the provincial and federal levels, and balancing continent-wide and regional electric reliability requirements.

As the cross-border regional reliability council serving the reliability assurance needs of Northeastern North America, NPCC encompasses approximately 70 percent of the total Canadian net energy for load. As an aside, NPCC as an organization is approximately 55 percent Canadian.

As such, the continuation of the successful international interdependency of electric system reliability is of critical importance to NPCC. NPCC began a formalized
self-assessment regarding implementation of the then-pending energy legislation in May of 2004, more than a year before the passage of the Energy Policy Act. With the initiation of the role of the region study undertaken by the Regional Manager's Committee, which I currently chair.

That analyses concluded that NPCC was in conformance with all of the fundamental principles necessary for reliability assurance organizations, including open and inclusive membership, fair and balanced governance, independence, universal and transparent compliance and rational organizational boundaries.

The role of the regions report also identified regional council functions and services, including the development of regionally-specific criteria, the coordination of operation and planning, and the assessment of bulk power system reliability; and that's both adequacy and security. These activities provide a comprehensive and technically sound base for regional reliability and complement ERO responsibilities.

While regional reliability councils operating as regional entities under a delegation agreement will have funding for their specifically-delegated authorities approved by FERC, the continuing provision of these other necessary functions and services of the regional councils to their members will need to be accomplished through non-
Section 215 funding mechanisms.

Continent-wide reliability standards, focusing on fundamental bulk power system reliability objectives, and with due allowance for regional differences should, we believe, be developed and maintained through the standard processes within the ERO. Regional standards, addressing the reliability requirements specific to that region, should be developed within the region with specific allowance for review by other potentially impacted entities, and subject to the review and approval of the ERO.

Enforcement of the ERO bulk power system reliability standards should be conducted primarily by the regional councils, acting under a delegation of authority as regional entities with verification and validation by the ERO. The ERO should provide oversight and perform those activities necessary for due diligence to make sure the bulk power system is planned and operated in compliance with ERO standards.

Cross-border cooperation on reliability standards development, compliance and enforcement should be built on the foundation already established by international regional reliability councils with the disposition of any monetary penalties levied within Canada determined by the individual provinces.

Consistent with the legislation, a regional
entity cannot receive authority from the ERO or FERC for reliability criteria regarding adequacy or safety of electric facilities or services. The backstop for adequacy within the U.S. continues to be provided from state authorities, as it continues to be provided from provincial authorities within Canada.

If the ERO is to be recognized as the prime force for electric reliability on this continent, which we believe it must be, it must speak with knowledge about both security and adequacy. To do this, it must incorporate state and provincial authorities in its reliability structure. State and provincial authorities are the foundation for liability criteria addressing adequacy, and those responsibilities are executed through the regional reliability councils.

A framework, therefore, that recognizes the regional reliability councils and the ERO as peer organizations -- and note I did not say equal peer organizations -- in the reliability structure, each with clear, non-duplicative responsibilities provides the greatest likelihood of future success. This approach will enhance mandatory compliance by creating a mutually-supportive reliability structure that addresses both regional reliability needs and a need for clear, mandatory grid-wide reliability standards.

A strong North American ERO, supported by
regional technical expertise, builds on the present framework, incorporates the federal and state authorities embodied in the legislation; provides for Canadian authorities, and participation at both the provincial and federal level; and balances continent-wide and regional electric reliability requirements.

When properly combined with the rebuttable presumption afforded a regional entity organized on an interconnection-wide basis, it has great potential to minimize adversarial contention and to enhance North American bulk power system reliability.

Thank you.

MR. McCLELLAND: Thank you, Ed.

Let's go back to Paul.

MR. JOHNSON: My name is Paul Johnson. I am Director of Transmission System Engineering and Maintenance Management at American Electric Power in Columbus, Ohio. And I'm here representing Reliability First.

It is, as you know a very new organization; it's the new kid on the block, and in fact it is so new that the meeting of the general membership and the permanent Board is scheduled for next month. So I am here representing that organization.

We appreciate the opportunity afforded to the Reliability First members to participate in discussions of
this very important subject of reliability standards.

Reliability First is scheduled to replace the three regions, ECAR, MAIN and MAAC on January 1, '06, as the NERC Reliability Council of record with a Reliability First footprint.

Of course the pace of Reliability First development is contingent upon how FERC resolves some of the issues being raised in this docket. We do not wish to get ahead of the Commission or the ERO certification process, and look forward as a new entity, to the direction that can be provided on the issue of what appropriately constitutes a regional standard under the energy legislation.

Reliability First supports the existing NERC standard setting process. It is open, it is fair, and provides the opportunity for all interested parties to partake in the vetting of issues related to the particular standard topics. Reliability First also supports the concepts that regional entities should carry out the compliance and enforcement function for the ERO standards with of course the appropriate oversights by the ERO itself.

A properly structured relationship between the ERO and all regional entities will ensure that the North American bulk electric system will be operated and planned in a reliable manner.

Reliability First believes that the ERO standards
should be objective-based and method-based or prescriptive only when absolutely essential to maintain that reliability we all want. In short, the standards should define the what and not the how reliability is achieved. Enforcement of the standards would be undertaken through the Reliability First enforcement processes, under delegated authority from the ERO.

During much of 2005, the ECAR, MAIN and MAAC members, the initial prospective members of Reliability First, invested considerable time and effort in resources to define the scope and the organization structure of the new combined region. While being mindful of the pending draft legislation at the time, the MRO also participated fully in the RRC development activities.

For Reliability First Day One, what we've called regional reliability standards as a name right now, that are under consideration for adoption by the RFC Board of Directors covers operating reserves, emergency operating plan, which would be applicable to the reliability coordinators, the balancing authorities and transmission operators within that footprint. Under frequency load shedding requirements and just system restorations, each of these regional reliability standards is compatible with or implement NERC Version 0 standards.

During 2006, the Reliability First members and
staff will work to rationalize and combine the remaining
legacy standards of ECAR, MAIN and MAAC, into a single RFC
reliability protocol. The RFC Board, the Reliability First
Board, has not acted on these standards yet. We believe
that it would be appropriate to consider the further
development of these standards in the context of what is
occurring with certification of the ERO, and as to what the
Commission's views are regarding regional reliability
standards.

Also in discussion by the RFC membership is a
proposed standard related to generation resource adequacy
for load serving entities within the Reliability First
footprint. The draft standard, if eventually adopted by the
RFC Board, would relate the required planning reserves,
resource planning reserves, over the next decade against an
assessment of loss of load expectation due to resource
inadequacy of one day in ten years.

The regional entities are in the best and most
efficient position to administer the compliance program,
with the proper and consistent oversight of the ERO. These
regional compliance programs currently exist and are
structured for the more existing characteristics of the
respective members. As I said, the EROs must have that
oversight of these regional compliance programs to ensure
that the industry's reliability rules are adhered to.
In any case, as this industry moves forward, the ERO standards must be unambiguous, must be focused on objectives, the methods of what and now how; they should be neutral as to regions with organized markets versus those without, and should be written in such a way that the multitude of regional variances are not needed. So it should be a minimum number of regional variances.

The ERO standard should not be painted with the same broad brush. Clear distinction is needed between standards that are critical for real-time reliability such as congestion management, for example, and those that are necessary standards, but are the relative equivalent of a parking ticket.

The ERO process to create new standards or modify existing ones must be deliberate, but it must also be expedient, and this is a tall task. The members of Reliability First stand ready to engage in these discussions, and appreciate this opportunity to participate in the ER standard process as overseen by FERC.

Thank you very much.

MR. McCLELLAND: Thank you, Paul.

Let's move to Bill.

MR. REINKE: Good morning. Thank you very much. My name is William Reinke, I am the President of the Southeastern Electric Reliability Council. We do
appreciate the opportunity to participate today to discuss
the efforts of our region to implement the terms and
conditions contained in the legislation.

I might add, based on some of the comments in the
first panel, we're in only business at SERC, it's
reliability; we have no other businesses in the region. So
we're focused solely on reliability.

SERC currently has 39 regular members and 9
associate members, and our members represent all sectors of
the industry including investor-owned and independent power
producers, municipals, cooperatives, marketers, and an RTO.
We were formed in 1970 and we are currently incorporated in
the State of Alabama.

Our ByLaws specify a full stakeholder Board that
includes nonvoting representatives for customers. SERC and
its members have been working throughout 2005, looking at
alternative governance structures that will ensure that it
meets the terms, balanced stakeholder board. So we expect
to have this issue resolved in the next 30 days, clearly
before the end of 2005. Subsequent to that, we would expect
to have discussions with NERC staff and your staff as
appropriate, to make sure that we conform to the
requirements associated with a balanced stakeholder board.

Our second major effort in SERC is modification
of our compliance plan, and we're doing that to make sure
that we do conform to the principles set forth in the
proposed delegation agreement. We believe our current plan
to be quite comprehensive, but nevertheless it's clear that
some parts of the plan will need to be modified.

For example, our current appeals process calls
for an independent arbitration as the final step. We
understand that that will likely have to be changed as we
transition to the ERO and the delegation. So once the
expectations are made clear, we'll begin the process of
modifying our plan to meet all of the requirements that are
specified.

On the matter of unique situations or unique
circumstances in our region, I'll just mention one: We do
have a challenge for us in that we have a large number of
independent power producers that are not members of the
region, and heretofore since the standards have been
voluntary, they have not been required to comply with
standards. So our challenge is going to be, going forward,
is to get the numerous independent power producers that
operate in our region to register with the region, and then
to begin to incorporate them in our compliance process.

Doesn't mean they have to be members of the region, but we
certainly, if they're going to be deemed users of the bulk
electric system, will have to comply with standards, and so
we want to make sure we've got them incorporated.
As it relates to the standards process itself, we've stated in our initial comments that we are not interested in becoming a standards setting organization. All of our members operate in the Eastern interconnection, and there are no unique geographic or operational characteristics of our members that would require development of standards separate from the ANSI-approved NERC standards process.

We fully support the existing open and balanced NERC process for standards development because that allows any individual entity to propose a standard by submitting a standard authorization request or a SAR. We would not independently propose changes to that process, because the industry constantly monitors the process through its standards authorization committee. Numerous refinements to the process have already been made, and we expect that additional refinements will be made as the standards process matures.

Clearly, the regions have a role in the standards process. First, our regions and our members must stay abreast of the standards that are now under development to ensure that new standards have realistic and appropriate requirements and measures. Second, if new standards contain regional requirements, we must be sure that the region is in a position to implement those requirements.
A number of the existing standards contain requirements that apply to the regions, and that was referred to in the earlier panel. We count about 28 of the existing 91 standards that require action by regions. For example, and I'll give you a couple, three, four examples here.

In the category, Emergency Preparedness and Operation, standard EOP-7 requires the region to establish, maintain and document a regional black start capability plan. Now one of our members at our recent Board meeting, when he talked about Katrina, one of the things that he pointed out to us is that exercising the black start plan was invaluable to him, as his system was basically destroyed and he had to use his black start plan that he had tested in order to begin to bring his system back up.

So again, a black start plan is important. The regional requirement that requires testing is important; so again we'll point out that there are some reasons for regional variations.

In the category of Modeling Data and Analysis, Standards 11 and 13 require maintenance and distribution of steady-state and dynamics data requirements in reporting procedures.

In the category of Protection and Control standard, Standard 2 requires the region to define and
document disturbance monitoring equipment requirements and
Standard 6 requires the region to develop and document
Regional Reliability Organizations under frequency load
shedding programs.

SERC, via its standing committees, develops
supplements for these standards -- and I'll emphasize the
word supplement, I'll come back to that. Our supplements
are written to clarify and refine requirements of NERC
reliability standards as they apply to the regions. Our
planning standards subcommittee is the group responsible for
review of all proposed supplements that apply to planning
matters. And when a supplement is deemed ready for review,
it's posted on our website, circulated to the affected
subgroups for a 45-day review and comment period. Once
comments are resolved, the supplement is presented to the
SERC engineering committee for approval.

And I'd like to quote from our under-frequency
load shedding supplement as an example of a SERC supplement
that deals with a regional requirement:

Each SERC member that serves load within SERC
will be required to participate in a regional
under-frequency load shedding scheme, and have
the capability of shedding at least 30 percent of
their peak hour load in a minimum of three steps
distributed over a frequency range of 59.5 Hertz
to 58.4 Hertz. Other minimum requirements are
that the first set point should be no lower than
59.3, and that the range between set points
should be at least .2 of a Hertz but no greater
than half a Hertz. These requirements constitute
the regional UFLS program requirements, and it's
required by NERC Reliability Standard PRC006.

I'll go on to say that as a result of our supplement, we
have had some violations, and we had an appeal; a member
appealed the finding of noncompliance with this standard,
and it had to do with whether or not that entity should
have, it was necessary to have three steps of load shedding
or one. Because it got, it shared all of its load in one
step versus three. We found that entity to be in
noncompliance.

So that's an example of a regional variation or a
regional difference that's important and is encompassed by
the existing standards.

On matter of regional compliance and enforcement,
the role of the regions report that Ed Schwerdt referred to
suggests that it is appropriate to assess compliance with
reliability standards at the regional level. Specifically
the report recommends that we establish a common
understanding and definition of compliance and assurance
functions across all of North America, and that we develop
common approaches to compliance and enforcement administration across North America; a common look and feel with the regional requirements highlighted. We agree with the conclusions in that report.

And finally, as it relates to challenges on the delegation agreement, we're working with the group that is dealing with and developing the delegation agreement, and we're not aware of any issues that cannot be resolved as that agreement moves forward.

Thank you very much.

CHAIRMAN KELLIHER: Thank you, Bill.

We have a substitute for Ken Wiley today. Linda Campbell has agreed to take Ken's place; so welcome, Linda, and the floor is yours.

MS. CAMPBELL: Thank you.

Good morning. I'm Linda Campbell, I'm the Director of Reliability for the Florida Reliability Coordinating Council. As Joe said, Ken Wiley, our President and CEO, was scheduled to participate in this panel today but had an unexpected family emergency yesterday. So I'm here on his behalf, an he sends his regrets. So he's asked that I read his comments for your consideration.

As many of you all know and especially those in the NERC community, Ken is a noncontroversial subject -- (Laughter)
-- and never speaks his mind. So I'm going to ask that you please recognize that I'm reading his comments and don't --

(Laughter)

-- do not shoot the messenger, please.

Seriously, though, many of you know I serve as the Chairman of the NERC Standards Authorization Committee, whose responsibility is to oversee and ensure the current standards development process. So the comments that I am reading to you today are from Ken and FRCC, and are not mine as the SAT chair:

Good morning, I am Ken Wiley from the Florida Reliability Coordinating Council. I appreciate the opportunity to participate in this very important technical conference.

The FRCC has from the beginning supported and continues to support the need for reliability legislation and a strong and effective electric reliability organization to establish mandatory reliability standards. As a matter of fact, I was on the original drafting team approximately seven years ago that proposed the first draft of the federal reliability legislation. Incidentally, Ruchard Deruin {ph} was the chair of that task force, and later became the first chair of the NERC independent Board of Trustees.

My comments today will address four areas: one,
the need for a strong ERO; two, reliability standards and regional standards; three, the reliability standards development process; and four, reliability risks and associated cost.

NERC must be a strong ERO to accomplish the intent of the reliability legislation, especially in the development of reliability standards. The regional entities will assist the ERO in the compliance and enforcement of these standards since they are the first line of defense in the preservation of the reliability of the bulk power system.

The regional entities are also the closest to and most familiar with the users of the bulk power system in their region, and with the facts and circumstances out in the field that affect the reliability of the grid. Thus, enforcement of reliability standards should generally come from the regional entities.

This includes not just regional variances to a reliability standard, but the reliability standards in their entirety as applicable in a region since it's that bundle of reliability requirements that will ensure the continued functionality of the bulk power system.

The ERO is the focus of the reliability standards setting process, including the incorporation of regional variances into reliability standards. The regional
entities, however, are the focus of the enforcement process once reliability standards have been established. The regional entities will come to the reliability process with a very long history of skills for and commitment to the preservation of the reliability of the bulk power system. For these reasons, a strong ERO should not translate into a top-down approach which relegates the regional entities to be district offices of NERC.

The FRCC has consistently promoted an effective compliance program even when the reliability standards were voluntary. Three to four years ago I recommended to the NERC Board of Trustees that we needed a strong compliance and enforcement program that would highlight and disclose any violations of critical reliability standards that threatened the near term security of the bulk power system.

We are happy to report in 2004 the NERC Board of Trustees approved a disclosure guidelines for violations of reliability standards; and they established a Board-level compliance committee to monitor this very important effort.

I would now like to discuss the importance of reliability standards and regional standards. The existing NERC reliability standards can be broadly categorized as two types: One, the first are the reliability standards that are explicit and include the details defining the requirements that must be complied with, and the
measurements to define how compliance can be measured. These reliability standards, by necessity, must be developed through a well-founded standards development process. Any regional variance to these reliability standards should also go through the ERO standard development process.

The second are reliability standards that require regions to develop the specific details of how the requirements of the reliability standard will be achieved at the regional level. These details are very region-specific, and in most cases involve many technical aspects that are only recognized and known at the regional level.

The development of these regional details to meet the reliability standards are best developed at the regional level. Any technical approval process at the ERO level would not be appropriate, since the ERO approval process would not and should not be expected to know all of the aspects of a given region.

If this ERO approval process involved a detailed look at the regional specific details, it would surely cause a lesser level of reliability. This could create a lowest common denominator approach to reliability.

I would now like to discuss the reliability standards development process. A reliability standards development process is a vital element in the success of the ERO. The process needs to be thorough, involve technical
experts, and involve all users of the bulk power system. But most of all, it needs to be timely, responsive, and flexible to changing reliability needs.

Now that the NERC reliability standards setting process has been in place for approximately three and a half years, I thought a review of whether or not it meets the criteria of being timely, responsive and flexible would be in order.

An examination of the NERC reliability standards web page revealed the following things: There have been 23 standard authorization requests or SARs, to develop reliability standards submitted since January of 2002. The Version 0 SAR, which produced 90 reliability standards, was posted in April 2004 and passed in January 2005. This was a great effort. However, it was acknowledged that some standards in Version 0 were missing measurements and compliance administration elements. A SAR was introduced in May 2005 to provide these missing pieces, and that SAR contemplates a time of four years to accomplish that task.

A cyber-security standard passed through the Urgent Action process twice. A SAR was submitted for the permanent cyber-security standard in July of 2003. That standard is currently in its fourth drafting stage and is expected to go to ballot sometime in 2006.

Twenty-one SARs are in various stages of
development, and have not been approved yet by this process. Nine of these have been in the process since 2002, two have been in the process since 2003, two since 2004, and eight were posted into the process in 2005.

I believe all these things indicate that so far, this process has not met the criteria of being timely and responsive. I would respectfully suggest that the reliability standards development process needs to be reviewed and perhaps revised to correct these deficiencies.

This should not be construed to be a criticism of the effort that has been made; some of the brightest minds of the industry and NERC staff have worked tirelessly on this effort. I know this because I see on a daily basis how this Act can strive to make this process work.

The final topic that I would like to comment on are reliability risk and associated cost. The existing reliability standards development process does not require an analysis of the reliability risk that a proposed reliability standard is seeking to mitigate. Also it does not include an analysis of the cost that would be incurred if the proposed reliability standard were approved. The ERO should require an analysis of the cost and the reliability risks of the proposed standard as part of its standard development process. This requirement would bring the necessary and appropriate economic rigor to the standard
setting process.

An understanding of the cost and reliability risk of a proposed standard would give the Commission and the industry the basis on which to assess the appropriateness of the proposed penalties and sanctions. Without a cost and reliability risk analysis, the Commission would be left to make judgments about the appropriateness of a standard or the proposed penalties and sanctions on the basis of little more than intuition.

The FRCC believes that this is an extremely important missing element of the current reliability standards process.

I thank you for the opportunity to participate as a panelist at this technical conference.

And I also thank you all for allowing me to read these comments on behalf of Ken. Thank you.

MR. McCLELLAND: I'm not sure whether to thank Linda or Ken, but I suppose we'll thank both. Thank you.

Let's move on to Charles.

MR. YEUNG: Thank you. My name is Charles Yeung. I am the Executive Director of Interregional Affairs at the Southwest Power Pool. Southwest Power Pool is a NERC regional reliability council covering mostly the South Central United States; contrary to the name Southwest, we are really South Central United States.
We have members in an eight state region, and we've been a NERC reliability council since the inception of reliability councils under NERC.

In my allotted time, I'm going to part slightly from the written comments that I'd submitted on Monday, particularly with Commissioner Kelly's final question on the first panel; I felt a little bit like left out of the party, so I'm going to focus in on some of the issues concerning RTOs and regional entities.

The question of course is: Should an RTO be allowed to be a regional entity? This is not prohibited under the statute. The industry has expressed concern, both noted by the U.S. bilateral, U.S. - Canadian bilateral principles; and as FERC noted in its ERO NOPR. Whether an organization operating a transmission grid is an appropriate entity to be approved as a regional entity, particularly to administer the compliance and enforcement activities of the ERO.

Again, as I stated before, SPP has been a NERC regional council for over 30 years, and throughout the history of Southwest Power Pool, reliability has been its foremost mission. The record shows that Southwest Power Pool has been one of the most reliable regions in the Eastern interconnection. I don't have the statistics that Mr. Boston provided for TVA, but I would think that our
statistics are quite comparable and favorable to that effect.

SPP of course is unique in that it is not only a NERC reliability council, but it also performs many other functions that were alluded to in the previous panel. SPP is also unique in that it is the only board that consists of wholly-independent members; most other regional councils are governed by stakeholder or hybrid-type boards.

As you all know, FERC approved SPP as an RTO in October '04. We are on track to begin our Energy Imbalance Services Market in May '06, and since 1997 SPP has also provided wide-area reliability coordinator services for its member control areas. These are some of the services that SPP provides beyond reliability council services.

Also at about 1997, SPP began administering a regional transmission tariff for its members. I would point out that in the discussions in the development of each of these added functions, the matter of independence and separation of reliability from other operating functions has been brought up by the members. And each time, SPP members have concluded that SPP, by having an open and inclusive process, and balanced stakeholder representation, is the most effective way to implement those functions for the region.

Now with the advent of the ERO and financial
penalties of up to a million dollars a day for noncompliance, this issue about independence and separation perhaps presents the highest stakes ever. Recently, SPP members again discussed this issue of separation, and found that SPP again is the appropriate organization to become or apply to become the regional entity for the SPP footprint.

With higher stakes brought forth with mandatory compliance and financial penalties, SPP members welcomed and embraced the changed by making structural changes to the SPP compliance program. These changes ensure that the operator is not the enforcer; the comment that I heard earlier in the discussion today.

The SPP Board approved moving the compliance enforcement staff of SPP directly under its authority. Previously it was under the authority of the CEO, the president of SPP. The compliance committee consists of three of the six independent directors of SPP, and they are the ultimate authority within SPP on compliance matters. The structural change will ensure members that SPP compliance decisions will not be unduly influenced by any stakeholder, including the SPP operations functions, whom are themselves stakeholders in the area of compliance to reliability rules.

As a further safeguard to protect from the Board taking inappropriate actions in compliance and enforcement,
the ERO will have close oversight over the SPP compliance program. How? They will first approve the SPP compliance program as per the delegation agreement; they will also have audits of the SPP compliance process itself, and they will also have an added level of review over the SPP Board members by review of the ERO's own independent Board of Trustees.

SPP believes that the cost efficiencies and effectiveness of a single organization's capability to address, head on, the issues that are so closely tied between reliability and economics should not be lost solely for the purpose of pursuing separation for separation's sake.

Forming a second organization, not only will costs increase for our members, it could also result in less independence from stakeholders. Why? Because an independent board is not a requirement under the statute for the regional entity. We have an independent board governing compliance today.

Having worked myself personally in three facets of the wholesale power industry, starting first under a transmission provider then working under a marketer generator, and now today here as an RTO regional council, I find that the ability to address both reliability and market concerns under a single house thwarts attempts by those
players who try to obstruct progress, progress not only in
reliability but in markets as well, by playing one
organization that is commissioned for reliability against
the other, which is commissioned for markets. This causes
retarding or even completely ceasing progress in both
reliability and in markets.

Our SPP regional state committee, which was
formed under the RTO order, our RTO order, recently was
confronted with the independence issue as well. Ms.
Cynthia Marlette was present at our last RSC meeting and the
RSC reaffirmed its strong support for a single RTO or E
organization under these same regions of efficiencies and
cost effectiveness.

From another vantage point concerning compliance,
the SPP market monitoring unit of the RTO also must meet
tests of separation independence in order for it to perform
the function of safeguarding the SPP market from
inappropriate behavior. We now believe that the SPP
compliance program, with its change of reporting directly to
the independent directors, now has a governing structure
that reflects that same dissociation from the SPP
stakeholders for compliance to reliability matters.

In short, if Southwest Power Pool in its present
form, which we believe already meets most -- or meets all of
the statutory requirements of the regional entities, if it
cannot become the regional entity, the result will be additional cost for members. And these costs are real in terms of organizational costs, forming a second separate organization, and they're also peripheral on our members in terms of their expenses to participate and be represented in a second organization.

Now of course there's going to be a loss of efficiency in dealing with those commercial and reliability matters that are so closely intertied together.

In the remaining time, I'll try to address some of the written comments that I had submitted. Under the ERO standards process issues, NERC is presently debating whether a regional entity should become "members of NERC." We would urge the Commission to allow all regional entities to have full representation in the process, whether or not they are members or not. Regional entities' perspectives in reliability often are not represented well by any other stakeholders within their process. And regional entities have been a formula for NERC's past successes and should not be lost.

The role of regional entities in standards processes, not all regional criteria need to become reliability standards, and I think we've heard that here earlier. Regional entities, although in the statute are tasked to proposed standards to the ERO, may not find it
necessary to submit all regional criteria through the NERC standards development process. Certain criteria are applicable for use only within a region's footprint; and to the extent these regional criteria do not conflict with NERC standards or reduce reliability to the grid, they should not have to be made a part of the standards.

For example, the criteria in the SPP RTO market - - this criteria was designed to facilitate our energy imbalance service market -- it provides for generator data in 15-minute intervals as a design requirement. It's also critical for the reliability coordinator to have this data so that it can meet NERC's requirement for curtailing transactions within 30 minutes of a violation on the flowgate.

It's important to note that NERC does not have any standards today that specify the data interval requirements for meeting that IROL standard for flowgate limit violations. And these requirements that SPP has developed are solely based on its market needs.

On improving existing standards. The Version 0 standards that the Commission proposes to adopt as the initial set of standards, these have been in practice for years. They have been revised to be more measurable and more direct. But they're very well understood by the industry today. By adopting these Version 0 standards, this
will ensure continuity and reliability as industry transitions into an ERO-compliance world.

MR. McCLELLAND: Charles, I've got to give you a one-minute warning.

MR. YEUNG: SPP supports the use of Version 0 standards, as I said earlier, but there are -- many of the Version 0 standards that Linda here mentioned that are not presently clear enough in terms of measurements to have meaningful enforcement penalties. So before the Commission adopts penalties to the Version 0 standards, NERC must be allowed to run its course, in hopefully less than four years that Linda so predicts. And that concludes my comments.

MR. McCLELLAND: Thank you, Charles.

Dan?

MR. SKAAR: Thank you, Joe. I just want to make a note that I put my watch right here, so that I'll watch while I'm talking. I don't know if I can do two things at once, though.

Actually, it's good afternoon. I'm Dan Skaar, President of the Midwest Reliability Organization, and I'm delighted to be here today. We agree with much of the discussion in the first panel.

The Midwest Reliability Organization is one of the regional reliability councils that comprise NERC. It includes members and stakeholders in the following States
and Canadian provinces: Minnesota, Wisconsin, Iowa, North Dakota, South Dakota, Nebraska, Montana, Illinois, the U.P. of Michigan, Saskatchewan and Manitoba.

Our region shares a long history of cooperation between Canadian utilities, investor-owned utilities, cooperatives, municipalities, and U.S. federal agencies. We also share the same cold weather and flat terrain.

The MRO was formed in 2004 to meet the proposed reliability legislation, ultimately enacted through the Energy Policy Act of 2005, as a regional entity. As far as implementation of the Act, the MRO immediately intends to seek delegation of authority to act as a regional entity under the provisions of the Act from the ERO, FERC, and the provincial authorities.

The MRO's preparations with regard to the Act are related to delegation agreements, identifying the regional standards which we would seek enforcement under the Act, and assuring our processes meet the requirements under the final rule.

Overall, the MRO supports a strong international organization to serve the best interests of end users, the industry, and the public. The Commission and Canadian regulators must have the absolutely confidence in empowering the ERO and its regional entities with standards and enforcement responsibilities.
In order for the ERO to be successful, its foundation for decision making must be forged from sound engineering. NERC has done an excellent job of gaining the needed technical expertise from the industry and we will need industry expertise to be successful in the future.

The Commission in its final rule must continue to recognize the importance of the Canadian provinces to the reliable operation of our grid here in the United States, and respect their sovereignty. The MRO will be unique because of the border with Canada becoming a cross-border regional entity. Any final rule which would make Canadian participation in the international ERO awkward or unworkable would be very unfortunate and detrimental to those of us who have relied on our Canadian friends.

We are and will continue to be interdependent with Canada. The industry understands that there are regional standards, criteria, procedures, et cetera that do not reach a threshold of an international or an interconnection-wide reliability standard for a number of reasons. One reason is that the requirement may have no impact on a bordering region or system, or it simply defines how an entity would need to meet a standard.

For example, the MRO views regional criteria as the "how" of a standard, and it can vary from one region to another. They are needed due to the physical makeup of the
system, do not violate existing standards, and do not
negatively impact an adjoining system or region.

A good example of this is a studies manual. Certainly how the system is studied in order to meet a
reliability standard in the Dakotas would be different than an urban area. But we have two concerns with this important layer to ensuring regional reliability. One, when the MRO was created, we compared the regional standards, criteria, procedures, guides of multiple regions surrounding us. And what we found was a lot of similarities and few differences; the perception of differences was caused by the words we used to describe similar things, not in what we were trying to achieve.

So our industry needs agreement on definitions. Two, we need an umpire to make a call on when a regional criteria, for example, reaches the threshold of impacting a bordering region. The MRO supports that the ERO must make the call when a dispute occurs. It's their job to make interpretations on these matters.

While we support each region filing pertinent regional criteria with the ERO to begin a process of cataloguing these so that the industry has a record of them, we don't support the ERO approving these criteria or other things which are not standards. We believe that this cataloguing would be done over time.
Our industry should set realistic expectations on the implementation of this rule. We would need transition plans for enforcement of the existing NERC Version 0 standards. The NERC Version 0 standards were an important step in establishing consistent well-defined standards; we should acknowledge that.

We understand that there are gaps in these standards, but we can't throw the baby out with the bath water. MRO recommends that where there is clarity in Version 0 these become enforceable with appropriate penalties. However, where the standard is less than complete or simply requires the region to have a standard, the industry needs time to make the standards complete in order to enforce them, with penalties.

The Commission should mandate a schedule for completion of this transition to the ERO in its final rule. Regional entities will become recipients of the ERO's delegated authority, and as such will be both vital to the success of the ERO and will be the linchpin to the implementation of the ERO's key responsibilities.

Through its delegation agreements with the regional entities, the ERO and the industry should seek more consistency and uniformity across North America, recognizing deference to the West and ERCOT. Where technically possible, regional entities should follow the same standard.
Where it's not technically possible, a regional entity should justify a difference; either it's something more, something less, or simply it doesn't apply. This should be done with absolute transparency. Furthermore, we should follow the same principles and similar processes in justifying differences, interpretation of standards, and enforcement.

The rigors and due process of the compliance and enforcement program should be similar so that there are no advantages from participation in one regional compliance program as compared to another. Consistent standards balance with technically justified differences in transparency along with the same levels of compliance rigor and due process will provide the cornerstone for a level playing field in reliability across North America and across interconnections.

MRO believes that the new and higher levels of consistency and uniformity can be achieved across North America and each interconnection through the delegation agreements between the ERO and its regional entities.

In conclusion, we support a strong international ERO which recognizes Canadian sovereignty, strives for consistency and uniformity, and recognizes that the industry needs a transition roadmap. Thank you.

MR. McCLELLAND: Thank you, Dan.
Questions for the panel?

CHAIRMAN KELLIHER: Basic question, the regional entity role, the legislation envisions that it be proposing and enforcing reliability standards. But it seems there's interest in different regional bodies to do perhaps more than that. I'm curious, the sense of you all, what do you think the role of the regional entities should be, limited to one described in the law; should it be proposing and enforcing reliability standards? Or should they do more things, and if so, what would those more things be?

MR. SCHWERDT: Mr. Chairman, I'll take that. I think I can speak for all of us. Our business is reliability. Let it not be unclear, that is what we're in the business for. But the assurance of reliability is so much more than the playing the "I gotcha" game, than enforcement.

Regional councils today to yeoman's service in terms of the coordination of both operations and planning, in terms of the assessment before there are violations; the assessment of reliability, and as I indicated in my remarks, both from the security perspective and the adequacy perspective.

So we're not looking to run a used car lot, we're not looking to be anything outside of the service of reliability; but I think our shared objective is a more
reliable overall grid. I think the other functions and
services that we provide to the Commission on behalf of the
members that would not be specifically identified in the
regional entity delegation agreement are valuable
contributions to the reliability of the North American grid.

CHAIRMAN KELLIHER: Let me follow up. I
perceived a difference between Mr. Johnson and Mr. Yeung on
the specificity of the NERC or ERO standards. Mr. Yeung
seemed to want them to be clear and pretty specific; Mr.
Johnson seemed to want them to be very general, setting out
an objective, setting out a, what's your term, a "what is
needed" not a "how is needed"?

I have a hard time understanding -- those seem to
be different points of view, and I'm not sure how we could
establish standards that are enforceable that are purely in
the "what" category. Because we have a requirement, if
we're going to set a standard that's actually enforceable,
and it's vague, it's vague to an extreme, that standard
actually could be overturned in court; it would be
challenged for being void for vagueness. So I don't think
we can rely purely on regional standards, actually establish
the "how."

Like one example is operating, the current
operating standard, the NERC operating standard I think
requires five days training a year, that's one aspect of it.
Your what and how distinction, are you saying that the NERC standard should say operators should be adequately trained; and then whether it's five days or three days or ten days should be set at the region?

MR. JOHNSON: No, I don't -- let me try and clarify that in regards. NERC would have or the ERO would have to set the standard and it should be specific enough to get to the goal it needs. Using your example of operator training if five days is the appropriate and perhaps it should even go into a level of content; but at a point when an operator is talking about it, a geographical region, it would have to be more specific to the region in which he operates.

Another perhaps example would be under frequency requirements. The ERO would have to set a standard; there must be a program and perhaps meet certain objectives. But how that is implemented could be very well different in New York as it would be in my home town. So there would have to be some latitudes.

So perhaps we're calling the different things by the same name. Standards are one level, but implementing the standards, what is that? Is that a business practice? Is that a business rule? Is that a supplement? I think we have to be careful with the nomenclature that we use.

So it's not that it's so -- I'm not proposing
anything so broad that the region is going to have, write their own rules, no, not at all.

CHAIRMAN KELLIHER: Okay. I think I understand, in part at least. A number of you have talked about how physical differences, there are physical differences in the systems in different regions, and that requires some kind of greater consideration to regional standards or variances. But are there certain categories that aren't affected by physical differences, where you could expect to have a uniform North American standard? Like communication, a communication standard. That's one where -- or operator training. There are certain categories where it seems physical differences wouldn't bear on how there should be communication among the grid operators to avoid an emergency. Why should there be ten different communication standards? Why should there be ten different operator training standards? Can we expect that in certain categories a uniform North American standard would be reasonable?

MR. SKAAR: I think so. I think there are some continental-wide standards that could be universal, like DCS, CPS-1, CPS-2, which are universal; they're very well defined. So I think there are areas where, on a continental-wide basis you'd follow those standards.

And there are some that you may need, for example
I brought up the studies manual, where you're trying to meet a particular reliability or ERO standard, but you may have to study the system differently.

CHAIRMAN KELLIHER: How do we resolve disputes among regional entities? Assume we have ten different regional entities that have delegated authority, and let's assume Midwest Reliability and Reliability First have a contrary view on either a regional standard or on implementation of a North American standard, and that your views are basically irreconcilable. Should the Commission nonetheless approve both regional variances or standards, even though you're both in the MISO footprint? Or should we -- how do we resolve that kind of a dispute?

MR. SKAAR: I don't know who wants to go first here. Paul, if you want to go first.

I think when there is a dispute, first the two parties should get together to try to see if they can resolve it first. They can't resolve it, they should bring it to the ERO for their consideration. And then if one of the parties doesn't like the outcome of the ERO, then they can bring it to the jurisdictional authorities -- here let's assume it's FERC - they can bring it to FERC for final resolution. That's the way I would see it.

MR. JOHNSON: Generally I would be in agreement
also. The parties can get together, and then through the ERO, and through that I think actually take care of the vast, vast majority of the issues.

CHAIRMAN KELLIHER: I have a question about the standards development. How many of your organizations use an ANSI process?

MR. SKAAR: Well, we don't use an ANSI process, but we use a process that has elements of the ANSI. It's open, it's inclusive, it considers other bordering systems and so forth, but it's not ANSI-approved; it has the elements of ANSI.

MR. YEUNG: Yes, I believe the current discussions with NERC right now, presently on a delegation agreement, will bring principles or elements of each regional entity's standards development process into light, and will have some approval of each regional entity's process in order for ERO to provide an agreement to what the regions propose.

CHAIRMAN KELLIHER: Mr. Johnson expressed some concern about the ANSI process. It seems that you urge that the process for standards develop be deliberate but expedient; and it seems the ANSI process has many virtues; but timeliness or expediency is not among them.

Is that a criticism by you of the ANSI process? Or are you saying that it's inappropriate for regions to use
an ANSI process? Or they should have the ability to not use
the ANSI process?

MR. JOHNSON: One of the goals of the ANSI
process is to be open and inclusive. The proposed process
that Reliability First has is open, it is -- standards can
be kicked off by anyone, and it would go through a public
vetting process. So in those aspects, the ANSI process is
very good. And as you alluded to, the baggage that comes
with that is not, it's not the quickest horse in the horse
race. And that's something that I think we have to get
through and get over as an industry somehow, is how can we
be responsive at the same time providing reliability?
So it's a tall order, and I'm not sure I have a
direct answer for that one.

CHAIRMAN KELLIHER: That's the difficulty we
have; there might be a situation where perhaps there's a
need for a new reliability standard or a revised reliability
standard in a year. That seems impossible under the ANSI
process.

MR. JOHNSON: Yes.

CHAIRMAN KELLIHER: And I think we've had a total
of one standard develop over five years, under the current
process.
The cyber-security standard I think is a
temporary, ANSI-approved standard, and I'm not trying to be
critical, but it just seems going forward maybe a standard
is needed in a year, 18 months, something like that; and we
need a standards-setting process that actually can
accommodate that kind of timeline.

Yes?

MS. CAMPBELL: I'm going to put my standards
authorization committee hat on now and take my Ken Wiley
FRCC hat off.

The standards development process at NERC right
now has taken a long time in a lot of things. It was new to
the industry, we were learning, there was a lot of that
involved. I think you all are very aware where we I think
participated in a technical conference in May where we
talked about streamlining some of those steps in the ANSI
process that we have to try and speed up things, and make it
more flexible, and we've done that. We did make changes to
the process manual in January, that the Board adopted and
approved, that allowed for some streamline changes now to be
made which I think were approved at the Board's May meeting.

So we've got some changes made within the process
that I think we can utilize. We haven't really had an
opportunity to try and do some of that yet, where certain
steps would be done concurrently, parallel postings, et
cetera, et cetera, that we may be able to whittle down, if
you will, on some of the time.
So history, we haven't got to practice that yet, but I think we may have more opportunity in some of the flexibility going forward than we've had in the past.

COMMISSIONER BROWNELL: Are we sacrificing -- I've heard everybody talk about the ANSI process and it's open and robust. Terrific. But I've not heard anybody mention kind of operational excellence and engineering review.

I think we're all concerned about a democratic process that doesn't yield the highest possible standard. So it's a time issue but it's also a lowest common denominator issue; and I thought it was interesting that people today brought up that there's some fear that we're going to a lowest common denominator. When we look at some of the existing standards, I don't know how much lower one could go; and certainly that's not the goal.

So what is it that's broken? Is it that it's too robust? Is it that there are too many people who don't have the technical expertise involved in developing and voting on? At your regional level you all said you have elements of the ANSI process, not the ANSI process. Are you developing standards faster than one in five years, and we've got a list here, and it's pretty scary when we look at the work before us.

So tell us what is not working about the ANSI
process and what is presumably better about the processes
that you have.

    MR. JOHNSON: I'll try that one.

    Again I should point out, the ANSI standard is
very deliberate. It takes a while to get through the
process. The process that Reliability First has developed
is I believe more truncated. It does have the open process,
but it does not constantly go back to the well for comment.
The reliability committee that Reliability First will be
creating has the ability to, once a proposal has been
proposed, they now own that process, and they can call the
standard to the membership when it is appropriate or when it
seems to be stalled or when there's an emergency.

    So there has to be a way of circumventing the
bureaucracy, when there's immediate action or when the
bureaucracy stalls. We have to have of course the
inclusiveness, but there is a time when we have to short-
circuit that.

    MS. CAMPBELL: I'll just add something from back
at the FRCC perspective.

    In our standards development in our region, we
still believe that the committee structure is still very
critical to the development of very robust standards,
because the face-to-face one-on-one talking and debating an
issue is very important; and even though our process is a
committee-based structure, we will incorporate principles of
the ANSI process and expand and include our neighboring
region and public comment and things of that nature.

But I think one thing that probably in the
current NERC development process, we're relying an awful lot
on a lot of electronic comments and not as much face-to-face
discussion as we've had once in the past.

MR. SCHWERDT: I believe the ANSI process is an
excellent process for inclusiveness. There's nothing
intrinsically wrong with it, but there's nothing built into
it that will help us strive for technical expertise, which I
think is our shared goal here, as we move from the NERC
reliability standards as the floor, which I think the
Commission appropriately identified in a 2004 statement, and
strive for the best practices.

Where are the best practices currently being, if
you will, developed and test marketed? That's within the
regional criteria development process. And I know there's
been a fair amount of concern within the Commission with
regard to, we've got standards, we've got NERC standards,
we've got differences, we've got regional standards and we
have these things, other things called regional criteria.

The regional criteria are never meant to go
around to challenge the FERC's authority in terms of
enforcement for mandatory reliability standards. But they
represent some of, if you will, the leading edge, the best expert opinions on how to make something more reliable. I will tell you, in the Northeast we view the NERC reliability standards as a minimum, and we go out of our way to create more stringent criteria that our members voluntarily today accept as mandatory.

We recently voted against a NERC reliability standard because after multiple postings and after multiple comments of why it should be more stringent, it did -- the drafting group did not accept that. And if we were to accept the NERC reliability standards on a today basis as being the only standards for which the Northeast is operated against, we would actually being going in the wrong direction, and I think that's clearly not the intent of Congress, that we reduce reliability.

We individually and collectively can offer up some of the industry expertise that is necessary to enhance reliability standards, and I think that working together, I think it's complex model but I think it's a workable model, that both respects the Commission's authorities and also offers up a road map for how the industry can enhance its own reliability.

COMMISSIONER BROWNELL: So with all due respect, your standards are higher and better, I'm assuming you have metrics to prove that, and you've had some kind of a peer
review that would say "Hey, you're doing a better job with higher bar for the standards than we are." Is that --? I appreciate your willingness to take credit for that, and good for you if that's true; but if that's true and if we can demonstrate that, then why aren't we sharing that across functional lines? Why doesn't everybody want the high standard? I'm confused.

MR. SCHWERDT: Because to operate to a higher standard means that you in a sense operate your system more conservatively. I'll use the primary example, New York City was already referenced -- during potential thunderstorms coming through the Hudson Valley, New York City will go into something called 'storm alert'. It goes from an n-1 criteria to an n-2 criteria.

That's something that has a cost associated with it. But in the words of one of the state commissioners:

"We in the Northeast can't necessarily compete on price, but we can compete on reliability." So we have made the decision collectively as a region to be a more reliable region, because we can't compete with some of the lower cost regions in terms of attracting businesses and supporting the digital economy that was referred to before.

COMMISSIONER BROWNELL: I appreciate the example of New York; it is the center of the universe, we know they have higher standards. But --
(Laughter)

So let's -- don't tell California I said that.

Okay, so taking aside that example, you know, I'd like for you maybe to submit to us your comments on how you've made the determination other than New York City and kind of the unique situation, what it is about your standards that are higher and what your peers say about that. It would also be great, by the way, if everyone submitted their budgets and their org charts and some description of your ANSI, non-ANSI process, so that we can get a better handle on that.

Thanks.

MR. SKAAR: I just wanted to add one thing to answer your question. You know part of the, if you benchmark the NERC process against other similar processes in other industries, in terms of trying to get an international standard or a continental-wide standard, it does take a lot of time. I mean it does, that's part of the nature of the beast.

I think one of the advantages is the quality of the outcome through the NERC process. The downside, as you pinpointed, takes a lot of time, but when you benchmark it against other industries, I think you'll find that -- I have never done it, the benchmarking that is, but I think that might be a good clue as to how efficient or how slow it is.
COMMISSIONER BROWNELL: Well, Mr. Skaar, one of my benchmarks is the blackout report that identified six or seven reasons that have been the cause of the blackouts for the last twenty years.

To me that's a process that actually isn't particularly accountable or responsive, and so I think we need to be accountable in terms of looking at the recommendations and what we've learned. And if it's taken us 20 years to learn the same lesson, something is broken.

MR. SKAAR: No, I agree; sometimes it looks like the only time we stop shooting ourselves in the foot is to reload; I understand that.

(Laughter)

COMMISSIONER BROWNELL: And Mr. Skaar, one more question, and then I'll -- I thought you were merging -- you were MAAC and now you're MRO -- I thought you were merging with Reliability First. One of the things the first panel talked about was fewer reliability organizations and more consolidation.

Is that a decision that was -- I thought, did I misunderstand that the that was the intention?

MR. SKAAR: Originally we were, we're a key supporter of those efforts. In fact, Reliability First is modeled after a lot of the similar organization documents and so forth that we have. And we're working towards
developing a coordination agreement with them.

There are some issues today that prevent us from joining right off the bat, but we'll reconsider it down the road. One of those issues is Canadian participation, and their governance.

But I think overall, addressing this issue about fewer regional entities and consolidation and so forth, I'll steal some of Rick Sergel's discussion on where structure follows from strategy. I think if our strategy is to have a strong ERO that's going to promote uniformity and consistency, structure will follow; and consolidation should happen over time.

COMMISSIONER BROWNELL: How many years? Ten, five, two, one?

MR. SKAAR: I don't know, I think it's over time. I think if the ERO determines that through its strength that there are so many similarities it makes sense to consolidate these, I think that that would be fine.

COMMISSIONER BROWNELL: On behalf of all of us, I think from the comments that several of you have made, some misunderstanding about our respect for Canada. I think that it is undiminished as a partner for a long period of time with both the provinces and the NEB. We have worked with them, we will continue to work with them, and any suggestion that that is not part of our strategy I think needs to be
corrected.

So if any of your members share the comments that you made, you need to correct that, please.

MR. SKAAR: No, they don't. They believe that they're working very well with FERC.

CHAIRMAN KELLIHER: We're running late, but does Staff have any truly excellent questions they want to ask?

(Laughter)

MR. KELLY: Let's say there's a NERC standard that says you have to do something in ten seconds, and Ed Schwerdt says "Well, we want a higher standard, you have to do it in five"; that's a regional variation and they would send it to the ERO for approval and send it to FERC for approval.

So call that a regional variation and set that aside and think of something else. Let's say Mr. Reinke says "Well, we agree you have to do it in ten seconds, but we're going to have an implementation detail" and say that ten seconds has to be measured on a digital clock. And you decide that that implementation detail is not worth sending through the ERO approval process for Commission approval. And then somebody decides to use an analog clock.

Are they liable under the law, are they punishable, are they fine-able, are they subject to a penalty under the law if they violate an implementation
detail that doesn't have ERO and regulatory approval?

MR. SCHWERDT: Since it's your clock, you can answer.

(Laughter)

Kevin, I would submit that they're not. Only those things that are submitted, that number one developed through a process that the ERO has pre-reviewed and is part of the delegation agreement, and only those things that have been submitted to the ERO, reviewed and approved by the ERO through some, I would submit, expedited process, and submitted here to the Commission would be enforceable under the Act.

MR. KELLY: Would you then want to submit your implementation details? If they're important, to be followed?

MR. SCHWERDT: That speaks to the level of implementation detail, and clearly right now they are not submitted, and I believe that we can work through a process where the, if you will, the mission-critical implementation details. Not your whether I measure it on an analog or a digital clock; but have I achieved that? That objective. Now how I've achieved the objective but have I achieved the objective is something that would be important.

And since I have the floor, and we're talking 10 versus 15 seconds, NPCC actually does have such an approach
that even the North American standard is 10, we have taken, we have procedures in place to get us back in 5. So we would report noncompliance on 10, but our procedures clearly aim at the 5, and we set that objective intentionally higher than the North American floor.

MR. REINKE: We would certainly contemplate what we call our supplements, but whatever phrase we use to describe the regional requirements, we would certainly, and do anticipate submitting those to the ERO, and if necessary to the Commission before we would consider them to be approvable or to be enforceable at our level. So yes, we would certainly do that.

CHAIRMAN KELLIHER: Any other brilliant questions? Anything? No. Okay. We're going to adjourn now until 1:45. We're running late, but we'll curtail lunch a bit. So 1:45.

(Whereupon, at 1:10 p.m., the meeting recessed for lunch.)
Panel III: Rick Sergel, President-CEO, North American Electric Reliability Council; Richard Wakefield, Past Chairman, Energy Policy Committee, Institute of Electrical and Electronics Engineers-USA; Richard J. Barrett, Agency Standards Executive, United States Nuclear Regulatory Commission; Bruce Ellsworth, Chair, New York State Reliability Council; Louise McCarren, Chief Executive Officer, Western Electricity Coordinating Council.

CHAIRMAN KELLIHER: If we could close the doors, my colleagues will be here presently. I think our panelists are here. Great. Rick's doing double duty today. Thank you.

We're ready whenever you are, Rick.

And I'm sorry, I should point out, I have to leave at 2 o'clock to swear in a FERC ALJ, so whoever's statement I leave during, take no offense.

MR. SERGEL: I'll be done before that; that probably means it's going to be IEEE.

MR. WAKEFIELD: We're used to it.

(Laughter)

MR. SERGEL: I did file something in advance, but I think in this case, having heard the previous panels, I'm going to shorten it up and just try to make it more
succinct.

Tennessee Williams took comfort in the kindness of strangers. I, myself, I take comfort in the unrelenting force of physics and mathematics that is displayed when we keep the power and system in balance between its load and its generation. And so many of the issues that we're going to talk about in this panel and I've already talked about this morning really fall in the nature of trying to balance things that are inevitably difficult to do. And I'm just going to go through three of them in specific, each of which has been talked about.

The first is, as it relates to the existing reliability standard process, which is accredited by ANSI; and it's open, it's fair, it's balanced, it's inclusive, it does provide the best opportunity for harnessing technical expertise of the industry. It's consensus-based and with nine segments, and it doesn't require unanimity but it does require a super-majority, two-thirds; coupled with a high quorum of 75 percent. And this assures that a standard, once approved, has broad acceptance with the industry.

Having said that, as you've already heard, it will always be the case if you have that kind of a process, that the questions will be asked: Is it timely? And certainly the question will be asked, is it a least common denominator? Those are questions that will just naturally
be asked.

But I would suggest that any other form of process that was not open and inclusive, that was more dictatorial, using the most extreme word, would simply substitute for those questions: Is it fair? Is it balanced? Has it been done too quickly?

So it's our job to make sure that we give up, I believe in the ANSI process we should keep it; I think it's the right thing to do, and it's going to be the job of the ERO to make sure that it drives the process to be timely and drives the process to not let it be the least common denominator. That will be its test.

And the same is true for the second point, which is Version 0, which we've already described, that there are standards that are not as complete as they could be. This is a set of standards in which more work could be done. Some of that has been left to the regions to do in the past. And again I would suggest that as we go forward, that doesn't describe some sort of natural deficiency in what's been done; it's simply a natural balancing point between how much of something should be regional and consistent across the country, and how much of it is better left to the nuances and intricacies of a particular geographic area.

And from time to time we'll have to continue to make those choices. But if we set up the right kind of
process with a strong ERO, it will be the ERO's job to drive
that to its optimal place over time. And I think it can do
that.

And then going on to the third area of balance is
with respect to competition. And we haven't talked as much
about that today, but the same thing is true: inevitably
there's going to be issues between how we set standards for
reliability and what impact that has on competitive markets.
And a tremendous amount of work has been done to develop
coordination with NAESB to assure that that's done
efficiently and effectively. I think it's probably not
being talked about because maybe it's further along than
where we would like it to be than maybe the first two that
I've mentioned.

But again, it would be the role of an effective,
strong ERO to ensure that that process continues and that
that process works effectively.

So I don't believe any of those three represent
deficiencies, if you will, in the system in any way; they've
simply the natural challenges that come with the territory
and the task that we've set upon. And I think a strong ERO
would be up to those challenges.

Thank you.

MR. McCLELLAND: Thank you.

Richard?
DR. WAKEFIELD: Good afternoon. Mr. Chairman, fellow Commissioners -- when they arrive -- and members of the FERC Staff. I am Richard Wakefield, past chairman of the IEEE-USA Energy Policy Committee.

The IEEE-USA is an organizational unit of the IEEE. It was created to advance the public good while promoting the careers and public policy interests of more than 225,000 U.S. members of the IEEE. My comments this afternoon are based on a 2004 position that was developed by the IEEE-USA Energy Policy Committee at a time when I was the chair of that committee.

The EPC's overall -- that's the Energy Policy Committee's overall objective is to assist in the resolution of energy problems through the provision of rational, sound, technical and professional counsel.

We believe that ERO standards must deal with the current reality. There are many visions of the correct utility industry structure. For example, some have called for a standard market structure. However, the ERO must deal with the structure that exists now and in the near future. It is both diverse in structure, and it is regionally differentiated.

Recognizing this, our guidance is based on the following five principles: One, consistent standards are required. The reliability rules established by the ERO
should be the minimum criteria applied by all systems regardless of the structure or regulatory regime. These criteria should apply to all market participants and state and federal policy makers should recognize these criteria as well.

Two, reliability rules and market rules must be compatible. When market rules work against reliability rules, problems are inevitable. Wherever such incompatibilities do exist, they should be carefully scrutinized and resolved with all views considered.

Three, reliability requires information access. ERO reliability rules must ensure that accurate information is available on a timely basis for both long-term system development and for operational planning. With many more decision-makers affecting our day-to-day system status than ever before, full access to participant plans and information is more important than ever before. At the same time, we acknowledge the need to protect commercially-sensitive information.

Four, long-term resource adequacy must be ensured. In the past, this was done using reserve margins, fairly simplistic reserve margins; now we have different types of resources to account for such as demand side resources and various classes of generating facilities. These adequacy requirements should apply to both vertically
integrated and restructured systems. And further, both real power and reactive power adequacy should be considered.

Five, regulations and technical fundamentals must be compatible. Electric systems have unique characteristics; concepts such as real and reactive power, dynamic stability and transient phenomena are not easily understood. As a consequence, the standards development process should include both technically competent drafters of standards and reviewers of these standards.

In conclusion, the guidelines we offer are a set of minimum requirements, and we recognize the developing of standards that adhere to these guidelines will not be an easy process. However, the standards setting process needs to be open, rigorous, and flexible.

Finally, revisions to the standards that are adopted will be required, both as the industry evolves and as we learn how well the standards work in our changing electricity markets.

Thank you for your attention.

MR. McCLELLAND: Thank you, Richard.

Richard?

MR. BARRETT: Good afternoon, Mr. Chairman, members of the FERC Staff, fellow members of the panel. My clock says it's going to be during my talk that you walk out, sir.
(Laughter)

So I promise I will take no offense. I'm Richard Barrett, I'm with the staff of the Nuclear Regulatory Commission. I'm the Agency Standards Executive.

The NRC licenses and regulates nuclear reactors, nuclear fuel cycle facilities, medical, academic and industrial uses of radioactive materials and the transportation, storage and disposal of radioactive materials and waste.

The primary mechanism for defining requirements or standards for these activities is through the imposition of legally binding requirements in Title X of the Code of Federal Regulations. These requirements are imposed through a rulemaking process which conforms to the Administrative Procedures Act and involves, includes full participation on the part of the public; and that's an important point.

NRC regulations include detailed technical requirements governing the design, construction and operation of these facilities. The requirements address a variety of topics including engineering standards, radiation protection, and emergency preparedness. They also include overarching requirements related to quality assurance and other licensee programs.

These requirements are derived from a variety of sources, including research results, operating experience,
and engineering practice. One important source of information is the industry consensus standards process.

In accordance with the National Technology Transfer and Advancement Act, the NRC participates in numerous standards developments organizations such as the IEEE to define codes and standards that can be incorporated into our requirements, through the rulemaking process.

NRC regulations also specify the processes to be used for important decisions, such as issuance and modification of licenses and enforcement actions. These requirements are implemented through the issuance of licenses. The licensing process involves extensive interaction between the applicant and the NRC staff to define the specific way in which that facility will comply with our regulations.

There is ample opportunity in the licensing process for public participation; and the conditions of the license also constitute legally binding requirements.

For example, the technical specifications for a nuclear reactor lay out the minimum conditions under which the plant can operate; and failure to meet those conditions places a requirement on the facility to cease operation until the problem is resolved.

In order to promote efficiency in the licensing process and to promote uniformity in licensing, the NRC has
published extensive regulatory guidance, covering every aspect of design and operation. As is the case with the regulations themselves, this guidance is derived from a variety of sources, including the consensus standards process.

The development and modification of regulatory guidance follows a process that includes public participation. License applicants are not required to follow this guidance, and they may define alternate methods of achieving compliance with NRC requirements. However, they're strongly encouraged to follow the guidance because of efficiency and a desire for uniformity.

The NRC conducts an extensive inspection program, and takes enforcement action in accordance with the Agency's enforcement policy, which is also spelled out in the Code of Federal Regulations.

For nuclear power reactors, the Agency also conducts the reactor oversight process, which is a program for assessing licensee performance. The performance of each licensed plant is monitored based on numerical performance indicators and the results of inspection findings which have been assessed using quantitative risk methods.

If a license exhibits performance problems that exceed certain predetermined thresholds, the Agency subjects that facility to augmented oversight, up to and including
suspension of operation.

The NRC also monitors overall industry trends to identify any potential adverse effects.

The NRC periodically encounters situations which are not adequately covered by existing regulations; and in those cases the regulations and/or the licenses may need to be amended. Because that process may take years to complete, interim compensatory measures are often required to assure continued safe operation.

In the most significant cases, the NRC will impose interim requirements by issuing orders either to individual plants or to groups of affected facilities. These orders also place legally binding requirements on the licensees.

In most severe cases, the NRC will use its authority to request that licenses address the issue and commit to voluntary interim actions, which are the evaluated by the NRC. These commitments are not legally binding, but the Agency has not experienced problems with compliance by licenses.

Conversely, the industry often encounters circumstances in which literal compliance with NRC requirements is unduly burdensome to the licensee, or even counterproductive to safety. The NRC has processes such as exemptions and code reliefs and enforcement discretion which
allow the licensee to operate safely under an alternative set of requirements.

The process steps associated with these actions vary, depending upon the type of regulatory relief being granted. And these processes are spelled out in the Code of Federal Regulations.

Under Section 274 of the Atomic Energy Act, the NRC may relinquish its regulatory authority to state governments, which enter into satisfactory agreements with the NRC. The basic requirement is that the program for regulation of nuclear materials must be adequate and compatible with the regulatory program applicable to certain materials licensees.

The NRC periodically evaluates the programs of individual states, via the Integrated Materials Performance Evaluation Program, or IMPEP, which entails a comprehensive evaluation of the program implemented by the state. In no case does the agreement cover regulation of nuclear reactors.

The Institute for Nuclear Power Operation is a nongovernmental organization which works to identify and remedy performance problems and improve the operation of nuclear power reactors. INPO works independently of the NRC, and its program enhances the level of safety provided by NRC activities.
While the NRC and INPO have an agreement which facilitates exchange of certain information, the NRC does not credit INPO activities in determining compliance with our regulations, nor does the NRC take enforcement action based on INPO findings.

The NRC program has been successful for over 30 years in preventing significant exposures of the public or the environment surrounding nuclear installation. The Agency conducts an active program to collect and evaluate operational experience. When events occur which challenge the NRC's assumptions about the effectiveness of our requirements, or the effectiveness of license programs, the Agency thoroughly investigates the root causes and takes timely action to remedy the specific identified deficiency, to consider the need for generic action, and to examine the need for changes to the NRC's program of regulation.

Some of the most significant changes in the requirements on licenses, as well as the NRC regulatory program have resulted from incidents such as the Three Mile Island accident in March of 1979, and the reactor coolant boundary degradation discovered at the Davis-Besse plant in March of 2002.

The NRC has recently instituted a corrective action tracking program to ensure that the lessons learned from these experiences are not lost, and the mistakes are
not repeated in subsequent years.

The NRC appreciates the opportunity to be a part of this conference this morning, and we're certainly here and very willing and happy to answer your questions. We regard the reliability of the electric grid to be important to the safety of nuclear power plants, and we will certainly try to do whatever we can to assist you in developing this new regulatory structure.

Thank you very much.

MR. McCLELLAND: Thank you, Richard.

Bruce?

MR. ELLSWORTH: Mr. McClelland, members of the Staff, I guess I first should say that I take no comfort in the fact that the Commissioners are not here. Having served on a regulatory staff, I know your ability to be just as probing as they are.

Let me offer three different ideas from the State of New York. First let me give you a quick genesis of the development of the Reliability Council. I'd like to share with you the relationship that we have with the other stakeholders in New York, and in the process that we use in bringing them into our rulemaking programs. And finally to suggest to you that it is essential even as we expand into a smaller or greater regional view, that local views are still essential and most helpful to the customers that our
companies serve.

After the 1965 blackout and the 1977 blackout, New York was critically aware of the need for standards. And after the New York Power Pool morphed into the New York ISO, a separation was made so that the ISO retained the authority to operate the grid, but a New York State Reliability Council was organized to develop local reliability standards and to set the reserve requirements for the State of New York. We're a single control area, and we reached out to the ISO and to the public service commission; and through the efforts of those three, we developed an agreement between the ISO and the reliability council, an agreement which was approved by this agency, by the FERC, and which gave us the authority to establish local reliability rules.

We also took on the mantle in that agreement of assuring that all NPCC rules and all NERC rules were not voluntary but were mandatory, as were our local rules.

So our responsibility is to develop the local rules, and they number something between 70 and 80, and to assure that the companies understand through the ISO that they are mandatorily required to meet all the standards of the NPCC and the FERC.

Our decisions are appealable first to the public service commission, and then to your agency. So we are well
aware that you are well aware of our responsibilities and limitations.

It's been interesting listening to the comments this morning, because we don't really get into the discussions or the arguments that some of your participants have. We had no quarrel with the NERC standards. We have no quarrel with the NPCC standards. We commend you for making them mandatory.

We don't have anything to do with enforcing them except to make sure that the companies understand that they have to enforce them. Our enforcement authority is strictly with the ISO. We set the standards, write the local reliability rules, and then we enforce them through the ISO. As a matter of fact, we enforce the enforcer. Our authority is strictly with the ISO.

We have an organization of many staffers made up of many of our stakeholder companies; we have a 13-member executive committee made up of transmission owners, wholesale sellers, large industrial and commercial customers, the municipals and cooperatives, and four unaffiliated members drawn from throughout the country who have no personal stake, if you will, in the State of New York. I am one of them.

Our process is open to all. We hold our meetings of course always in public. The stakeholders include the
NPCC, the Public Service Commission, the ISO, members of the public. All of our stuff, if you will, is on the web. We of course publicize our meetings, and the work is done through three subcommittees. We have one, the reliability rules subcommittee, that writes the rules. We have a reliability compliance monitoring subcommittee that monitors and enforces the rules; and then we have an installed capacity subcommittee that provides the recommendation which is the basis for our decision as to a reserve requirement for the State of New York.

We consider that everything, that all of our rules are supplementary to those of the NPCC and the NERC. And we are comfortable with the relationship that we have with the NPCC and particularly with the Public Service Commission. We work closely with them on a number of studies and projects; they participate in all of our hearings and all of our meetings. And in fact we are looking with them at the future of our rules and to what the disposition of those rules ought to be in terms of whether or not there should be state-level rulemakings or whether we and you can come to another alternative that would give us the same satisfaction that our customers would be protected by our local rules without compromising what you're trying to do on a more national basis.

The process is this: A local rule can be offered
by anyone, by any stakeholder, by any of our members, by any of the staffs of our subcommittees, or by any of the other participants. They're reviewed first by our reliability rules subcommittee, they're -- in order to assure that they meet the local reliability rules, and that they are not inconsistent with any of the NERC rules or the NPCC rules, and to make sure that they don't introduce any seams issues with our neighbors.

Having passed that test, then we put them out for comment, and we have a 45-day comment period, following which they come back and they are recommended to the executive committee for approval or disapproval, so long as there are no changes. We have a very rapid turnaround of rules. We don't follow the ANSI process.

There is also, as a matter of fact, a 15 day expedited process if there is an emergency condition that comes up, that so long as there was a deadline for coming to the end of those, that we can process those if it's in the interest of customers.

They're approved for publication first of all by the executive committee, they go back out for public comment, they come back, are reviewed by us, and if they are approved and they are forwarded for execution. Now as a matter of interest at that point, we keep the FERC informed of all of our rules. You have approved our agreement, you
approve the membership of our executive committee, and you
maintain a file as I know you have, a thorough one, of all
of our rules and of all of our practices.

The enforcement part of it has been very workable
and very simple: Our reliability compliance monitoring
subcommittee presents us with a budget, if you will, each
year. Our agreement requires that every three years we go
through every one of our rules to make sure that they are in
full compliance by all our stakeholders. And so they then
monitor, through the ISO, whether or not those rules are
being followed.

if they are being followed, then of course that
is reported to us. If they're not followed, if there is a
company that has failed to follow it and the ISO reports
that it has, then we ask that subcommittee to work with the
staffs of the ISO; and for them to work with the staffs of
the company to get them resolved.

If they don't, if they can't, then they bring it
back to us, and as a last resort -- at least the last resort
that we have had to follow so far -- would simply be a
letter from our organization, over my signature, to the ISO
stating what had happened.

Now we've found that peer pressure does more good
than any fine in the world. As a small town kid, I'm not a
supporter of fines, I will admit that. We have found,
particularly working with small companies, that any money
that they have is better served being plowed back into
repairing something and fixing something than it is in a
fine. But we understand that.

MR. McCLELLAND: Got to interrupt just for a
second, Bruce. You're down to one minute.

MR. ELLSWORTH: Okay. Let me summarize, then.

If the ERO had the time to do all the things that
we do, and the opportunity to get down into the intricacies
that we think we do, there would be no need for us; there
would be no need for a regional organization. But we think
we have a place in the sun to look more specifically and
more comprehensively at what's going on at the local level.

We think we can focus on those local rules, and
additionally be a little bit of the eyes and ears of the
regional and national level. We think that we understand
each other, that we understand the companies better at the
local level -- not better, but well. And we think that the
relationship that results from that assures us of better
compliance than someone from far away.

We appreciate everything that you have done with
the Act; we commend you for what you've done with the Act;
we look forward to continuing to work with you as you
implement the Act. Thank you very much.

MR. McCLELLAND: Thank you, Bruce.
Louise?

MS. MCCARREN: Thank you. Thank you, Chair Kelliher and Commissioners.

I first want to recognize Joe McClelland's work that he's done. He gave us four hours with his staff the other day, I think it was Wednesday, and we had a very, very constructive and helpful exchange. We learned a lot. We brought some folks from the West, not just from our staff, but the chair of our planning committee and the chair of our operating committee as well. And I think those kinds of exchanges are going to go a long way to working through some of the challenges we still face.

I think what I will do is just address some of the challenges that we have. There wasn't a whole lot I really disagree with today in what I heard from all the panelists, but there are some issues which I think are worth noting in terms of their complexity in that they're not quite -- the resolution has not been finished.

I will say that from our perspective, working through a delegation agreement which we intend to do in time to file with the ERO application, that we don't really see any show-stoppers. We think that every issue we have can come to a reasonable resolution. And so I wanted to put that out in the beginning.

I think it has been a very arduous and almost
Byzantine process working through this, but I think it's been a very helpful one.

I think it would be useful for us to explain how the WECC views the delegation agreement. We view it as a contractual relationship between our company and the ERO. And that's important, because what it means is we're going to contract to deliver certain things. Certainly we're going to contract to deliver enforcement, we're going to contract to conduct our standards setting processes in a certain way; we're going to contract to a whole host of things.

And the remedy for our failing to deliver under this contract is going to be breach of contract; and as someone said today, then we should not be having this delegation, and that that is the remedy. And how will we demonstrate that we have met our contractual obligations? And the answer is, through a very robust auditing process. I think you've heard that today from Rick Sergel. But that's something we would certainly agree to, because we're going to make contractual commitments, and the ERO is going to make contractual commitments to us as well.

We mention that as a framework for how we're approaching it, because I think it clarifies a lot, may clarify some of our thinking, and it kind of clarifies how you approach it. So we don't approach this as a regulatory
relationship between us and the ERO, but much more of a contractual relationship.

Let me address a couple of issues that still need to be resolved, and I think they're pretty obvious to everyone here. And that one is the standard setting. I do not believe we will have any difficulty working through with the ERO, how WECC standards are developed in the West, given to the ERO for the ERO Board approval. I think that process, pretty much we've got a clear picture of it now.

But I think the issue that we're all going to be facing is, there are layers of what could be called standards, but sometimes use different names. They sometimes are called criterias, sometimes they're called guides, a term we use; and they are kind of various levels of implementation, I guess is a good word for that.

And the question is going to be: How many levels of that, and to what detail and to what granularity need to be bundled up, given to the ERO, and then given to you for approval? And it's going to be very different by region, because it's done differently. And so we have a big challenge to pick off the key ones, the critical ones, make sure we're getting enough granularity to you, and make those enforceable.

So I think there's a lot of work to be done in that area. Again, I don't think it's insurmountable, but I
think that's -- I had to point out an area where there's a challenge. With respect to enforcement, our view, and this differs I think from many people, many observers; our view is that the penalties should be clear, and that they should not be subjective. There's a whole school of thought that says "Let's put into the penalty phase things like self-reporting, mitigation, you know, are you a good citizen?" We don't agree with that. We think that at least in the beginning, and the beginning being on Day One, that the table should be clear and precise. I agree with the commenters who've said that penalties is probably only one mechanism to get compliance; and after all, it is compliance that we want, not penalty assessment.

You can have a penalty schedule that reflects the size, megawatts, that reflects repeat violators so repeaters get higher penalties, and it also categorizes for seriousness. But again, we think we would have a real administrative burden if we had to really, to qualitatively or subjectively assess a penalty, at least at the beginning.

Others have urged you with a transition period; I think that's really important. Many have observed that Version 0 has a lot of holes in it. I think we don't want to create a great deal of chaos and uncertainty in the industry. So I think there needs to be some period in which
we make sure we're all comfortable in what we're doing, and
then we begin to escalate and escalate and escalate the
difficulty or the criticalness of the standards and their
enforcement.

And finally, I will just very briefly address
budgets. There's some work to be done there. As you know,
we are responsible for the reliability coordination in the
Western interconnection; a very different kind of thing.
We've got to decide whether that goes into the FERC-approved
budget or not. It's going to depend on your views on that.
As someone pointed out, we do do a number of other things
that should absolutely not be included in a FERC-approved
budget, because they're not related to the core of standards
setting and enforcement.

Again, I don't see anything that we can't work
through, but those are some of the issues.

With that, I'd like to take just a minute and
introduce you to one of our members from Calgary, Dianne
Pomon, who is here. She is the Director of Business
Operations for the Alberta ESO. I said I would introduce
her, she's here. She's come down because she's very
interested in observing what you all do, and she is a very
valued member of the WECC family and the WECC membership.

And with that, I'm finished. Thank you.

MR. McCLELLAND: Thank you, Louise.
Questions from the panel?

CHAIRMAN KELLIHER: Sure. I'll start, and colleagues, join in.

Louise, I had a question. Let's assume that you take the alphabet as the possible range of reliability standards, A to Z. Let's assume just for purposes of argument the current Version 0 standards represent A to M.

The reliability standards that might come out of the West, would they be a different K, a different F, or would it be a P, a Z -- that's why sometimes we talk about regional variations and regional standards; and to me I think regional variation would be a different K, but a regional standard might be a P or a Z, if you will.

MS. McCARREN: I think that that's exactly right.

We have five areas where we have standards that are not replicable in the NERC standards.

CHAIRMAN KELLIHER: They go outside the scope of Version 0?

MS. McCARREN: Or they're just different. They cover different topics.

All 90 New York standards apply to us. We may have two waivers, but essentially all 90 of them apply. We apply them.

Our only issue going forward is to whether something is called a difference, or a variation, is in how
it gets approved. And whether we call it a WECC standard
or if you want to put a little bit different label on it,
we're still going to seek that path of going to the ERO
Board and rebuttable presumption.

One of the things that has become painfully
obvious over the last couple of months is that there's no
common language in terms of how these things are described,
and I would say that my colleagues have worked very, very
hard to sort through all of that to come up with some common
language.

CHAIRMAN KELLIHER: But if you accept that the
word standard should be something that's ultimately been
approved by the Commission and therefore is enforceable,
some of what you have, regardless of what the appellation
is, some of it presumably you want to be enforceable --

MS. McCARREN: Yes.

CHAIRMAN KELLIHER: -- other things you may not.

MS. McCARREN: Yes.

CHAIRMAN KELLIHER: Right. Would you -- I don't
even know the different terms you use, protocol, criteria,
et cetera, but would you expect that everything would be
filed? You'd seek everything would be filed and everything
would be enforceable?

MS. McCARREN: That is an issue that is on the
table and that has not been fully vetted or discussed in the
West. There are so many layers, frankly. Whether something is a guide or it's an implementation; and I think we need to work our way through that, working with the ERO and talking to Joe about it as well.

CHAIRMAN KELLIHER: Okay. Now, Mr. Wakefield had alluded to something. Usually, frequently when you hear a discussion about regional standards or regional variances, the notion is something stronger than a NERC standard, if you will. Right?

Mr. Wakefield said something about how the national standard -- something weaker than the national standard shouldn't be permitted. I'm paraphrasing what you said; it's not a quote.

Let's assume, hypothetically, that there's a national standard, North American standard in the area, and there's a regional entity proposed as a standard that is just hypothetically weaker than the national standard. Should it be rejected, should it be considered because perhaps a physical difference in that region makes it impossible to comply with the North American standard? It's something Mr. Wakefield --

DR. WAKEFIELD: Chairman Kelliher, I could just read the words I stated under the topic that consistent standards are required or should be required?

CHAIRMAN KELLIHER: I'm sorry, you said regional
criteria of a single North American reliability organization should be the minimum.

DR. WAKEFIELD: The minimum applied by all systems regardless of their structure or their regulatory regime.

CHAIRMAN KELLIHER: But that suggests nothing below the minimum should ever be tolerated. Is that a reasonable inference?

DR. WAKEFIELD: Oh, I would not say that, no. Because I followed up, I had preceded that by saying that there are regional differences, and that these need to be accounted for. But that the standards -- there should be a set of standards that all parties must -- that all parties and all systems must adhere to.

Regional differences do exist, as we're aware. One example that came to mind this morning during the discussions was the fact that in ERCOT, for example, there's much less generation, and frequency tends to decay much more rapidly than in other regions on the loss of a large unit. Therefore, in terms of the way underfrequency relaying is handled, there are special needs in Texas to acknowledge that.

Other regions have --

CHAIRMAN KELLIHER: That seems inconsistent with what you said; you're playing words, though. Reliability
criteria of a single North American reliability organization should be the minimum applied by all systems.

DR. WAKEFIELD: yes.

CHAIRMAN KELLIHER: But now you're saying what you really meant was that's a baseline and you could depart from it up or down.

DR. WAKEFIELD: Yes.

CHAIRMAN KELLIHER: So it's not really the minimum.

DR. WAKEFIELD: It depends on what you mean by minimum; but yes, the way you've stated it I definitely agree with. They need to be adhered to by all. There may be other, more stringent requirements that apply in certain areas in order to ensure reliability in those particular systems.

CHAIRMAN KELLIHER: Okay.

DR. WAKEFIELD: Because of the nature and structure of those systems.

CHAIRMAN KELLIHER: Now, a question I raised earlier about, I can understand how physical differences might compel a difference in standards, regional standards, a departure from North American standards. But are there certain areas where there are, certain categories of reliability standards where physical differences are irrelevant, such as a communication standard or an operator
training standard? WECC right now has a different
communication standard than the North American standard, I
believe; I don't know why, but there is a different
communication standard in WECC. I don't know if there --

MS. McCARREN: There is a different one, and I
think it's probably -- I wouldn't want to say more
stringent, but there's a lot more redundancy, let me put it
that way, than there are in the other areas.

I certainly agree with you, there certainly are
areas where there are not physical differences that would --

CHAIRMAN KELLIHER: There are physical
differences. To me it's not obvious why there should be a
variation in communication standards. I don't see --

MS. McCARREN: I agree. I think that's one where
I'd absolutely agree with you.

CHAIRMAN KELLIHER: Okay.

MS. McCARREN: They do exist today; you might
want to take a look at, that really is how many control
areas or balancing authorities do you have? How many pieces
do you have? And in ours, there's a lot of redundancy built
into it, let me put it that way. That may fit us, but you
know, that's one where you'd think it would lend itself to
sameness.

Certainly with operator training, I would agree
with you there. There are going to be a number of areas where it simply, it makes a lot of common sense to have it be the same. You may run into a situation where there is -- you know, someone needs to do something different, maybe it's a timing issue; but over the long haul or the medium haul on those kind of issues, I agree.

CHAIRMAN KELLIHER: Other categories, again not individual standards but other categories where you think physical differences would more frequently compel or legitimate a regional standard?

MS. McCARREN: Well, we have some areas I think that will. But we really only have five areas where we have different standards. This is, I don't foresee that we are going to have a large number of different standards. I think the problem, going in as I've said, is to try and sort through how much of the differences, particularly in implementation, how much granularity do you want and do you want us to deliver on how some of these things are implemented? I think that's going to be a big issue.

But going forward, I don't see that we're going to have all that many. We only have five areas right now.

COMMISSIONER KELLY: Louise, can you tell me why you care about the ERO's standard approval process?

MS. McCARREN: Yes, because -- well, part of it is simply the bargain that was struck in the legislation.
And that bargain was struck, as you all know, to gain the
West's support of mandatory standards and the creation of a
single ERO.

And so that is important to the West; and that
is, ERO is going to approve the standards but there is this
rebuttable presumption. I think the biggest issue is one
you've heard before, and I think Sam Jones said it: Our
experience is that it doesn't work when you send -- I
shouldn't say that. It's great difficulties when you take a
national standard and you encapsulate in that a difference
or a variance for a region, and put it into the balloting
body.

COMMISSIONER KELLY: Why is that?

MS. McCARREN: Because the balloting body becomes
confused. I think Ed Schwerdt said that, people voted
against a New York standard because they thought that it
wasn't strong enough, and looked at what was encapsulated in
it for our region, which was more stringent, and didn't vote
for it.

So also --

COMMISSIONER KELLY: And how many balloting
bodies are there?

MS. McCARREN: I think the ERO is the only one
that has a balloting body; we don't.

COMMISSIONER KELLY: Do you know how many people
are in the balloting body?

MS. McCARREN: It's open-ended. It's how many people register.

CHAIRMAN KELLIHER: 500.

COMMISSIONER KELLY: Oh, I see. So they all have a vote?

MR. SERGEL: There's nine segments, and each segment has its own members that are chosen, and register and vote.

COMMISSIONER KELLY: So you don't have an opportunity to go through it with the people who vote.

MS. McCARREN: Well, it's a balance issue, and you've heard this from us before; we're 18.7 percent of the load and we get 1/10th of the vote, sometimes. That's an issue, it's a cultural issue.

I think the other reason is if a standard is coming to the ERO from the WECC, it's going to have gone through our open stakeholder process approved by our Board; and it's not going to be something that someone just one morning woke up and decided would be a good idea.

So it's very well considered, and with a lot of technical input. Again, as Rick said earlier, it's going to go through Board review, ERO Board review, but with a limited set of criteria.

COMMISSIONER KELLY: Would it make a difference
if the board was an independent board or a stakeholder board
or a combination board?

MS. McCARREN: In terms of our willingness to
have it --

COMMISSIONER KELLY: Maybe in the abstract. What
kind of board do you have?

MS. McCARREN: We have a hybrid board. We have
seven independent members and twenty stakeholder members.

COMMISSIONER KELLY: And NERC's Board?

MS. McCARREN: It's all independent.

MR. SERGEL: I just wanted to share that since
we're on this point, that -- I don't believe there's any
difference of opinion between WECC and NERC on how this
should operate; because we also believe that a standard that
comes out of a process we've had a chance to look at, and
comes in from an entire interconnection that comes to us
should not go through the ballot body; that there should be
a separate review that involves a public review, a review by
the staff and a limited set of questions, and then it should
go directly to the independent board and then ultimately of
course to the Commission and to the provinces.

But there's not a disagreement here; we would
agree with the basic process that's being described here.

COMMISSIONER KELLY: And that would be the
process that applies to WECC and ERCOT but not to the other
regional entities?

MR. SERGEL: With respect to the others, we would ideally be able to also pre-approve a process such that their standards that came would also not necessarily go through the whole ballot body; and if it did, it would probably be only the Eastern interconnection ballot group, for example.

COMMISSIONER KELLY: If you do that, how do you achieve the goal of best practices or uniformity to the extent it makes sense, across the country?

MR. SERGEL: That's a great question, and it's by having the ERO step up and say No. That what we're describing is the process by which it would come to us, but it doesn't mean that we wouldn't have the ability and we would certainly exercise that if we thought we were just seeing three different regional standards, all of which that were essentially the same; there wasn't any real reason for them to be different; then we could exercise the authority and say No, and likewise, it's clear that if we weren't doing our job in the process we've just described here when it came here, and you thought you were seeing too many different regional standards that weren't justified, you would be able to say No.

MS. McCARREN: And we expect that the process by which standards would be set in the West, to become WECC
standards, that process is going to be part of the
delegation agreement. So it will be negotiated and agreed
between the ERO and WECC, and then you would have to approve
it as well.

CHAIRMAN KELLIHER: I had one question -- oh.

COMMISSIONER KELLY: No, go ahead.

CHAIRMAN KELLIHER: This will be my last
question, I think.

(Laughter)

I had one question for Rick; it was something we
raised earlier when you were here, I think we raised it
during the second panel. What if the Commission needs to
have a new standard developed in a fairly timely manner, or
revise an existing standard in a fairly timely manner?
Does the ANSI process accommodate that? Can it produce, if
we were to say, let's argue that there's been some
suggestion that we should approve some of the Version 0
standards conditionally, even if it's close to the line of
the statutory test.

Let's assume we did that and approved something
for a year, purely hypothetically, and directed NERC to
develop a replacement standard in a year. Could the ANSI
process possibly accommodate that? It doesn't seem so, but
if not, is there a way to streamline NERC consideration in
that kind of situation?
And also, hypothetically it seems, when standards are voluntary, maybe some of the problems in the interrelationship of standards doesn't quite come to light, but when they're enforceable, maybe we'll see problems a little bit more readily? And can that problem be tolerated over perhaps a multi-year process?

MR. SERGEL: I think, I would just draw upon the entirety of the first panel in trying to answer that question, which is, I thought what you were hearing was a uniform desire on the part of all those who operate and try to make this system work, that in fact they do want to see this work; they do want to see the standards.

I believe the hypothetical you're creating is a real one, but I also believe that there would be something behind that. I doubt that the Commission would be directing a standard and thinking that there was a need for it to be immediately done; but that that was just out of some --

CHAIRMAN KELLIHER: Let's -- we're all wrong; that a standard comes up through ANSI that everyone thinks is going to work well, and -- because we think it's going to work well, and it proves we're all wrong.

MR. SERGEL: I'm only trying to pose that within that, the statement "well, we need to do something quickly" that there would actually -- there would be a compelling reason behind that would be clear to folks, and I believe
that it will work. I believe the process will get done in that amount of time, and I think it only takes the combination of the Commission, your counterparts in Canada, a strong ERO stepping up, setting up the challenge; and if it's there and if it's expected, then we're going to be able to go back through that process, which is very open and very democratic and I don't believe should change. I'm a firm believer in it.

But I think it just means we're going to get on the phone, we're going to start making phone calls, we're going to go back to the individual, we're going to put EEI to the test. They were here, they said they want to make it work, there's a standard you believe we need. We're going to be making the phone calls and we'll work our way right down the whole panel, right through all of the segments, and we'll get it done.

And I just think the hypothetical question of can we do it when we're under pressure, I believe also comes with, that when that pressure is there it'll be clear and obvious why we need to do it and the collective group will respond.

I think the important thing is that it's structured in a way such that we have a place where we're able to do that, which means a strong ERO, that it understands that that's its role, that's its function,
that's what it's supposed to do; but it's not out where a
response is, "Well, I don't want to do it at the national
level because I've got seven other places or eight other
places I can -- where I can go solve that particular
problem."

MS. McCARREN: Let me address the field testing
just briefly. We've had great success with field testing,
standards that are going to go into our voluntary
contractual relationship, because it gives all the entities
a chance to work with the standard. And someone mentioned
that this morning, I think it was Allen.

We just see this drastic drop in violations, as
you go through this field testing process. And it's just -
- so we're supporters of that, but we also realize that
time, time may not allow as much of that as we all would
like.

COMMISSIONER BROWNELL: Mr. Barrett, I looked at
your process, which seems to be inclusive and democratic,
but also seems to have some technological rigor in the
review process.

It says that you, or you said that you -- there's
typically regulatory guidance, for example, about what is
acceptable. Could you describe that process? Because I'm
confused by 500 people voting. I hope they're all people
who know what is they do, and they're all engineers of some
kind, but I suspect not.

So I'd like to see if we could marrying democracy and technology excellence, or operational excellence.

MR. BARRETT: What we try to do is, you know we have a lot of people involved in the standards development process who are quite knowledgeable in these areas; and of course I'm talking here about a relatively mature technical area, something that's been developing over the past 30 years.

But the process, I think that the process of developing regulatory guidance is one that requires involvement from a broad community, from the industry, from academia, in some cases through the ANSI process. We have our own expertise within our own research community within the DOE national laboratories; we bring all of that to bear. And it is a slow process. It's a fairly stable system at this point, and the changes that we make tend to be evolutionary. But Nonetheless they take time.

When you do something that involves nuclear installations, what you find is that there's a great deal of interest from all stakeholders. From the industry, from public advocacy groups, from the public, from the states; and so we have to be careful to take the time to make sure that all those voices are heard.

So public interaction is important to us. So I
think we have kind of a hybrid. We do bring a lot of
technical expertise to the table, but we also try to make
sure that we're open to different views as to how to
implement them.

COMMISSIONER BROWNELL: You categorize your
enforcement of the rules into various egregious -- you know,
egregious, most egregious, least egregious, mortal sin,
venial sin -- if Pat were here, we would be saying that.

MR. BARRETT: Yes. Yes, we do.

(Laughter)

And we have kind of a dual-headed system. We
have an enforcement system which is compliance-oriented and
legalistic, and we have a performance system which is a
reactor oversight process, which is more performance based,
it looks at indicators, and it looks at operational
experience, and tries to take that operational experience
and put a quantitative face on it.

So, and in both cases there is a hierarchy of
violations. And so in the case of the compliance, you can
get level one, level two, level three violations, higher and
higher civil penalties. On the performance side you can get
enhanced NRC oversight, and in some cases you can end up
with a facility that's not able to operate for an extended
period of time, until the problems are resolved. Yes, there
is an escalating level of enforcement on both sides.
COMMISSIONER BROWNELL: And you have a watch list, I think before you shut somebody down, the frequent flier on the enforcement side gets at least that they're on a watch list based on those categories, I guess?

MR. BARRETT: Yes. And the performance process that we have in place we think gives a facility ample warning that they're headed toward a problem. So that -- you know, we have a system of green, white, yellow and red findings, and we have an action matrix so that certain combinations of reds and whites and greens and blues will get you into this level of trouble.

So it's sort of like the points on your driver's license; you know when you have to start driving more carefully.

COMMISSIONER BROWNELL: Well, that would be a very sore topic with me.

(Laughter)

Do we have anything in any of the regions that is similar, do we contemplate anything like that, either at NERC or in the regions?

MS. McCARREN: What we do is we have levels of violations. But what we also do is, and this is just sort of recent, the last 18 months -- when we see there's violations that are not getting fixed, we both escalate and we also go visit and try and really see if we can't
understand what's going on.

To give you a good example, there was a lot of, sort of operators were not certified. And when you got underneath that, it turned out it was a political union problem. So then you try and work with the company to address that problem.

When we were visiting our colleagues at CFE, they had that, but they were also seeking to have to have a Spanish language version of the test.

So we're also doing that as well, so it's not just -- you've really got to get under why is this entity continuing to violate? And see if you can't fix the underlying problem.

MR. SERGEL: We've been in contact with both the NRC and INPO and looked at specifically at what they're doing; there's work ongoing at NERC on precisely what was described here; meaning being able to take what is now the readiness audit and think about whether we can take each of the elements of that, can we code them, could we have a score. So we're very much following that, and developing that.

I think that -- probably see that just as being one step out from being the ERO and getting the penalty matrix in place, and you heard that there's a desire for that to be clear and specific.
But I would have to say that my expectation is that we would be attempting to do that.

COMMISSIONER BROWNELL: I have one more question for you, Louise; and we asked some of your colleagues -- actually all of the regional entities for their budgets and org charts, and we'd love yours as well.

When you talk, it's going back to something you and I discussed, and the Chairman asked about. So you have standards, you have protocols, you have criteria. You talked about a common language. Wouldn't it be better if we just all agreed, kind of up front, that standards are standards, and if somebody wants to have all these other things, I don't know how they're enforceable, and I don't know why there would be interchangeable names for the same thing, like a standard. And maybe you can tell us how all those things evolve.

MS. McCARREN: Let me answer your first question. I think our current thinking is, there's either an ERO standard or a regional standard. Now, my colleagues may absolutely disagree with me on this, and I can't really describe all the various layers because I think they have different names and they have different meanings in the different regions.

But one way, and I think I mentioned this: I believe that a difference, or at least some of my colleagues
agree with me on this, that a difference is you take the NERC standard, a region says "we want something different in there for us" and that gets encapsulated and thrown to the whole ballot body.

Now that's one definition of what a difference is. I think where we're going to come from is, it's just a regional standard, and everything that's different that we do we're going to ask that it be a regional standard and then, you know, get ERO approval.

I know that one of my colleagues believes very strongly, and you heard from him today, though he doesn't usually have strawberry blond hair -- that they feel very strongly that they have sets of criteria which should only be applicable in their region.

So I think this is an area in which there's a lot of work to be done, let me put it that way. And I think there's a real good faith effort going on among all of the regions to resolve -- and with the ERO, to try and work through this, because it's complicated.

COMMISSIONER BROWNELL: I go back to my premise that all of us would be better served if we had some standards that you would have to meet to justify a regional difference. I think then it would be very clear.

COMMISSIONER KELLY: Along those lines, I was going to say, Rick, that when I look at the criteria that
you are looking at for presuming that regional standards
will be ERO standards, the criteria on its face don't have
things like best practices or uniformity across the country
is desirable.

So how will you factor that into your process?

MR. SERGEL: And you're looking at the list for
the rebuttable presumption for interconnection-wide, and I
think we'll just take that as a take-away for today; that
we'll have to think about that.

COMMISSIONER KELLY: Okay.

MR. SERGEL: I will say that with respect to
within an interconnection, we've given that a lot more
thought, and in fact have even shared some drafts of that
with the staff; but have not given the same level of thought
to how that might make its way into -- where it came from
with the rebuttable presumption from interconnection, but
we'll think about that.

COMMISSIONER KELLY: Thank you.

CHAIRMAN KELLIHER: I had one more question for
Mr. Barrett.

What's the consequence of being on the NRC watch
list? I'm not sure what it's called these days, or trending
negatively on your ratings? Is there increased attention by
the NRC? Are there more frequent audits? Are the audit
teams larger? Are the audits more rigorous? Is there more
NRC staff on site? What's the consequence.

MR. BARRETT: Yes, all of those things can certainly be the consequences. As the NRC becomes more and more interested in a plant that it's experience performance problems, we sent out a diagnostic team to begin to take a closer look. And that can -- more inspection, more reporting, more interaction with our regional offices; this can be an expensive proposition and difficult to deal with from a licensee point of view.

In some cases a licensee can run into a problem that results in the plant being suspended from operation for some period of time, in which case we're actually into what we call a restart panel.

CHAIRMAN KELLIHER: That's something I don't think we could do.

(Laughter)

MR. BARRETT: It's not something we do lightly, either.

CHAIRMAN KELLIHER: Are there any truly brilliant questions from the staff?

Yes, go ahead.

MR. McCLELLAND: I have one. I don't know if it qualifies as brilliant, but it's something -- to Mr. Barrett.

You had said earlier that your industry is fairly
evolved, and so -- or it's been around for a while and it has sort of an evolutionary process. Well, ours has been around for a longer period of time; and the process is also evolutionary. But every now and again we have a blackout, and that blackout causes what we heard from the Commissioners today, the Chairman, causes sort of an urgency to investigate the incident and perhaps put a corrective action in place quickly.

Now I guess, I just want to clarify what I thought I heard you say before; that an incident like a Three Mile Island would also prompt a process like that. Could you, in the interests of time, just succinctly say, how would that process work? How would you, identify the problem, seek to resolve it through the change of a standard, get participation and then implement that change. And that's really where the Commission and I think the industry need to focus on perhaps the ANSI processes. How can a fast turnaround be accomplished by our industry?

MR. BARRETT: Well, I think I understood everything you said until you got to 'fast turnaround' there.

You know, to answer the first part of your question, we have processes, when something is discovered, a problem for instance; we discovered a serious problem in 2002 at a plant in Ohio, and that caused us to go into a
very deep investigative mode, not only of the problem at the
plant but also what were the implications for our own
regulatory processes.

And that's a process that has played out over the
course of three years, and we are now fairly satisfied that
we have now addressed the problems of our own regulatory
process and we're ready to move forward with the lessons
learned. And also that facility, which was suspended
operation for well over two years, is now operating again
and operating within acceptable band of performance.

But what do you do in the meantime? We have
processes that allow us to take corrective action in the
meantime for that facility as well as for the industry as a
whole, if we find that the problem we've identified is
generic. So we can, for instance we can issue an order
which would be a legally binding requirement upon that
facility or other facilities or the entire industry which
will require them to take corrective action in the interim
while we sort out what has to be done to our regulations, to
the license for that facility or what have you.

We also have processes that are less draconian
wherein we can request information from the licensees and
request from them proposals as to what would be their
voluntary commitments that we can accept as the basis for
continued operation in the interim.
MR. SERGEL: I just wanted to add that we are going to be working on developing the event analysis and information sharing section of NERC; it's modeled after how INPO does its job.

And I just wanted to suggest that where we want to evolve together is where we're not looking at outages and particularly cascading outages to determine how to improve; we want to be looking at near-misses and dangerous actions. So we want to be evaluating every situation; we want to be evaluating them long before anything has actually gone wrong and be evaluating it, determining what actions need to be taken, sharing that information and changing what needs to be changed.

And I would agree with Mr. Barrett, the idea that says sometimes that means not only looking at a standard, it may mean changing how you're -- what your rules are for your own behavior, up to and including changing what the standards process itself, if it got to the place where it wasn't working.

But we've got to drive ourselves to do better than to wait for the next significant event to be when we start to learn and get better; we have to start looking at all the information that's available to us today. This is modeled after every great safety program which says: you don't wait until somebody -- you know, it's not the people
that get hurt that you learn from; it's the ones that
didn't, but almost, and the things that people are doing
that are dangerous that can otherwise be eliminated.

CHAIRMAN KELLIHER:  I just want to thank the
panelists, and make a few closing remarks.

The purpose of this meeting was to help the
Commission understand North American and regional
reliability standards in advance of the filing. And we
explored the regional standards development process, we
looked at regional approaches on reliability standards, and
also at the role of regional entity; and I think the meeting
has been very helpful to me, at least.

And E-PACT implementation is going to be one of
the most difficult parts, reliability standards
implementation; it's going to be one of the most difficult
parts of E-PACT, and we know that, and we're working pretty
hard on it. And we want to make sure that we get it right,
we do it right the first time, and that we don't end up
regretting it down the road.

So I thank you for your help, and stay tuned on
December 9th. December 9th is our next meeting. And for
those of you who are watching on the Internet, come back on
December 9th. I don't know what time it is, 9 or 9:30?
Doesn't matter; check the website if you want to know.

Thanks to everyone for coming on a Friday, a late
Friday afternoon. Thank you.

(Whereupon, at 3:03 p.m., the meeting concluded.)