

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Docket No. RM05-30-000

TECHNICAL WORKSHOP  
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TESTIMONY OF JAMES P. FAMA  
ON BEHALF OF  
THE EDISON ELECTRIC INSTITUTE

Good afternoon. I am Jim Fama, Executive Director of Energy Delivery for the Edison Electric Institute (EEI). EEI appreciates the opportunity to address the Commission today on reliability compliance and enforcement as the Commission moves forward to implement the reliability provisions of the Energy Policy Act of 2005. We commend the Commission and the staff for convening these technical conferences before finalizing the reliability rule. We believe it is very important to discuss the technical and transition issues surrounding Electric Reliability Organization (ERO) implementation, especially those involving the interplay between the ERO and the Regional Entities.

I would like to briefly discuss two issues: first, the need to achieve consistency in regional compliance and enforcement programs, and second, the need to effectively and promptly transition from today's world to the compliance and enforcement scheme called for in the Energy Policy Act.

## Consistency

As we stated in EEI's rulemaking comments, and as you heard from EEI's chairman, Michael Morris, at the November 18<sup>th</sup> technical conference, we support a strong ERO that will provide certainty and consistency in compliance enforcement. We must have a strong ERO at the top that exercises close oversight of the Regional Entities to ensure that regional enforcement programs are consistent and of the highest quality.

Because significant expertise, experience and wherewithal reside with the regional councils, the ERO will delegate certain of its reliability duties to Regional Entities pursuant to delegation agreements, as envisioned in the statute. When the ERO enters into these contracts, and as it administers these contracts over time, the ERO must require consistency among the regional compliance and enforcement programs to the greatest extent possible. EEI believes two areas requiring consistency are of particular importance.

First, there must be consistent interpretation and application of standards and penalties across regions. In addition to ensuring that penalties and sanctions fit the severity of violations, we strongly believe that enforcement actions must be comparable across regions.

Second, there must be consistency in the investigatory and due process procedures followed by the regions. Regardless of the region, all parties should be treated fairly and even-handedly with respect to the conduct of investigations, confidentiality and other matters surrounding enforcement.

## Transition

In the near future, the Commission will receive NERC's ERO certification application. A critical part of that application will be the transition plan—how, and how fast, does NERC plan to move from today's reliability mechanisms to those called for by the Energy Policy Act? A smooth and prompt transition involves many complex sequencing issues.

For example, regional delegation agreements cannot be executed until the ERO has been certified, the Commission has acted on the proposed pro forma delegation agreement, and regional compliance programs have been revised as necessary to comply with Commission rulings. Likewise, regional standards, and the processes used to propose and review these standards, will depend in part on Commission rulings on ERO standards and ERO standard-setting processes.

These are just a few examples of sequencing issues. There are many more. We believe that squaring up regional compliance enforcement programs and regional standards with a final ERO rule and a final Commission ERO certification will take some time.

At the November 18<sup>th</sup> technical conference, the Chairman noted the importance of getting regional standards in place in order to establish a comprehensive set of mandatory reliability rules. The Chairman has also indicated that in the event a particular NERC-proposed ERO standard requires improvement, the Commission will consider granting conditional approval so that the standard can be enforced during the period the Commission or the ERO is considering revisions to strengthen it. EEI believes that the conditional approval

approach being considered for ERO standards may also have to be used to address regional issues. The Commission may need to grant conditional approvals of certain regional standards or regional compliance enforcement programs in order to get a mandatory reliability regime in place as soon as possible.

EEI urges the Commission to focus on transition issues as it finalizes its rule and considers NERC's upcoming ERO certification application. It is time to establish a sequence and schedule of events. The more effectively the transition is handled, the faster we will put in place the reliability enforcement structures that we have sought for so long, and which now have been enacted into law.

I appreciate the opportunity to appear before the Commission and the staff today and I would be happy to answer any questions you may have.