

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

Technical Conference Relating to the Rules)
Concerning Certification of the Electric)
Reliability Organization; and Procedures for) Docket No. RM05-30-000
the Establishment, Approval, and)
Enforcement of Electric Reliability Standards)

**Technical Conference
December 9, 2005**

**Testimony of Mark Bennett
on Behalf of
The Electric Power Supply Association**

Good morning. I am Mark Bennett, General Counsel and Director of Policy for the Electric Power Supply Association (EPSA), the national trade association representing competitive power suppliers, including generators and marketers. EPSA appreciates the opportunity to participate in the Commission's effort to successfully implement the reliability provisions contained in the Energy Policy Act of 2005 (EPAAct). EPSA has supported and continues to support this important transition for FERC, and we will continue to work with this Commission and other stakeholders to get the implementation of the ERO correct as we now focus on more thorny planning and implementation details. Maintaining and enhancing power grid reliability is of vital concern to EPSA and its members, who

have and continue to play an active and meaningful role in the standards development processes of both NERC and NAESB.

The work of many committed people from all stakeholder groups has resulted in significant progress in standards development to date. It is essential that standards development and implementation utilize an inclusive, fair and transparent standards development processes that produces clear, sufficiently detailed, and technically sound reliability standards. Equally important is that the Commission and the Electric Reliability Organization (ERO) recognize that markets and reliability are inextricably linked and therefore account for the resulting dual nature of many energy standards. Accordingly, the standards development process must provide for the identification of the commercial dimensions of reliability standards, and an efficient and effective coordination mechanism to properly address them.

I. INTRODUCTION

Physical operational issues associated with system security are typically expressed in technical, engineering terms. Reliability-related activities, however, have distinct financial components and impacts. The business and commercial interests of all stakeholders depend upon a reliable, well-managed transmission grid, in conjunction with robust bilateral markets and, liquid, transparent spot markets. The overlap of reliability and commercial issues has long been recognized.¹ Therefore, EPSCA welcomes the more expansive role for FERC outlined in the EPAct.

¹See *Maintaining Reliability in a Competitive U.S. Electricity Industry*, Final Report of the Task Force on Electric System Reliability (September 29, 1998); NERC Search Conferences,; Order No. 2000, Order

EPSA's members have supported the Commission's recognition of the need to coordinate the development of reliability and business practice standards by participating in NAESB's Wholesale Electric Quadrant (WEQ), as well as the Joint Interface Committee (JIC) with NERC and the ISO/RTO Council. Also, we have submitted comments and a position statement addressing FERC's role regarding the overlap of reliability and market issues. Indeed, it is now widely acknowledged that many issues relating to reliability and markets are virtually inseparable. EPSA believes that the reliability construct contained in the EPCRA presents an opportunity to develop more clearly detailed and uniformly implemented standards, as well as more effective criteria for fostering the critical link between efficient market operation and grid reliability.

II. RESPONSES TO SPECIFIC PANEL I QUESTIONS

1. What criteria should be used to determine reliability standards?

- The criteria used to develop reliability standards and the criteria used to evaluate those standards may be different. In developing standards, the ERO has a statutory burden to establish that the standard is just, reasonable, not unduly discriminatory or preferential and in the public's interest;
- The standard must contain specific, well-developed details and clearly articulated purposes so that all market participants can conform their behavior to the standards.

Providing Guidance on the Formation of a Standards Development Organization for the Wholesale Electric Industry, 97 FERC ¶61,289 (December 19, 2001); Order on a Standard Development Organization for the Wholesale Electric Industry, Docket No. RM01-12-000 (May 16, 2002); and Policy Statement on Matters Related to Bulk Power System Reliability, 107 FERC ¶61,052 (April 19, 2004).

- Proposed reliability standards should be supported by detailed technical studies, and a chronology confirming that all steps required by the ERO's governance and development process have been satisfied, confirming broad stakeholder input, fair voting procedures and whether and how minority views, if any, were resolved;
- The criteria should require that the technical aspects of the standard be harmonized with the efficient operation of the relevant market(s), such that the standard recognizes and accounts for specific market based solutions to the reliability issue(s) being addressed;
- The criteria should reflect the ERO's statutory burden to establish the standard is just, reasonable, not unduly discriminatory or preferential and in the public interest; In its filings of proposed standards, the ERO should describe the effort to determine whether the standard conflicts with any existing function, rule, order, tariff, rate schedule, or agreement of a Transmission Organization, including whether and how such conflict was resolved;
- The criteria should establish minimum requirements to prevent the implementation and enforcement of vague, or unclear standards, or standards offering varying interpretations by different independent readers.
- Filings should describe the effort to identify and address the commercial components of standards, the outcome of coordination

with NAESB and the related steps taken to minimize adverse market impacts.

2. How should “best practices” be incorporated into developing reliability standards?

- The Final Blackout Report endorses the use of “best practices,” which is currently being explored by NERC’s Best Practices Task Force. However, EPSA cautions against blindly relying on existing best practices protocols as a means for circumventing the standards process. If used by NERC, “best practices” must be adequately justified, which includes the articulation of clear business practices guiding the posting or advertisement of any such “best practices” in order to prevent confusion and a weakening of the standards process itself or a circumvention of various stakeholder points of view in promoting a particular “best practice.”

3. What process should the Commission use in evaluating reliability standards?

- The satisfaction of the criteria for obtaining approval of a proposed standard must be clearly documented, particularly regarding the reasonableness of the standard and the absence of undue, adverse competitive impacts;
- Notice and opportunity to comment should accompany the filing of a proposed standard;
- The Commission should consider the establishment of a timetable for periodic reviews of approved standards to confirm their

effectiveness, as well as to determine and assess what, if any, market impacts have occurred as a result of that standard.

4. What are the implications for the Electric Reliability Organization if a reliability standard is remanded? What process should be used by the ERO if a reliability standard is remanded?

- EPSA shares the concern the Commission expressed in ¶53 of its NOPR for the prospect for delays in obtaining responses to remand orders. We agree that the imposition of deadlines by which the ERO must resubmit a proposed standard may be a valuable approach. However, the Commission may need to work with the ERO to determine whether the time periods in NERC's existing standards development process would need to be modified;
- Remanded standards should not go back to square one, but rather re-enter in an advanced stage of the ERO's process, subject to necessary opportunities for stakeholders to review and comment;
- If a standard is remanded due to unresolved issues relating to competitive markets or commercial practices, the Commission should direct the ERO to work those through the coordination mechanism with NAESB. In this regard, EPSA urges the Commission to preserve and better define the respective roles for the ERO and NAESB.

5. How are entities such as distribution providers, load serving entities, generation owners, generation operators, etc. covered by the reliability standards approved by the Commission?

- From EPSA's perspective, generation owners and operators are subject to reliability standards that directly relate to their activities and operations. However, EPSA reemphasizes the need for standards to provide detailed and clear instructions regarding what is required and expected. This is especially important in light of the new enforcement regime.

III. CONCLUSION

Thank you again for the opportunity to participate in this important initiative. EPSA and its members share the resolve and commitment of all stakeholders to being active, and responsible, parties in the effort to maintain and enhance the reliability of our nation's wholesale power grid.