

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

**Rules Concerning Certification of the Electric
Reliability Organization; and Procedures for
Establishment, Approval, And Enforcement
of Electric Reliability Standards**

Docket No. RM05-30-000

Second Technical Conference on Electric Reliability Standards

**Statement of
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Maryland Public Service Commission**

December 9, 2005

Good morning. My name is Allen Freifeld and I am a member of the Public Service Commission of Maryland. I am also a member of NARUC's Electricity Committee. I would like to thank the Staff of the FERC and the Commission for the opportunity to address you today on the important topic of electric reliability standards and the role of the States in maintaining reliable service.

It seems clear that the States have a significant role to play in the maintenance of reliable electric service. EAct 2005 specifically references the rights of the States to take action to ensure the safety, adequacy and reliability of electric service within a State. By the same token, given the explicit grants of authority to the FERC and the ERO, it is also clear that the maintenance of reliable service is a shared responsibility among State, regional, and Federal authorities.

In addition to the actions that a State may take in its own right, the States may also participate in the reliability standards development process at the regional entity, ERO, and FERC levels as well. Several States participate in the North American Electric Reliability Council currently and there is no reason why such participation should not continue under EAct.

The Act authorizes any and all State action to ensure the reliability of electric service so long as such action is not inconsistent with any reliability standard adopted by the Commission. You have asked what test the Commission should use to determine whether a state-developed rule conflicts with the reliability standards. I suggest the following analysis: The fundamental purpose or objective of Section 1211 is to improve the reliability of electric service. Therefore, any State action which is likely to improve reliability above and beyond that expected from FERC-approved reliability standards would be consistent with the purposes of Section 1211 and would not conflict with the reliability standards. Stated differently, the Federal- standards would be floors below which State action could not fall; but States could impose reliability requirements more stringent than those adopted by the FERC. I note that this standard of review is quite similar to the standard set forth in Section 1211 (i)(3) with respect to New York State regulations.

This test might be more or less difficult to apply in different situations, but let me offer just one simple example of its application. If the FERC-approved reliability standards require vegetation management at a site once every three years, and a State regulation requires a more frequent tree- trimming regime, the State regulation would be viewed as 'not inconsistent' with the Federal standard. I note in this regard that the Act requires State action to be 'consistent' with Federal reliability standards; it does not require that they be 'identical'.

You also ask “When should Regional Advisory Bodies be convened and for what purpose?” As a preliminary matter it should be noted that the Act does not speak in terms of the ‘convening’ of Regional Advisory Bodies. Rather, it requires the FERC to ‘establish’ such bodies upon appropriate petition. Therefore, once the regional advisory body is established it can ‘convene’ itself for all of the purposes set forth in Section 1211 (j).

Finally, the Notice of Second Technical Conference asks, “What role should the states, provinces, Regional Entities, ERO, and the Commission play in determining resource adequacy?” With the understanding that the term ‘resource adequacy’ refers to generation, the Act clearly limits the direct role to be played by the Commission and the ERO. Also, EAct 2005 provides that “This section does not authorize the ERO or the Commission to order the construction of additional generation...” There may be an indirect influence that these two bodies exert on resource adequacy however; the FERC through its market design authority and the ERO through its ability to propose reliability standards that require transmission owners to maintain various engineering criteria, such as adequate voltage control.

The States are the governmental bodies vested with primary jurisdiction over resource adequacy. Given the interconnectedness of the grid, that jurisdiction should be exercised with an eye on the effect of individual State action on the grid as a whole and upon other jurisdictions. While States are possessed of the jurisdiction regarding resource adequacy, the nature of the electric grid calls out for regional solutions to the maximum extent possible. Each individual State clearly possesses jurisdiction over resource adequacy within its borders; the exercise of that jurisdiction can effect resource adequacy in other States.

Thank you for the opportunity to address these important issues.