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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Technical Conference
Electric Reliability Organization Certification

Docket No. RM05-30-000

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

Commission Meeting Room
Federal Energy Regulatory
Commission
888 First Street NE
Washington, DC

Friday, November 18, 2005

JOSEPH T. KELLIHER, Chairman
SUEDEEN G. KELLY, Commissioner
NORA JEAN BROWNELL, Commissioner

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3 P R O C E E D I N G S

4 Opening Remarks

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

14 The second conference will be held on December
15 9th and we'll continue exploring related issues and
16 stakeholder views to ensure successful implementation of the
17 Energy Policy Act of 2005.

18 These conferences come at a particularly
19 important time. On August 8, 2005, President Bush signed
20 the Energy Policy Act into law. Perhaps the most important
21 responsibility given the Commission by the Energy Policy Act
22 is the responsibility of safeguarding reliability of the
23 bulk power system by certifying an ERO, by carefully
24 reviewing and approving mandatory reliability standards, and
25 ensuring that these standards are properly enforced, and the
Commission is committed to faithfully executing these new
responsibilities.

1 I just want to be clear that the Energy Policy
2 Act does not provide for a 'one size fits all' approach
3 towards reliability standards. That much is clear from the
4 plain words and structure of the new law.

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

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

18 Now under the law, the Commission must approve
19 any reliability standard before it becomes enforceable, and
20 we're operating under the expectation that the Version 0
21 standards will be proposed to the Commission for its
22 consideration and review.

23 In the proposed rule, the Commission interpreted
24 the Energy Policy Act to permit the ERO applicant or
25 applicants to propose reliability standards in their

1 certification application. We did that in order to
2 accelerate establishment of enforceable reliability
3 standards.

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

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

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

1 support and are written so that they are enforceable against
2 all users, owners and operators of the bulk power system, as
3 the law provides.

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

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

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

19 As I conclude, I want to recognize and welcome
20 recognize Kim Warren from Ontario. The Commission
21 recognizes the importance of continued cooperation with our
22 neighbors in Canada, as we share not only a border but
23 potentially an ERO as well. And good governance of the ERO
24 including the approval and enforcement of clear and
25 effective reliability standards will benefit both our

1 nations. And I look forward to hearing the views of the
2 participants today.

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

4 Introductions

5 MR. McCLELLAND: Thank you, Mr. Chairman.

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

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

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

21 I'd like to begin with a few housekeeping items.
22 Please feel free to step in and out of the conference room
23 as necessary; there are restrooms located past the elevators
24 in the left and the right hallways. The Commission will
25 accept comments to this conference through December 8th of

1 2005. The docket number under which to file the comments
2 are RM-05-30-000. And as I saw a lot of folks reaching for
3 pencils, I'll repeat that number: It's RM-05-30-000.

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

10 I'd like to begin with Rick Sergel, President and
11 CEO of NERC. Now each of you will have ten minutes for
12 your presentations, and I'll provide you with a fair warning
13 when we hit the one minute mark. I don't like to do that,
14 but I will give you a verbal warning. I'd suggest you
15 start with an introduction; your name, your title, and
16 briefly state the organization that you represent and who
17 the members of that organization might be. Let's begin with
18 Rick.

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1 Panel I: RICK SERGEL, President-CEO, North American
2 Electric Reliability Council; MICHAEL G. MORRIS, Chairman-
3 President-CEO, American Electric Power, Inc.; DAVID MOHRE,
4 Executive Director, Energy and Power Division, National
5 Rural Electric Cooperative Association; ALLEN MOSHER,
6 Director of Policy Analysis, American Public Power
7 Association; SAM R. JONES, Vice President-Chief Operating
8 Officer, Electric Reliability Council of Texas, Inc.; TERRY
9 BOSTON, Executive Vice President, Power System Operations,
10 Tennessee Valley Authority; and KIM WARREN, Manager of
11 Regulatory Affairs, Independent Electricity System Operator
12 of Ontario

13 MR. SERGEL: Thank you, Joe.

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

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

25 And this is NERC's vision for a strong ERO: The

1 ERO will be an international center for excellence and
2 reliability, it will be open to participation by all, with
3 an interest in the reliability of the bulk power system in
4 North America, and will not be dominated by any particular
5 segment of the industry. The ERO will develop robust,
6 technically sound reliability standards, and will do so
7 through processes that are well understood in advance, and
8 appropriately applied. Those reliability standards will be
9 implemented consistently across North America through
10 effective, regionally-based compliance and enforcement
11 programs.

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

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

25 Now I believe this vision is completely

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

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

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

1 reaches the ERO.

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

6 And here's the basic list:

7 Was the process followed?

8 Does the standard have adverse consequences
9 outside the region?

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

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

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

22 Second, the Commission has appropriately
23 recognized the need for an assured source of funding for the
24 ERO's activities in support of reliability. We believe that
25 assured source of funding must be extended to the activities

1 of the regional entities as well.

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

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

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

23 There is no point to having disputes about
24 whether the ERO or regional entity has the authority to
25 require particular procedures. And if the ERO is to live up

1 to its promise of driving to improve the performance and
2 reliability of the electric system, then it must be able to
3 obtain the data it needs to do the analysis. The final rule
4 should require users of the bulk electric system to respond
5 to such requests for data.

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

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

24 And thank you again for the opportunity to
25 participate.

1 MR. McCLELLAND: You finished early, Rick. Thank
2 you.

3 COMMISSIONER BROWNELL: More time for questions.

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

7 CHAIRMAN KELLIHER: Let's do that, yes.

8 MR. McCLELLAND: Okay, Mike, the floor is yours.
9 And I am timing.

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

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

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

20 MR. McCLELLAND: (Laughing)

21 MR. MORRIS: I will simply tell you that we are
22 here to represent the investor-owned utilities, and we
23 believe that EEI is speaking of a single mind and a single
24 purpose, and a very important purpose and a very important
25 purpose in this undertaking; and that is to recognize many

1 of the things that the Chair has said in regard to the
2 Energy Policy Act; and equally important, to dovetail and
3 support the comments that were made by Rick, who is a very
4 important addition to the overall reliability scheme as we
5 go forward jointly to work on what we hope is an extremely
6 successful program that will ensure reliability of the bulk
7 interstate grid as we go forward.

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

20 It is very important that the ERO be extremely
21 strong and forceful in the way that they see and implement
22 their role at the top of this planning cycle and structure.
23 It is equally important that we find a way to accommodate
24 the points that are important to the regional characters in
25 the organization who have been in place for a long time and

1 have added tremendously to the current reliability that we
2 enjoy on this country, but we know that we need to do more.

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

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

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

22 That strong ERO will have to recognize the
23 regional differences that are real. And I had the
24 opportunity to share with one of the commissioners before we
25 sat in formal setting here, to a piece of advice that was

1 given to us by Chairman Thomas of the House Ways and Means
2 Committee when we were negotiating various pieces of the
3 Energy Policy Act; and his advice to us was to bring forward
4 those things that you need in a tack sense, not bring
5 forward those things that you want.

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

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

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

23 We obviously have been working very diligently at
24 EEI at what are called delegation agreements; trying to
25 understand how it is that a regional organization would make

1 application almost to the ERO to make certain that their
2 regional differences are recognized and become standards.
3 We think it's critically important that that process be
4 followed.

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

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

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

24 So the requirement for the absolutely up-front
25 understanding of "You must be a member, these are the rules

1 that you must follow, this is the process that's available
2 to you if you believe that you need some change in that
3 overarching program of regulatory control. Then bring it
4 forward, and bring forward your logic for it, and I'm sure
5 that the ERO will be more than accepting of those issues,
6 and if in fact they're needed, not just wanted,
7 accommodations will be made for them." We think that it's
8 essential that we get to that point.

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

21 And it's an opportunity that we can't make a
22 mistake on; and I know how seriously you take that
23 challenge, as the Commission, and we join you and champion
24 you in that regard. These are very important times, and we
25 need to be respectful of the history of these regional

1 organizations that, for the longest period of time, have
2 really set their standards. I can't imagine that any of
3 those regions will bring forward to the ERO or to the FERC
4 standards that would be less than we're used to. I would
5 expect that many of them would be interested in bringing to
6 the ERO and to the FERC standards that might be higher.

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

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

1 much broader challenge.

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

7 MR. McCLELLAND: A minute, Mike.

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

9 (Laughter)

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

19 Thank you.

20 MR. McCLELLAND: Thank you, Mike.

21 Dave?

22 MR. MOHRE: Good morning, everyone. I'm David
23 Mohre, I'm Executive Director of the Energy and Power
24 Division of NRECA, National Rural Electric Cooperative
25 Association.

1 I was going to make a fancy beginning to my
2 presentation; I'll just say "I'm with him."

3 (Laughter)

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

15 (Laughter)

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

21 With regard to the current matter, cooperatives
22 strongly, strongly supported legislative efforts over the
23 past five, six, seven, how many years has it been -- to make
24 reliability standards mandatory through a strong, single,
25 national, self-regulating organization. One that has the

1 authority to develop the standards and also to enforce them.

2 Interestingly enough, I went back and looked at
3 our resolutions. Cooperatives love to do resolutions; and
4 one of the longest-running resolutions the cooperative
5 membership has is one entitled: Support for NERC's
6 Independent Self-Regulatory Organizations. I found that
7 intriguing.

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

22 We are also involved in other ways; 11 percent of
23 the current registered ballot body are made up of
24 cooperative technical staff, and that's interesting, because
25 historically only 12 cooperatives out of 950 cooperatives

1 have been certified control area operators -- in the old
2 days, I should say.

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

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

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

20 I think it's important to recognize the strong
21 support for NERC and the movement to the ERO and mandatory
22 standards is there from cooperatives despite the fact that
23 far more cooperatives will be captured, if you will, by the
24 standards due to the functional model of replacing the prior
25 model.

1 We think that's fine, and it will require us to
2 be even more involved in both the working groups, the
3 working committees, the ballot body and the ANSI process.
4 We're pleased to do so because as I like to say, Congress
5 got this one right.

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

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

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

24 We would also like to point out, we believe that
25 Congress made it abundantly clear -- at least that's our

1 reading -- to, these rules should only apply to those who
2 truly do impact the reliability of the bulk power system.
3 That means those who are newly impacted need to know it, and
4 there should be a process put in place to ensure that, there
5 should be a process put in place to evaluate the arguments
6 in dispute. We need to be sure; we don't want to have a
7 situation where "I didn't know" that that's unacceptable;
8 that has to be done up front.

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

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

23 (Laughter)

24 And finally, as I've tried to explain, we feel we
25 have a very balanced and very important input into the

1 existing NERC process and how it evolves, the ERO evolves;
2 and assuming, a priori, that NERC will be given the mantle,
3 we want to make sure that continues in the future.

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

6 MR. McCLELLAND: Thank you, Dave.

7 Let's go to Allen.

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

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

24 We serve about 15 percent of the nation's
25 electric customers. We do this through a variety of

1 mechanisms, some vertically integrated, sometimes
2 distribution utilities that combine together through
3 municipal joint action agencies which are power supply
4 organizations that either own or purchase generation and
5 transmission to serve the requirements of their member
6 utilities.

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

18 APPA has a lot of members that are also involved
19 in NERC processes. Dave Mohre's summary includes a number
20 of cooperatives that are involved in NERC. When he sent me
21 back to do my own tally of the registered ballot body.
22 We've got over 100 APPA members that are actually registered
23 to vote in the various segments of the NERC-registered
24 ballot body, which is the industry-segment weighted approach
25 that we use to approve standards.

1 I'm very pleased by that participation, but
2 there's a flip side on that, that because public power
3 systems, a lot of them are small, they wear multiple hats.
4 One of the most important awards that APPA hands out to its
5 members is something called the seven hats award, because we
6 have member systems that, basically there are just a few
7 people working there, and they have to perform multiple
8 functions. So we should keep in mind that reliability
9 standards compete with every other function that a
10 distribution utility or a medium-sized city has to perform,
11 that we need to make these standards clear and
12 understandable, we need to communicate needs to the industry
13 in a way that is respectful of their time concerns.
14 Complexity is a danger because it may interfere with
15 compliance.

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

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

1 lot less clear, once you dig below the general consensus.
2 As the endless meetings of the post-legislative steering
3 committee has demonstrated, where we have consensus on an
4 issue or we think we do, and then we dig a little bit deeper
5 and well, maybe we really don't agree as much as we thought
6 we did.

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

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

24 So the Commission needs to continue to pay
25 attention to those kinds of issues where we get that

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

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

18 To talk a bit about the standards process that
19 NERC uses and the regions use, and also the compliance,
20 we're pretty comfortable with the NERC standards development
21 process, which includes the registered ballot body, but also
22 the standards process manual. We think that that can be
23 used successfully as part of the transition to an ERO. I'm
24 less familiar personally with the regional processes, but I
25 know my Western members are very comfortable with the WECC

1 model.

2 That goes to a related problem, though, that many
3 of these standards need to be harmonized between what the
4 regions develop versus what NERC develops. There is a
5 problem, if it isn't readily apparent, as Rick Sergel said,
6 how the standards are developed on a regional basis when
7 they basically present the documents: 'Here are our regional
8 standards' to NERC, and it isn't clear how they got to this
9 endpoint; it isn't apparent that the process has been fair,
10 open, balanced, and inclusive, and that it properly
11 addresses all elements of reliability. I don't know whether
12 we can just take what a region produces and then say "Here,
13 FERC, you take a look at it now." There may need to be some
14 due process at the NERC level, although certainly deference
15 to ERCOT and to WECC is appropriate.

16 One of the stumbling blocks I also anticipate is
17 going to be in the area of registration and personnel
18 training, and there that goes to some of my smaller members.
19 It's not quite apparent now to many of them whether they
20 need to be registered or not; it's a problem that we're
21 going to have to work through over the next year, because
22 again there are about 2,000 municipal systems in the United
23 States; most of them don't have a direct interface with the
24 bulk power system, so it is unclear to some of them whether
25 they need to be registered and whether NERC standards

1 actually apply to them. And that also relates to, the
2 development of NERC standards as they reach beyond the
3 traditional control areas and unbundle the standards through
4 the NERC functional model, and then impose requirements on
5 users, quote unquote, of the bulk power system that may not
6 actually be operators of bulk electric facilities.

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

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

20 Let me talk about a couple of the stumbling
21 blocks we're likely to hit: the regional delegation
22 agreements are probably the most important single document
23 that's still in play right now. Regions have different
24 views on what ought to be in the document. I think each of
25 them would like to do it their own way, to make the

1 transition as easy as possible; but as Chairman Kelliher
2 said, the Commission has a good reason to expect
3 considerable standardization there, so that NERC knows, in
4 its relationship with each of the regions, that compliance
5 will take place on a sound basis, so that the delegation
6 will be successful. There is good reason for having a pro
7 forma agreement, and considerable standardization among the
8 regions.

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

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

14 Thank you, Allen.

15 Okay, Sam.

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

20 I'm Sam Jones, I'm the Executive Vice President
21 and Chief Operating Officer at ERCOT, and since ERCOT is a
22 little bit new, I'll tell you just a few things. We are the
23 Regional Reliability Council of the North American Electric
24 Reliability Council, NERC. We are organized on an
25 interconnection-wide basis. We're also an independent

1 system operator that operates as a single control area or
2 single point of control grid within the State of Texas. Our
3 only connection outside the state to the United States is
4 two DC ties into the eastern interconnect with a total
5 capacity of about 820 megawatts. We have a small DC tie
6 into Mexico, CFE, and we do talk to Mexico the utility, but
7 they are not a part of the ERCOT region.

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

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

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

23 We have an outstanding record of reliability in
24 the 64 years that the utilities have been interconnected in
25 ERCOT. We don't have any knowledge of any major grid

1 disruptions or cascading events in our history. Because
2 we're so small we have to be pretty careful in what we do.

3 ERCOT has been a regional member of NERC since
4 1970. We actively participate on NERC committees; I
5 personally have the honor of chairing the NERC Operating
6 Committee at this time. We intend to continue the support
7 with the ERO, certainly. We support fully the NERC
8 standards development process, and we'll continue that
9 standards development process cooperation with the ERO. We
10 support the standards that are in place, and any future
11 standards that are developed.

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

21 We will utilize a compliant regional standards
22 development process, but we really don't anticipate the need
23 for a lot of regionally-specific standards. We've been able
24 to work well with the NERC standards program it is today; we
25 do anticipate, however, that we would need a few variances

1 in particular cases. We currently have two to day in
2 response to control performance standards; one is a waiver
3 from one of the standards which really doesn't apply to us,
4 the other is a different coefficient.

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

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

23 We don't believe that submission of these
24 regional specific standards to the full NERC ballot body is
25 appropriate, because the people that vote there outside of

1 ERCOT really don't have knowledge of our grid
2 characteristics and operations, and probably would be asked
3 to vote on something with which they're not that familiar.
4 I know personally I would have a problem voting on a
5 standard for another interconnect which I'm not intimately
6 familiar with.

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

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

24 But it requires even further in that we could,
25 our Board has an independent group; we have both

1 stakeholders and independent directors on our Board; we'll
2 have five independent directors very shortly. The purpose
3 would be to put the oversight of that compliance group
4 underneath a committee of the independent Board members, use
5 separated areas of office facility, separate accounting
6 systems, separate information systems, and comply with that
7 affiliate unbundling rule.

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

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

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

18 MR. BOSTON: Thank you, Joe.

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

25 TVA's primary relationship with the North

1 American Electric Reliability Council is through the
2 regional council in the Southeast, SERC. We are dues-
3 paying, card-carrying members of the Southeastern Electric
4 Reliability Council and we are extremely active in
5 participation and the NERC-SERC standard settings, the
6 standing committees, the working groups, and nationwide, the
7 audit process. We have learned as much from audits of
8 others if we have for audits of ourselves.

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

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

22 With the growth in robotics and electronics in
23 our area, five nines of reliability is what we consider the
24 threshold to support the digital economy. In our last NERC
25 FERC audit, we were recognized for creating a culture of

1 reliability, which I consider a badge of honor for our
2 operators and our planners; and we strongly supported SERC
3 as it adopted one of the first compliance programs in the
4 nation that featured enforcement backed by financial
5 penalties.

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

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

19 Going forward to September 1992, E-PACT is what I
20 call a textbook case of an example of law of unintended
21 consequences. The authors never dreamed it would lead to
22 overreliance on a single fuel, natural gas, for new
23 generation. Nor did they imagine the electrically-sound
24 planning principles which dictated that transmission and
25 generation planning must occur in lock-step, closely

1 integrated, would be abandoned for the rush to site new
2 generation near the wellheads and the gas pipelines; and of
3 course in the Southeast we've seen a lot of that.

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

7 What followed was one of the toughest periods in
8 the industry's history; the 14-state blackout that occurred
9 in 1996 in the Western interconnection followed six weeks
10 later, before the I think was dry on the report that DOE had
11 issued to the president saying "We know the root cause, it
12 won't happen again." It did. We are familiar with the
13 well-publicized rotating blackouts in California, and the
14 great Midwest-Northeast blackout of August 14, 2003.

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

23 I believe that one of the reasons the Southeast
24 has not had the large scale cascading blackouts is because
25 SERC members are closely knit and both operators and

1 planners share data and collectively we have invested about
2 \$1 billion per year in transmission.

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

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

23 TVA is committed to accurate and timely reporting
24 of assessment information and data. We'd take any
25 recommendation that comes down from audits of NERC and SERC

1 very seriously, and when they apply to TVA, we track them to
2 completion.

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

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

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

21 EPRI estimates the societal cost of power
22 failures grew from \$25 billion in 1996 to about \$119 billion
23 by 2001. A DOE report by Joe Eto pretty much confirmed that
24 excluding power quality events, came up with an estimated
25 cost to the U.S. of \$80 billion.

1 It's vitally important that we get this right to
2 protect our economy, to protect the customers we serve, and
3 to safely integrate power markets as they evolve; but we
4 must recognize that without reliability we shut down our
5 economy, without reliability we jeopardize our customers and
6 their livelihood, and even their lives on a cold winter day
7 or a hot summer day. And without reliability, there will be
8 no markets, electricity or otherwise.

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

14 MR. McCLELLAND: Thank you, Terry.

15 Kim?

16 MR. WARREN: Thank you, and good morning.

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

22 My comments are made from the following
23 perspectives: My organization, the Ontario Independent
24 Electricity System Operator, the NERC Reliability
25 Coordinator and Control Area Operator for the Province of

1 Ontario, the enforcement authority respecting compliance
2 with NERC, and NPCC by all entities in Ontario, and an
3 organization that has always been and continues to be both
4 heavily involved in all aspects of NERC and NPCC.

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

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

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

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

24 The enforcement arm of the IESO is "ring-fenced"
25 from the remainder of the IESO.

1 The IESO also has the authority to develop
2 Ontario-specific standards that cannot be less stringent
3 than NERC or NPCC standards, and has done this, for example,
4 with respect to vegetation management.

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

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

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

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

25 In effect, the IESO's primary objective in the

1 transition to the ERO will be to preserve the effectiveness
2 of current arrangements and processes. This is true
3 generally in Canada, where similar to the case in Ontario,
4 NERC and regional standards are generally mandatory and
5 enforceable now.

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

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

25 Further in this regard we see the question of

1 regional variations of ERO standards, or alternatively,
2 regional standards that are subsequently approved by the ERO
3 as being essential in avoiding the lowest common denominator
4 concern. It will be a challenge to design processes that
5 are effective in facilitating such variations.

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

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

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

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

1 effectively on an international basis.

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

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

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

22 Now is the time to establish coordination
23 mechanisms in a number of areas. They would include
24 coordination on the governance structures of the ERO, on the
25 approval of the ERO and the timing of when the approval will

1 take effect; coordination on approval of mandatory standards
2 and the timing on when such standards will go into effect;
3 coordination on delegations to regional entities.

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

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

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

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

25 Achieving such unanimity is unlikely to occur by

1 all regulators acting in isolation. Realistically, there
2 must be coordination amongst the regulators for them to
3 reach a common position on a remand. We recognize this is
4 a challenge for regulators; regulators and law are
5 independent of each other, and ultimately accountability to
6 their respective governments, not to each other.
7 Coordination among regulators must achieve a common voice
8 while respecting this constraint.

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

18 Thank you very much.

19 MR. McCLELLAND: Thank you, Ken.

20 At this time, I'd like to turn it over to
21 questions from the panel.

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

25 One of the comments I made in my opening

1 statement was referring to the fact that about 25 percent of
2 the Version 0 standards really rely on regional,
3 implementing criteria if you will. And that's a pretty
4 complicated relationship, and that's something --
5 relationship between North America and regional standards is
6 something that we want to explore here.

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

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

1 implementing criteria?

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

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

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

12 CHAIRMAN KELLIHER: It's a requirement --

13 MR. SERGEL: It's a requirement.

14 CHAIRMAN KELLIHER: -- on the Regional
15 Reliability Council.

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

19 It then leaves --

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

24 MR. SERGEL: Well, it goes beyond that, because
25 you would find as a part of that that it also would impose

1 upon a user of the system, of the transmission network, for
2 example, that they would then comply with whatever their
3 region has determined as how it's to be done within that
4 region.

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

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

21 I think there's some room for that debate, and in
22 fact we'll probably end up with some of both. But the
23 transition to that point is one that we should just try to
24 move through as quickly as we can; but my preference is that
25 we ought to be placing that overriding standard in place

1 despite the fact that it has the limitation of not having
2 the specificity that we might all like it to have.

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

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

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

17 Is there any disagreement on that?

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

23 MR. SERGEL: We would expect so, and if we
24 didn't, we have the authority to initiate it on our own and
25 would do so.

1 CHAIRMAN KELLIHER: So you would fill in the
2 blank if they don't avail themselves of the opportunity.

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

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

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

19 It really is a shift in the way that we do these
20 things, but remember, the regions are just us. I mean,
21 American Electric Power is part of what will become
22 Reliability First along with many other members. So we
23 aren't going to be a bunch of renegades trying not to live
24 up to the national standards; I don't think that's the
25 intent of any of the EEI members, and I'm sure that's true

1 of the REAs and the APPA members and the rest of us who have
2 had an opportunity to speak here.

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

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

24 But going forward with the mandatory nature of
25 what we hope the ERO and the FERC will create, there will be

1 no option. And I really champion my friend from the TVA who
2 mentioned that he and they learned more from the audits than
3 they taught by the audits. And it really is true. The
4 critical element here is to say that you, regional member/
5 operator/ user, are doing these things wrong, and if you do
6 them better we'll have better reliability in a national
7 sense. And then you have a period of time to fix that.

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

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

20 CHAIRMAN KELLIHER: Thanks. David?

21 MR. MOHRE: I'd like to just mention another
22 aspect of this, and that is while penalties are important
23 and certainly they are, if done correctly -- and I believe
24 this will be done correctly particularly with regarding
25 transparency, the independent NERC Board has already passed,

1 as you are well aware, a resolution on transparency.

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

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

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

25 But if you have ten regions enforcing standards,

1 how do we assure that regional enforcement is actually
2 effective? I assume in part through ERO review of the
3 budgets, the enforcement budgets of the regional entities;
4 also through some kind of audits, whether they be by the
5 Commission or the ERO. But what are the other steps we can
6 take to make sure that regional enforcement is effective and
7 consistent?

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

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

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

22 And so I think we have to start on the right
23 foot; we have to start with an expectation of what the
24 programs are going to look like, if we start from that.
25 Then the process of audits and budgets and oversight I think

1 will be enough to not only keep it there, but to be able to
2 improve it over time.

3 CHAIRMAN KELLIHER: Thank you.

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

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

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

22 They have to fit within the same templates so
23 that when say someone from SERC comes in to assess them on a
24 major outage that takes place in MRO, that they understand
25 what the documents in front of them say, what they mean, and

1 it's not some implicit meaning that's worked out "Oh, this
2 is what we really meant by this." In fact, it's got to be
3 pretty explicit.

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

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

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

20 PANEL: Absolutely. And call it back.

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

24 MR. JONES: Chairman Kelliher, it's important
25 that, as was mentioned, I think the ERO should specify in

1 its approval or in its approved -- what is expected of a
2 compliance review and enforcement program in the regional
3 entities. Then when the regional entities file to become a
4 regional entity, included as a part of that delegation
5 agreement is a specific plan on how they will accomplish
6 that, which the ERO can review to see that it's adequate.
7 And the Commission can see.

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

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

19 CHAIRMAN KELLIHER: Thank you.

20 MR. MORRIS: Could I add a quick thought? If you
21 pull back a region's authorities because they have for
22 whatever reason chosen not to implement the way they should,
23 I would think you would pull it back to the ERO and not give
24 it to another region, because then you'll get interregional
25 competition that would really not serve any of us well over

1 time; and family squabbles are usually fun but not very
2 productive.

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

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

15 CHAIRMAN KELLIHER: Thanks.

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

20 (Laughter)

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

1 country.

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

17 So the nature of the audit itself for strict
18 compliance is a very local, regional process by definition.
19 It's not that it won't benefit from having people from
20 elsewhere. The process of doing a readiness audit for
21 improvement to determine how much above that standard you
22 are so that you're never close, we want you to be excellent
23 and be improving all the time, that is an international
24 process; that does need to be across all of the regions and
25 all the interconnections and all of the countries.

1 MR. JONES: And ERCOT certainly concurs with that
2 philosophy. In fact, we just underwent our readiness audit
3 just a few weeks ago, and had a team from all across North
4 America on that audit, and it was a good experience for us
5 and for them.

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

8 CHAIRMAN KELLIHER: Thank you.

9 Suedeen?

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

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

24 Contrast that with most states where that's not
25 how it works. Where the state attorney general tends to

1 have a separate jurisdiction, but regionally and locally
2 there's the police department and the district attorney's
3 office, and they're autonomous, and they have their own
4 enforcement practices and they do not report to or are
5 otherwise, aren't controlled in any way by the state
6 attorney general.

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

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

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

23 But that's another way of ensuring that there's a
24 level of consistency across them, and I think it's very
25 important that we have that. You know, there are lots of

1 different reasons here, whether it's the budgets, whether
2 it's enforcement, whether it's regional standards, we can't
3 set up a process in which we have forum shopping in which
4 you can just pick the regional entity that has the lowest
5 price and the easiest compliance. I don't think anyone will
6 do that; that is not what I've heard from anyone, and that
7 is not what's expected. I think that everybody expects to
8 set tight, tough standards, expects enforcement of those and
9 expects it consistently. But that needs to be driven from
10 the ERO.

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

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

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

24 And we happen to think that's a very good thing.
25 I think it's terrific that we'll be able to list those

1 places where we're doing well and we want to do more of it;
2 and those things that we're not doing well and that we've
3 got to get the change done quickly.

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

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

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

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

1 COMMISSIONER KELLY: Thanks.

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

5 (Laughter)

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

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

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

25 MR. SERGEL: Well, let's try a bit of both. I

1 think that starting with how we would hope that it works in
2 the future.

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

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

19 So there are things that not only are -- there's
20 a difference, but it's more administrative, let's say; has
21 something to do with the rules that are in place. And then
22 there are some that are undoubtedly physical. I have a
23 Board member that reminds me all the time that it's not at
24 all unreasonable that New York City might think that with
25 buildings, that people are in 50 stories and elevators,

1 might decide that it wants to handle some aspect of
2 reliability more tightly than we would do it elsewhere.

3 So that's another place where it's perfectly
4 reasonable to assume that there are differences. And the
5 way it should work going forward is that those standards
6 should be brought, the regional standards where they're
7 justifiably different should be brought to the ERO. And if
8 they're brought to the ERO from a process that we've already
9 looked at in advance, which is the way we think it should be
10 done, then you wouldn't even have to repeat it. In other
11 words, we would want to work with the region and with the
12 Commission to determine in advance what needed to be done so
13 that a regional standard that came to us could be deemed
14 acceptable. With the exception of a limited review that we
15 would do to make sure what impact it was having on its
16 neighbors, and was it in fact needed.

17 A description here of wanted versus needed I
18 think was very appropriate. So we would play that role. In
19 going forward, we would expect to do that and we would
20 expect to drive them to consistency over time by saying No,
21 by suggesting what Yes would be, et cetera, and certainly by
22 approving those where there's a real need and/or it's simply
23 administrative and makes sense to everyone.

24 So that's I think how we would expect it to work.
25 But they need to come to the ERO, and then the ERO needs to

1 both do its job but do it flexibly.

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

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

15 COMMISSIONER BROWNELL: Yes.

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

25 The regional differences should be few of and by

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

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

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

25 And as we transition, I suspect that in the

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

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

18 And I know that's a terrible task to give back to
19 you, but we didn't give it to you, Congress did; and we
20 champion you in getting that done, and we want to support
21 you in every way that we can. But it is important that we
22 limit the differences, that we limit the numbers, that we
23 limit the flexibilities to begin with, and that we
24 absolutely do not codify the existing process. The existing
25 process didn't work, doesn't work, we all know it. So let's

1 get on with it, let's fix it, and let's take this
2 opportunity to do it.

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

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

6 (Laughter)

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

19 MR. SERGEL: Just coming back to the point of how
20 much specificity in advance. Same thing applies here as it
21 will with respect to enforcement. We have to write down in
22 advance how we would expect regional standards to come to
23 us. When, and what are the conditions under which we think
24 there should be a regional difference; and we're working on
25 that, and that's a collaborative effort to do that. But we

1 have to have expectations up front that say we expect them
2 to be filed, we expect them to be filed in this format,
3 here's the process we would hope you would use, here's the
4 process by which we're going to review it. And share all
5 that with the Commission and with the provinces in Canada --
6 everyone will know in advance.

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

17 COMMISSIONER BROWNELL: I have a budget question.

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

24 As I looked at your rebuttable presumption
25 language, Rick, I didn't see that aspect to it. Because if

1 we don't deal with that --

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

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

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

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

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

21 And then just be able to look at a series of
22 issues. If we are comfortable with those and we would
23 solicit comments from others and determine if somebody else
24 had a problem; but if none of those are the case, then we
25 ought to be able to send that directly to our Board; the

1 Board would then vote it and it would be submitted to you
2 and to the appropriate provinces where that's necessary.

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

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

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

23 But what I wouldn't see us doing is we wouldn't
24 be doing that through a process of resubmitting it to a
25 ballot body, taking long periods of time, and doing it

1 again. It would be more of a very direct approach of simply
2 looking at it, making that decision and reaching that
3 conclusion.

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

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

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

23 I wouldn't expect they'd do that today. I think
24 that there isn't anyone who is just being arbitrary; I think
25 most of these things are rooted in some basic differences of

1 how they've approached it over many, many years; and they
2 are different because of history not because anybody there
3 is being the least bit arbitrary.

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

8 COMMISSIONER KELLY: Thanks.

9 COMMISSIONER BROWNELL: I have a budget question.
10 I have a bunch of budget questions.

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

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

16 (Laughter)

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

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

23 MR. MORRIS: And I would argue, going forward,
24 I'm not sure that's a good idea. Again, the ERO should set
25 these standards. The budgetary impact of improved

1 reliability on the system is something that none of us
2 should argue a great deal about; and again I liken it to,
3 and I know how different this organization is, believe me, I
4 really do understand the differences. But there has never
5 been a time at INPO when a member would say, 'Well, I don't
6 want to have that budget increase.'

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

13 COMMISSIONER BROWNELL: And that is just my
14 point; I wonder if Rick, you have enough staff as you play
15 an increased role, and one of the criticisms in the blackout
16 report and from others has been, for example on the audits,
17 it's the industry auditing the industry, and I wonder if you
18 need more technical support so that you can help in fact
19 guide higher standards and guide a more independent audit
20 process, develop the metrics and things to be done as
21 opposed -- I think there ought to be some efficiency gains
22 out of the regions if in fact their role is clarified and
23 crisper. So it may not be a complete add, but you're right,
24 Mike, I mean, what price reliability? Ask the people in New
25 York.

1 MR. SERGEL: I think that's right; I think
2 there's also an expectation that we're going to be efficient
3 and effective. Be clear: We will come and ask for the
4 budget we need to do that job; and if that's for more, so be
5 it, we'll ask. If we can do it with the people we have, by
6 using more of what is out there and in place already and
7 using it more effectively, then that will be great as well.
8 I think it's a little early to be able to say that.

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

17 MR. MORRIS: A special committee.

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

24 MR. MOSHER: If I can follow up. One of the
25 things we have to realize is that we're in this transition

1 to get these standards clear and on file, both the regional
2 variations and the ERO standards. People are going to make
3 mistakes early on, but I keep going back to the WECC
4 experience with the RMS program, whenever they put in a new
5 standard.

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

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

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

1 abiding by the law.

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

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

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

18 Are you looking at, as you approve budgets, what
19 actually is dedicate to reliability? You talked, Sam, about
20 separate accounting. I think we're going to need to be
21 looking at that very carefully, as -- I don't know if these
22 organizations should be doing anything other than
23 reliability. That in itself is a question; but if they are,
24 how is it getting paid for? It strike me as odd that it
25 would be paid for under the guise of reliability.

1 MR. SERGEL: Well, unquestionably, just starting
2 with NERC, it's our view that everything we should do should
3 be with respect to reliability; we should have a single
4 budget, it should all come here. That's our view, because
5 we shouldn't be doing anything else.

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

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

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

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

20 MR. MORRIS: And I would argue that they should
21 do nothing other than that; that's their charge here. De-
22 bottlenecking is a whole different matter, and planning and
23 all the other things that come with it are totally different
24 matters that ought not be inside of the ERO and the
25 reliability issue. It should be solely laser-focused on

1 that particular path, and if a region came to the ERO with
2 this grand plan of being everything to everyone, I would
3 hope the ERO would send it back and say "have a nice day,
4 that's not going to work."

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

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

9 MR. McCLELLAND: Or short answers?

10 (Laughter)

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

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

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

24 So there's tension here, and so I'd really
25 appreciate your thoughts.

1 MR. SERGEL: I think we need to separate that
2 into its two parts, and the first is, are there good policy
3 reasons for keeping them separate where that's possible? I
4 believe there are, I think that should be the policy of the
5 Commission, I don't think the policy should change.

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

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

23 MR. MOHRE: We have spent a lot of time thinking
24 and talking about this issue with our members, and we would
25 concur with what's been said.

1 MR. MOSHER: I think the agreement here also,
2 that ERCOT is a bit different a situation; but we're very
3 uncomfortable with enforcement functions being in
4 transmission organizations, as a general rule.

5 MR. JONES: Obviously I'm biased.

6 (Laughter)

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

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

23 We also have extreme oversight by the Texas
24 legislature. In fact, they passed additional legislation in
25 this past session which increased the PUC's oversight of us,

1 and we meet with them regularly; we were in hearings with
2 them last week, to meet with them. And so we're a very
3 transparent and highly observed region, and we think that in
4 our case that accommodates that functional unbundling, if
5 it's a strong functional unbundling as I described earlier.

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

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

15 COMMISSIONER KELLY: Thank you.

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

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

23 And that is a textbook example of a logical
24 fallacy of post hoc, ergo propter hoc. You argue that gas,
25 you imply or insinuate that gas causes blackouts; that

1 because we've been building a lot of gas. The two blackouts
2 in '96 were caused, they were related to hydro projects. I
3 think by the logic of your argument, hydro causes blackouts,
4 not gas.

5 You argue that transmission investment has dried
6 up because of competition. Transmission investment started
7 drying up in the Seventies. And you point out that in one
8 of the Western blackouts -- one of the Western blackouts in
9 '96 that you referred to was caused by Bonneville, a sister
10 agency. And again using your logic, federal utilities cause
11 blackouts.

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

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

25 (Laughter)

1 I guess we can call up the second panel. Thank
2 you, gentlemen. Hopefully, I'll see you later.

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

9 (Brief recess.)

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1 Panel II: PAUL JOHNSON, Director, Transmission System
2 Engineering and Maintenance Management, American Electric
3 Power; EDWARD SCHWERDT, Executive Director, Northeast Power
4 Coordinating Council; WILLIAM F. REINKE, President-CEO,
5 Southeastern Electric Reliability Council, Inc.; KEN WILEY,
6 President-CEO, Florida Reliability Coordinating Council,
7 Inc.; CHARLES YEUNG, Executive Director, Interregional
8 Affairs, Southwest Power Pool, Inc.; and DANIEL SKAAR,
9 President, Midwest Reliability Organization

10

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

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

17 Previous panelists spoke a little about history;
18 our history is that we were formed approximately 40 years
19 ago, as a result of the November 9, 1965 blackout, an
20 anniversary that we just acknowledged. That's 40 years ago.
21 We have a long and very dedicated tradition of creating very
22 specific and I would add more stringent regional criteria to
23 which our members are obligated to comply through
24 participation in the membership agreement. Our membership
25 agreement requires both compliance with all NERC and all

1 NPCC criteria, not only in their own operation, but in any
2 dealings with any other market participant.

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

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

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

23 As such, the continuation of the successful
24 international interdependency of electric system reliability
25 is of critical importance to NPCC. NPCC began a formalized

1 self-assessment regarding implementation of the then-pending
2 energy legislation in May of 2004, more than a year before
3 the passage of the Energy Policy Act. With the initiation
4 of the role of the region study undertaken by the Regional
5 Manager's Committee, which I currently chair.

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

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

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

1 Section 215 funding mechanisms.

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

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

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

25 Consistent with the legislation, a regional

1 entity cannot receive authority from the ERO or FERC for
2 reliability criteria regarding adequacy or safety of
3 electric facilities or services. The backstop for adequacy
4 within the U.S. continues to be provided from state
5 authorities, as it continues to be provided from provincial
6 authorities within Canada.

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

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

25 A strong North American ERO, supported by

1 regional technical expertise, builds on the present
2 framework, incorporates the federal and state authorities
3 embodied in the legislation; provides for Canadian
4 authorities, and participation at both the provincial and
5 federal level; and balances continent-wide and regional
6 electric reliability requirements.

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

12 Thank you.

13 MR. McCLELLAND: Thank you, Ed.

14 Let's go back to Paul.

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

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

24 We appreciate the opportunity afforded to the
25 Reliability First members to participate in discussions of

1 this very important subject of reliability standards.
2 Reliability First is scheduled to replace the three regions,
3 ECAR, MAIN and MAAC on January 1, '06, as the NERC
4 Reliability Council of record with a Reliability First
5 footprint.

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

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

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

25 Reliability First believes that the ERO standards

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

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

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

25 During 2006, the Reliability First members and

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

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

18 The regional entities are in the best and most
19 efficient position to administer the compliance program,
20 with the proper and consistent oversight of the ERO. These
21 regional compliance programs currently exist and are
22 structured for the more existing characteristics of the
23 respective members. As I said, the EROs must have that
24 oversight of these regional compliance programs to ensure
25 that the industry's reliability rules are adhered to.

1 In any case, as this industry moves forward, the
2 ERO standards must be unambiguous, must be focused on
3 objectives, the methods of what and how; they should be
4 neutral as to regions with organized markets versus those
5 without, and should be written in such a way that the
6 multitude of regional variances are not needed. So it
7 should be a minimum number of regional variances.

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

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

20 Thank you very much.

21 MR. McCLELLAND: Thank you, Paul.

22 Let's move to Bill.

23 MR. REINKE: Good morning. Thank you very much.

24 My name is William Reinke, I am the President of
25 the Southeastern Electric Reliability Council. We do

1 appreciate the opportunity to participate today to discuss
2 the efforts of our region to implement the terms and
3 conditions contained in the legislation.

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

8 SERC currently has 39 regular members and 9
9 associate members, and our members represent all sectors of
10 the industry including investor-owned and independent power
11 producers, municipals, cooperatives, marketers, and an RTO.

12 We were formed in 1970 and we are currently incorporated in
13 the State of Alabama.

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

24 Our second major effort in SERC is modification
25 of our compliance plan, and we're doing that to make sure

1 that we do conform to the principles set forth in the
2 proposed delegation agreement. We believe our current plan
3 to be quite comprehensive, but nevertheless it's clear that
4 some parts of the plan will need to be modified.

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

12 On the matter of unique situations or unique
13 circumstances in our region, I'll just mention one: We do
14 have a challenge for us in that we have a large number of
15 independent power producers that are not members of the
16 region, and heretofore since the standards have been
17 voluntary, they have not been required to comply with
18 standards. So our challenge is going to be, going forward,
19 is to get the numerous independent power producers that
20 operate in our region to register with the region, and then
21 to begin to incorporate them in our compliance process.
22 Doesn't mean they have to be members of the region, but we
23 certainly, if they're going to be deemed users of the bulk
24 electric system, will have to comply with standards, and so
25 we want to make sure we've got them incorporated.

1 As it relates to the standards process itself,
2 we've stated in our initial comments that we are not
3 interested in becoming a standards setting organization.
4 All of our members operate in the Eastern interconnection,
5 and there are no unique geographic or operational
6 characteristics of our members that would require
7 development of standards separate from the ANSI-approved
8 NERC standards process.

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

19 Clearly, the regions have a role in the standards
20 process. First, our regions and our members must stay
21 abreast of the standards that are now under development to
22 ensure that new standards have realistic and appropriate
23 requirements and measures. Second, if new standards contain
24 regional requirements, we must be sure that the region is in
25 a position to implement those requirements.

1 A number of the existing standards contain
2 requirements that apply to the regions, and that was
3 referred to in the earlier panel. We count about 28 of the
4 existing 91 standards that require action by regions. For
5 example, and I'll give you a couple, three, four examples
6 here.

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

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

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

24 In the category of Protection and Control
25 standard, Standard 2 requires the region to define and

1 document disturbance monitoring equipment requirements and
2 Standard 6 requires the region to develop and document
3 Regional Reliability Organizations under frequency load
4 shedding programs.

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

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

20 Each SERC member that serves load within SERC
21 will be required to participate in a regional
22 under-frequency load shedding scheme, and have
23 the capability of shedding at least 30 percent of
24 their peak hour load in a minimum of three steps
25 distributed over a frequency range of 59.5 Hertz

1 to 58.4 Hertz. Other minimum requirements are
2 that the first set point should be no lower than
3 59.3, and that the range between set points
4 should be at least .2 of a Hertz but no greater
5 than half a Hertz. These requirements constitute
6 the regional UFLS program requirements, and it's
7 required by NERC Reliability Standard PRC006.

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

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

19 On matter of regional compliance and enforcement,
20 the role of the regions report that Ed Schwerdt referred to
21 suggests that it is appropriate to assess compliance with
22 reliability standards at the regional level. Specifically
23 the report recommends that we establish a common
24 understanding and definition of compliance and assurance
25 functions across all of North America, and that we develop

1 common approaches to compliance and enforcement
2 administration across North America; a common look and feel
3 with the regional requirements highlighted. We agree with
4 the conclusions in that report.

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

10 Thank you very much.

11 CHAIRMAN KELLIHER: Thank you, Bill.

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

15 MS. CAMPBELL: Thank you.

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

23 As many of you all know and especially those in
24 the NERC community, Ken is a noncontroversial subject --

25 (Laughter)

1 -- and never speaks his mind. So I'm going to
2 ask that you please recognize that I'm reading his comments
3 and don't --

4 (Laughter)

5 -- do not shoot the messenger, please.

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

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

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

25 My comments today will address four areas: one,

1 the need for a strong ERO; two, reliability standards and
2 regional standards; three, the reliability standards
3 development process; and four, reliability risks and
4 associated cost.

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

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

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

23 The ERO is the focus of the reliability standards
24 setting process, including the incorporation of regional
25 variances into reliability standards. The regional

1 entities, however, are the focus of the enforcement process
2 once reliability standards have been established.

3 The regional entities will come to the
4 reliability process with a very long history of skills for
5 and commitment to the preservation of the reliability of the
6 bulk power system. For these reasons, a strong ERO should
7 not translate into a top-down approach which relegates the
8 regional entities to be district offices of NERC.

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

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

20 I would now like to discuss the importance of
21 reliability standards and regional standards. The existing
22 NERC reliability standards can be broadly categorized as two
23 types: One, the first are the reliability standards that
24 are explicit and include the details defining the
25 requirements that must be complied with, and the

1 measurements to define how compliance can be measured.
2 These reliability standards, by necessity, must be developed
3 through a well-founded standards development process. Any
4 regional variance to these reliability standards should also
5 go through the ERO standard development process.

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

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

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

22 I would now like to discuss the reliability
23 standards development process. A reliability standards
24 development process is a vital element in the success of the
25 ERO. The process needs to be thorough, involve technical

1 experts, and involve all users of the bulk power system.
2 But most of all, it needs to be timely, responsive, and
3 flexible to changing reliability needs.

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

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

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

25 Twenty-one SARs are in various stages of

1 development, and have not been approved yet by this process.
2 Nine of these have been in the process since 2002, two have
3 been in the process since 2003, two since 2004, and eight
4 were posted into the process in 2005.

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

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

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

1 setting process.

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

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

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

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

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

19 Let's move on to Charles.

20 MR. YEUNG: Thank you. My name is Charles Yeung.
21 I am the Executive Director of Interregional Affairs at the
22 Southwest Power Pool. Southwest Power Pool is a NERC
23 regional reliability council covering mostly the South
24 Central United States; contrary to the name Southwest, we
25 are really South Central United States.

1 We have members in an eight state region, and
2 we've been a NERC reliability council since the inception of
3 reliability councils under NERC.

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

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

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

1 statistics are quite comparable and favorable to that
2 effect.

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

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

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

25 Now with the advent of the ERO and financial

1 penalties of up to a million dollars a day for
2 noncompliance, this issue about independence and separation
3 perhaps presents the highest stakes ever. Recently, SPP
4 members again discussed this issue of separation, and found
5 that SPP again is the appropriate organization to become or
6 apply to become the regional entity for the SPP footprint.

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

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

24 As a further safeguard to protect from the Board
25 taking inappropriate actions in compliance and enforcement,

1 the ERO will have close oversight over the SPP compliance
2 program. How? They will first approve the SPP compliance
3 program as per the delegation agreement; they will also have
4 audits of the SPP compliance process itself, and they will
5 also have an added level of review over the SPP Board
6 members by review of the ERO's own independent Board of
7 Trustees.

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

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

20 Having worked myself personally in three facets
21 of the wholesale power industry, starting first under a
22 transmission provider then working under a marketer
23 generator, and now today here as an RTO regional council, I
24 find that the ability to address both reliability and market
25 concerns under a single house thwarts attempts by those

1 players who try to obstruct progress, progress not only in
2 reliability but in markets as well, by playing one
3 organization that is commissioned for reliability against
4 the other, which is commissioned for markets. This causes
5 retarding or even completely ceasing progress in both
6 reliability and in markets.

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

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

23 In short, if Southwest Power Pool in its present
24 form, which we believe already meets most -- or meets all of
25 the statutory requirements of the regional entities, if it

1 cannot become the regional entity, the result will be
2 additional cost for members. And these costs are real in
3 terms of organizational costs, forming a second separate
4 organization, and they're also peripheral on our members in
5 terms of their expenses to participate and be represented in
6 a second organization.

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

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

21 The role of regional entities in standards
22 processes, not all regional criteria need to become
23 reliability standards, and I think we've heard that here
24 earlier. Regional entities, although in the statute are
25 tasked to proposed standards to the ERO, may not find it

1 necessary to submit all regional criteria through the NERC
2 standards development process. Certain criteria are
3 applicable for use only within a region's footprint; and to
4 the extent these regional criteria do not conflict with NERC
5 standards or reduce reliability to the grid, they should not
6 have to be made a part of the standards.

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

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

20 On improving existing standards. The Version 0
21 standards that the Commission proposes to adopt as the
22 initial set of standards, these have been in practice for
23 years. They have been revised to be more measurable and
24 more direct. But they're very well understood by the
25 industry today. By adopting these Version 0 standards, this

1 will ensure continuity and reliability as industry
2 transitions into an ERO-compliance world.

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

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

13 MR. McCLELLAND: Thank you, Charles.

14 Dan?

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

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

23 The Midwest Reliability Organization is one of
24 the regional reliability councils that comprise NERC. It
25 includes members and stakeholders in the following States

1 and Canadian provinces: Minnesota, Wisconsin, Iowa, North
2 Dakota, South Dakota, Nebraska, Montana, Illinois, the U.P.
3 of Michigan, Saskatchewan and Manitoba.

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

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

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

20 Overall, the MRO supports a strong international
21 organization to serve the best interests of end users, the
22 industry, and the public. The Commission and Canadian
23 regulators must have the absolutely confidence in empowering
24 the ERO and its regional entities with standards and
25 enforcement responsibilities.

1 In order for the ERO to be successful, its
2 foundation for decision making must be forged from sound
3 engineering. NERC has done an excellent job of gaining the
4 needed technical expertise from the industry and we will
5 need industry expertise to be successful in the future.

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

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

23 For example, the MRO views regional criteria as
24 the "how" of a standard, and it can vary from one region to
25 another. They are needed due to the physical makeup of the

1 system, do not violate existing standards, and do not
2 negatively impact an adjoining system or region.

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

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

20 While we support each region filing pertinent
21 regional criteria with the ERO to begin a process of
22 cataloguing these so that the industry has a record of them,
23 we don't support the ERO approving these criteria or other
24 things which are not standards. We believe that this
25 cataloguing would be done over time.

1 Our industry should set realistic expectations on
2 the implementation of this rule. We would need transition
3 plans for enforcement of the existing NERC Version 0
4 standards. The NERC Version 0 standards were an important
5 step in establishing consistent well-defined standards; we
6 should acknowledge that.

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

15 The Commission should mandate a schedule for
16 completion of this transition to the ERO in its final rule.

17 Regional entities will become recipients of the
18 ERO's delegated authority, and as such will be both vital to
19 the success of the ERO and will be the linchpin to the
20 implementation of the ERO's key responsibilities.

21 Through its delegation agreements with the
22 regional entities, the ERO and the industry should seek more
23 consistency and uniformity across North America, recognizing
24 deference to the West and ERCOT. Where technically
25 possible, regional entities should follow the same standard.

1 Where it's not technically possible, a regional entity
2 should justify a difference; either it's something more,
3 something less, or simply it doesn't apply. This should be
4 done with absolute transparency. Furthermore, we should
5 follow the same principles and similar processes in
6 justifying differences, interpretation of standards, and
7 enforcement.

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

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

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

25 MR. McCLELLAND: Thank you, Dan.

1 Questions for the panel?

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

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

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

23 So we're not looking to run a used car lot, we're
24 not looking to be anything outside of the service of
25 reliability; but I think our shared objective is a more

1 reliable overall grid. I think the other functions and
2 services that we provide to the Commission on behalf of the
3 members that would not be specifically identified in the
4 regional entity delegation agreement are valuable
5 contributions to the reliability of the North American grid.

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

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

23 Like one example is operating, the current
24 operating standard, the NERC operating standard I think
25 requires five days training a year, that's one aspect of it.

1 Your what and how distinction, are you saying that the NERC
2 standard should say operators should be adequately trained;
3 and then whether it's five days or three days or ten days
4 should be set at the region?

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

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

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

25 So it's not that it's so -- I'm not proposing

1 anything so broad that the region is going to have, write
2 their own rules, no, not at all.

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

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

25 And there are some that you may need, for example

1 I brought up the studies manual, where you're trying to meet
2 a particular reliability or ERO standard, but you may have
3 to study the system differently.

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

14 MR. SKAAR: I don't know who wants to go first
15 here.

16 Paul, if you want to go first.

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

25 MR. JOHNSON: Generally I would be in agreement

1 also. The parties can get together, and then through the
2 ERO, and through that I think actually take care of the
3 vast, vast majority of the issues.

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

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

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

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

24 Is that a criticism by you of the ANSI process?
25 Or are you saying that it's inappropriate for regions to use

1 an ANSI process? Or they should have the ability to not use
2 the ANSI process?

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

13 So it's a tall order, and I'm not sure I have a
14 direct answer for that one.

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

20 MR. JOHNSON: Yes.

21 CHAIRMAN KELLIHER: And I think we've had a total
22 of one standard develop over five years, under the current
23 process.

24 The cyber-security standard I think is a
25 temporary, ANSI-approved standard, and I'm not trying to be

1 critical, but it just seems going forward maybe a standard
2 is needed in a year, 18 months, something like that; and we
3 need a standards-setting process that actually can
4 accommodate that kind of timeline.

5 Yes?

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

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

20 So we've got some changes made within the process
21 that I think we can utilize. We haven't really had an
22 opportunity to try and do some of that yet, where certain
23 steps would be done concurrently, parallel postings, et
24 cetera, et cetera, that we may be able to whittle down, if
25 you will, on some of the time.

1 So history, we haven't got to practice that yet,
2 but I think we may have more opportunity in some of the
3 flexibility going forward than we've had in the past.

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

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

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

25 So tell us what is not working about the ANSI

1 process and what is presumably better about the processes
2 that you have.

3 MR. JOHNSON: I'll try that one.

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

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

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

21 In our standards development in our region, we
22 still believe that the committee structure is still very
23 critical to the development of very robust standards,
24 because the face-to-face one-on-one talking and debating an
25 issue is very important; and even though our process is a

1 committee-based structure, we will incorporate principles of
2 the ANSI process and expand and include our neighboring
3 region and public comment and things of that nature.

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

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

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

23 The regional criteria are never meant to go
24 around to challenge the FERC's authority in terms of
25 enforcement for mandatory reliability standards. But they

1 represent some of, if you will, the leading edge, the best
2 expert opinions on how to make something more reliable.

3 I will tell you, in the Northeast we view the
4 NERC reliability standards as a minimum, and we go out of
5 our way to create more stringent criteria that our members
6 voluntarily today accept as mandatory.

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

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

23 COMMISSIONER BROWNELL: So with all due respect,
24 your standards are higher and better, I'm assuming you have
25 metrics to prove that, and you've had some kind of a peer

1 review that would say "Hey, you're doing a better job with
2 higher bar for the standards than we are." Is that --? I
3 appreciate your willingness to take credit for that, and
4 good for you if that's true; but if that's true and if we
5 can demonstrate that, then why aren't we sharing that across
6 functional lines? Why doesn't everybody want the high
7 standard? I'm confused.

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

15 That's something that has a cost associated with
16 it. But in the words of one of the state commissioners:
17 "We in the Northeast can't necessarily compete on price, but
18 we can compete on reliability." So we have made the
19 decision collectively as a region to be a more reliable
20 region, because we can't compete with some of the lower cost
21 regions in terms of attracting businesses and supporting the
22 digital economy that was referred to before.

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

1 (Laughter)

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

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

12 Thanks.

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

20 I think one of the advantages is the quality of
21 the outcome through the NERC process. The downside, as you
22 pinpointed, takes a lot of time, but when you benchmark it
23 against other industries, I think you'll find that -- I have
24 never done it, the benchmarking that is, but I think that
25 might be a good clue as to how efficient or how slow it is.

1 COMMISSIONER BROWNELL: Well, Mr. Skaar, one of
2 my benchmarks is the blackout report that identified six or
3 seven reasons that have been the cause of the blackouts for
4 the last twenty years.

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

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

13 (Laughter)

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

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

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

1 developing a coordination agreement with them.

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

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

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

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

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

1 corrected.

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

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

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

8 (Laughter)

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

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

23 Are they liable under the law, are they
24 punishable, are they fine-able, are they subject to a
25 penalty under the law if they violate an implementation

1 detail that doesn't have ERO and regulatory approval?

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

4 (Laughter)

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

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

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

24 And since I have the floor, and we're talking 10
25 versus 15 seconds, NPCC actually does have such an approach

1 that even the North American standard is 10, we have taken,
2 we have procedures in place to get us back in 5. So we
3 would report noncompliance on 10, but our procedures clearly
4 aim at the 5, and we set that objective intentionally
5 higher than the North American floor.

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

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

17 (Whereupon, at 1:10 p.m., the meeting recessed
18 for lunch.)

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24
25

1 succinct.

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

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

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

1 be asked.

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

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

13 And the same is true for the second point, which
14 is Version 0, which we've already described, that there are
15 standards that are not as complete as they could be. This
16 is a set of standards in which more work could be done.
17 Some of that has been left to the regions to do in the past.

18 And again I would suggest that as we go forward, that
19 doesn't describe some sort of natural deficiency in what's
20 been done; it's simply a natural balancing point between how
21 much of something should be regional and consistent across
22 the country, and how much of it is better left to the
23 nuances and intricacies of a particular geographic area.

24 And from time to time we'll have to continue to
25 make those choices. But if we set up the right kind of

1 process with a strong ERO, it will be the ERO's job to drive
2 that to its optimal place over time. And I think it can do
3 that.

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

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

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

23 Thank you.

24 MR. McCLELLAND: Thank you.

25 Richard?

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

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

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

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

23 Recognizing this, our guidance is based on the
24 following five principles: One, consistent standards are
25 required. The reliability rules established by the ERO

1 should be the minimum criteria applied by all systems
2 regardless of the structure or regulatory regime. These
3 criteria should apply to all market participants and state
4 and federal policy makers should recognize these criteria as
5 well.

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

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

20 Four, long-term resource adequacy must be
21 ensured. In the past, this was done using reserve margins,
22 fairly simplistic reserve margins; now we have different
23 types of resources to account for such as demand side
24 resources and various classes of generating facilities.
25 These adequacy requirements should apply to both vertically

1 integrated and restructured systems. And further, both real
2 power and reactive power adequacy should be considered.

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

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

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

19 Thank you for your attention.

20 MR. McCLELLAND: Thank you, Richard.

21 Richard?

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

1 (Laughter)

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

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

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

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

24 These requirements are derived from a variety of
25 sources, including research results, operating experience,

1 and engineering practice. One important source of
2 information is the industry consensus standards process.

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

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

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

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

24 In order to promote efficiency in the licensing
25 process and to promote uniformity in licensing, the NRC has

1 published extensive regulatory guidance, covering every
2 aspect of design and operation. As is the case with the
3 regulations themselves, this guidance is derived from a
4 variety of sources, including the consensus standards
5 process.

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

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

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

23 If a license exhibits performance problems that
24 exceed certain predetermined thresholds, the Agency subjects
25 that facility to augmented oversight, up to and including

1 suspension of operation.

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

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

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

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

21 Conversely, the industry often encounters
22 circumstances in which literal compliance with NRC
23 requirements is unduly burdensome to the licensee, or even
24 counterproductive to safety. The NRC has processes such as
25 exemptions and code reliefs and enforcement discretion which

1 allow the licensee to operate safely under an alternative
2 set of requirements.

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

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

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

20 The Institute for Nuclear Power Operation is a
21 nongovernmental organization which works to identify and
22 remedy performance problems and improve the operation of
23 nuclear power reactors. INPO works independently of the
24 NRC, and its program enhances the level of safety provided
25 by NRC activities.

1 While the NRC and INPO have an agreement which
2 facilitates exchange of certain information, the NRC does
3 not credit INPO activities in determining compliance with
4 our regulations, nor does the NRC take enforcement action
5 based on INPO findings.

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

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

23 The NRC has recently instituted a corrective
24 action tracking program to ensure that the lessons learned
25 from these experiences are not lost, and the mistakes are

1 not repeated in subsequent years.

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

9 Thank you very much.

10 MR. McCLELLAND: Thank you, Richard.

11 Bruce?

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

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

1 companies serve.

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

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

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

24 Our decisions are appealable first to the public
25 service commission, and then to your agency. So we are well

1 aware that you are well aware of our responsibilities and
2 limitations.

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

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

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

24 Our process is open to all. We hold our meetings
25 of course always in public. The stakeholders include the

1 NPCC, the Public Service Commission, the ISO, members of the
2 public. All of our stuff, if you will, is on the web. We
3 of course publicize our meetings, and the work is done
4 through three subcommittees. We have one, the reliability
5 rules subcommittee, that writes the rules. We have a
6 reliability compliance monitoring subcommittee that monitors
7 and enforces the rules; and then we have an installed
8 capacity subcommittee that provides the recommendation which
9 is the basis for our decision as to a reserve requirement
10 for the State of New York.

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

25 The process is this: A local rule can be offered

1 by anyone, by any stakeholder, by any of our members, by any
2 of the staffs of our subcommittees, or by any of the other
3 participants. They're reviewed first by our reliability
4 rules subcommittee, they're -- in order to assure that they
5 meet the local reliability rules, and that they are not
6 inconsistent with any of the NERC rules or the NPCC rules,
7 and to make sure that they don't introduce any seams issues
8 with our neighbors.

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

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

20 They're approved for publication first of all by
21 the executive committee, they go back out for public
22 comment, they come back, are reviewed by us, and if they are
23 approved and they are forwarded for execution. Now as a
24 matter of interest at that point, we keep the FERC informed
25 of all of our rules. You have approved our agreement, you

1 approve the membership of our executive committee, and you
2 maintain a file as I know you have, a thorough one, of all
3 of our rules and of all of our practices.

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

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

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

23 Now we've found that peer pressure does more good
24 than any fine in the world. As a small town kid, I'm not a
25 supporter of fines, I will admit that. We have found,

1 particularly working with small companies, that any money
2 that they have is better served being plowed back into
3 repairing something and fixing something than it is in a
4 fine. But we understand that.

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

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

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

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

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

25 MR. McCLELLAND: Thank you, Bruce.

1 Louise?

2 MS. McCARREN: Thank you. Thank you, Chair
3 Kelliher and Commissioners.

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

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

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

25 I think it has been a very arduous and almost

1 Byzantine process working through this, but I think it's
2 been a very helpful one.

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

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

22 We mention that as a framework for how we're
23 approaching it, because I think it clarifies a lot, may
24 clarify some of our thinking, and it kind of clarifies how
25 you approach it. So we don't approach this as a regulatory

1 relationship between us and the ERO, but much more of a
2 contractual relationship.

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

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

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

24 So I think there's a lot of work to be done in
25 that area. Again, I don't think it's insurmountable, but I

1 think that's -- I had to point out an area where there's a
2 challenge.

3 With respect to enforcement, our view, and this
4 differs I think from many people, many observers; our view
5 is that the penalties should be clear, and that they should
6 not be subjective. There's a whole school of thought that
7 says "Let's put into the penalty phase things like self-
8 reporting, mitigation, you know, are you a good citizen?"
9 We don't agree with that. We think that at least in the
10 beginning, and the beginning being on Day One, that the
11 table should be clear and precise. I agree with the
12 commenters who've said that penalties is probably only one
13 mechanism to get compliance; and after all, it is compliance
14 that we want, not penalty assessment.

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

21 Others have urged you with a transition period; I
22 think that's really important. Many have observed that
23 Version 0 has a lot of holes in it. I think we don't want
24 to create a great deal of chaos and uncertainty in the
25 industry. So I think there needs to be some period in which

1 we make sure we're all comfortable in what we're doing, and
2 then we begin to escalate and escalate and escalate the
3 difficulty or the criticalness of the standards and their
4 enforcement.

5 And finally, I will just very briefly address
6 budgets. There's some work to be done there. As you know,
7 we are responsible for the reliability coordination in the
8 Western interconnection; a very different kind of thing.
9 We've got to decide whether that goes into the FERC-approved
10 budget or not. It's going to depend on your views on that.

11 As someone pointed out, we do do a number of other things
12 that should absolutely not be included in a FERC-approved
13 budget, because they're not related to the core of standards
14 setting and enforcement.

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

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

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

25 MR. McCLELLAND: Thank you, Louise.

1 Questions from the panel?

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

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

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

14 MS. McCARREN: I think that that's exactly right.
15 We have five areas where we have standards that are not
16 replicable in the NERC standards.

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

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

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

24 Our only issue going forward is to whether
25 something is called a difference, or a variation, is in how

1 it gets approved. And whether we call it a WECC standard
2 or if you want to put a little bit different label on it,
3 we're still going to seek that path of going to the ERO
4 Board and rebuttable presumption.

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

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

16 MS. McCARREN: Yes.

17 CHAIRMAN KELLIHER: -- other things you may not.

18 MS. McCARREN: Yes.

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

24 MS. McCARREN: That is an issue that is on the
25 table and that has not been fully vetted or discussed in the

1 West. There are so many layers, frankly. Whether something
2 is a guide or it's an implementation; and I think we need to
3 work our way through that, working with the ERO and talking
4 to Joe about it as well.

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

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

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

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

25 CHAIRMAN KELLIHER: I'm sorry, you said regional

1 criteria of a single North American reliability organization
2 should be the minimum.

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

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

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

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

23 Other regions have --

24 CHAIRMAN KELLIHER: That seems inconsistent with
25 what you said; you're playing words, though. Reliability

1 criteria of a single North American reliability organization
2 should be the minimum applied by all systems.

3 DR. WAKEFIELD: yes.

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

7 DR. WAKEFIELD: Yes.

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

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

16 CHAIRMAN KELLIHER: Okay.

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

19 CHAIRMAN KELLIHER: Now, a question I raised
20 earlier about, I can understand how physical differences
21 might compel a difference in standards, regional standards,
22 a departure from North American standards. But are there
23 certain areas where there are, certain categories of
24 reliability standards where physical differences are
25 irrelevant, such as a communication standard or an operator

1 training standard? WECC right now has a different
2 communication standard than the North American standard, I
3 believe; I don't know why, but there is a different
4 communication standard in WECC. I don't know if there --

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

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

11

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

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

17 CHAIRMAN KELLIHER: Okay.

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

25 Certainly with operator training, I would agree

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

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

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

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

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

24 MS. McCARREN: Yes, because -- well, part of it
25 is simply the bargain that was struck in the legislation.

1 And that bargain was struck, as you all know, to gain the
2 West's support of mandatory standards and the creation of a
3 single ERO.

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

13 COMMISSIONER KELLY: Why is that?

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

20 So also --

21 COMMISSIONER KELLY: And how many balloting
22 bodies are there?

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

25 COMMISSIONER KELLY: Do you know how many people

1 are in the balloting body?

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

4 CHAIRMAN KELLIHER: 500.

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

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

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

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

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

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

25 COMMISSIONER KELLY: Would it make a difference

1 if the board was an independent board or a stakeholder board
2 or a combination board?

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

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

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

9 COMMISSIONER KELLY: And NERC's Board?

10 MS. McCARREN: It's all independent.

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

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

24 COMMISSIONER KELLY: And that would be the
25 process that applies to WECC and ERCOT but not to the other

1 regional entities?

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

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

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

24 MS. McCARREN: And we expect that the process by
25 which standards would be set in the West, to become WECC

1 standards, that process is going to be part of the
2 delegation agreement. So it will be negotiated and agreed
3 between the ERO and WECC, and then you would have to approve
4 it as well.

5 CHAIRMAN KELLIHER: I had one question -- oh.

6 COMMISSIONER KELLY: No, go ahead.

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

9 (Laughter)

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

20 Let's assume we did that and approved something
21 for a year, purely hypothetically, and directed NERC to
22 develop a replacement standard in a year. Could the ANSI
23 process possibly accommodate that? It doesn't seem so, but
24 if not, is there a way to streamline NERC consideration in
25 that kind of situation?

1 And also, hypothetically it seems, when standards
2 are voluntary, maybe some of the problems in the
3 interrelationship of standards doesn't quite come to light,
4 but when they're enforceable, maybe we'll see problems a
5 little bit more readily? And can that problem be tolerated
6 over perhaps a multi-year process?

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

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

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

22 MR. SERGEL: I'm only trying to pose that within
23 that, the statement "well, we need to do something quickly"
24 that there would actually -- there would be a compelling
25 reason behind that would be clear to folks, and I believe

1 that it will work. I believe the process will get done in
2 that amount of time, and I think it only takes the
3 combination of the Commission, your counterparts in Canada,
4 a strong ERO stepping up, setting up the challenge; and if
5 it's there and if it's expected, then we're going to be able
6 to go back through that process, which is very open and very
7 democratic and I don't believe should change. I'm a firm
8 believer in it.

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

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

22 I think the important thing is that it's
23 structured in a way such that we have a place where we're
24 able to do that, which means a strong ERO, that it
25 understands that that's its role, that's its function,

1 that's what it's supposed to do; but it's not out where a
2 response is, "Well, I don't want to do it at the national
3 level because I've got seven other places or eight other
4 places I can -- where I can go solve that particular
5 problem."

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

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

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

21 It says that you, or you said that you -- there's
22 typically regulatory guidance, for example, about what is
23 acceptable. Could you describe that process? Because I'm
24 confused by 500 people voting. I hope they're all people
25 who know what is they do, and they're all engineers of some

1 kind, but I suspect not.

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

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

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

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

25 So public interaction is important to us. So I

1 think we have kind of a hybrid. We do bring a lot of
2 technical expertise to the table, but we also try to make
3 sure that we're open to different views as to how to
4 implement them.

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

9 MR. BARRETT: Yes. Yes, we do.

10 (Laughter)

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

18 So, and in both cases there is a hierarchy of
19 violations. And so in the case of the compliance, you can
20 get level one, level two, level three violations, higher and
21 higher civil penalties. On the performance side you can get
22 enhanced NRC oversight, and in some cases you can end up
23 with a facility that's not able to operate for an extended
24 period of time, until the problems are resolved. Yes, there
25 is an escalating level of enforcement on both sides.

1 COMMISSIONER BROWNELL: And you have a watch
2 list, I think before you shut somebody down, the frequent
3 flier on the enforcement side gets at least that they're on
4 a watch list based on those categories, I guess?

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

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

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

17 (Laughter)

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

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

1 understand what's going on.

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

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

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

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

22 I think that -- probably see that just as being
23 one step out from being the ERO and getting the penalty
24 matrix in place, and you heard that there's a desire for
25 that to be clear and specific.

1 But I would have to say that my expectation is
2 that we would be attempting to do that.

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

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

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

24 But one way, and I think I mentioned this: I
25 believe that a difference, or at least some of my colleagues

1 agree with me on this, that a difference is you take the
2 NERC standard, a region says "we want something different in
3 there for us" and that gets encapsulated and thrown to the
4 whole ballot body.

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

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

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

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

24 COMMISSIONER KELLY: Along those lines, I was
25 going to say, Rick, that when I look at the criteria that

1 you are looking at for presuming that regional standards
2 will be ERO standards, the criteria on its face don't have
3 things like best practices or uniformity across the country
4 is desirable.

5 So how will you factor that into your process?

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

10 COMMISSIONER KELLY: Okay.

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

18 COMMISSIONER KELLY: Thank you.

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

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

1 NRC staff on site? What's the consequence.

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

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

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

16 (Laughter)

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

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

21 Yes, go ahead.

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

25 You had said earlier that your industry is fairly

1 evolved, and so -- or it's been around for a while and it
2 has sort of an evolutionary process. Well, ours has been
3 around for a longer period of time; and the process is also
4 evolutionary. But every now and again we have a blackout,
5 and that blackout causes what we heard from the
6 Commissioners today, the Chairman, causes sort of an
7 urgency to investigate the incident and perhaps put a
8 corrective action in place quickly.

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

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

22 You know, to answer the first part of your
23 question, we have processes, when something is discovered, a
24 problem for instance; we discovered a serious problem in
25 2002 at a plant in Ohio, and that caused us to go into a

1 very deep investigative mode, not only of the problem at the
2 plant but also what were the implications for our own
3 regulatory processes.

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

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

21 We also have processes that are less draconian
22 wherein we can request information from the licensees and
23 request from them proposals as to what would be their
24 voluntary commitments that we can accept as the basis for
25 continued operation in the interim.

1 MR. SERGEL: I just wanted to add that we are
2 going to be working on developing the event analysis and
3 information sharing section of NERC; it's modeled after how
4 INPO does its job.

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

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

20 But we've got to drive ourselves to do better
21 than to wait for the next significant event to be when we
22 start to learn and get better; we have to start looking at
23 all the information that's available to us today. This is
24 modeled after every great safety program which says: you
25 don't wait until somebody -- you know, it's not the people

1 that get hurt that you learn from; it's the ones that
2 didn't, but almost, and the things that people are doing
3 that are dangerous that can otherwise be eliminated.

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

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

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

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

25 Thanks to everyone for coming on a Friday, a late

1 Friday afternoon. Thank you.

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

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