BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION

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IN THE MATTER OF: : Docket Numbers

MANDATORY RELIABILITY STANDARDS : RM06-16

FOR THE BULK-POWER SYSTEM :

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Room 2C

Federal Energy Regulatory Commission

888 First Street, NE

Washington, DC

Thursday, July 6, 2006

The above-entitled matter came on for technical, conference pursuant to notice, at 9:35 a.m.

BEFORE: JOSEPH T. KELLIHER, CHAIRMAN

P R O C E E D I N G S

(9:30 a.m.)

CHAIRMAN KELLIHER: This meeting is called to order. Can we close the doors? Thank you.

I'm make some brief opening remarks, then Joe can describe how the day's going to be structured. Then we can get to the presentations. Today the Commission holds a technical conference focusing on the May 11, 2006 staff preliminary assessment of the North American Electric Reliability Council's Proposed Reliability Standards. This assessment was issued as part of the Commission's duty to establish enforceable standards that assure bulk power system reliability.

The assessment finds that NERC's existing program of voluntary standards represents a solid foundation on which to maintain and improve the nation's reliability. However, the assessment finds various deficiencies in the proposed standards. The assessment makes no legal findings and makes no recommendation about which standards should be accepted, conditionally accepted or remanded by the Commission.

To date, the Commission has received over 50 comments totalling nearly a thousand pages, including responses from federal and provincial agencies within Canada. Although the commentors were not necessarily in

agreement about every aspect of the preliminary assessment, many were highly complimentary about the quality of the staff review and the manner in which the assessment was organized. I've also personally heard from several organizations about the quality and content of the assessment and my thanks and congratulations go out to the Commission staff and to Division of Reliability who are responsible for the composition of such a high quality and professional document.

I also want to recognize the tremendous progress NERC has made over the past year towards strengthening reliability standards. Moving from a regime of voluntary compliance with unenforceable reliability standards to one of mandatory compliance with standards backed by a significant penalty authority is not an easy matter. While the preliminary assessment identified deficiencies in the proposed reliability standards the fact is that the reliability standards proposed by NERC are stronger than the standards that existed on the day the Energy Policy Act of 2005 was enacted and I think NERC deserves credit for this progress.

These proceedings will help establish a record that will assist the Commission to issue a notice of proposed rulemaking in the fall to act on each of the reliability standards that have been submitted by NERC.

Interested parties will have further opportunity to comment on the standards and the process for reviewing those standards after the NOPR is released by the Commission. After notice and comment, the Commission will issue a final rule approving, conditionally approving or remanding reliability standards. Once approved, those standards will be mandatory and enforceable as to all users, owners and operators of the bulk power system.

I do want to clarify one point, though. We will not follow our usual practice at this technical conference. Usually, at a technical conference we have a further round of comments. In this case we will not have a further round of comments in order to maintain our schedule towards development of a NOPR. So this is it. So be persuasive.

(Laughter.)

CHAIRMAN KELLIHER: We have a legal duty under the Energy Policy Act to assure that proposed reliability standards provide for reliable operation of the bulk power system. To me, that means carefully reviewing proposed reliability standards and assuring that they have technical support and are written so that they are enforceable against all users, owners and operators of the bulk power system as the law provides. We will, of course, give due weight to the technical expertise of the ERO and regional entities organized on an interconnection-wide basis.

In my view, we do not have the discretion to approve standards that fall short of the statutory criteria. However, we do have discretion on how to proceed in the event of a proposed reliability standard does not clearly meet the statutory test. We are not limited to two stark choices of approving unconditionally or remanding. We actually have more options than that available to us. We cannot let the perfect be the enemy of the good, but we also cannot make standards enforceable if we cannot find those standards assure bulk power system reliability. Once we approve standards that meet the statutory tests, the focus then turns on assuring effective enforcement and improving reliability standards over time.

Today's discussions will focus on (1) the standards ability to meet criteria established in Order 672; (2) the common issues identified by the assessment and their applicability when reviewing the standards; (3) how existing reliability standards can be improved over time and where necessary new standards can be developed; and (4) what processes might be necessary when coordinating across international borders to enact and subsequently enforce mandatory reliability standards. It would also perhaps be most helpful if we were to, in this discussion, discuss what happens in the event the Commission cannot approve all of the proposed reliability standards. How should we proceed

after that point? How do we prioritize the work on the standards that we cannot approve? If we get to that point, what kind of work plan would be developed? How do we prioritize and identify which standards are most important to assuring reliability of the bulk power system.

As I conclude, I want to recognize and welcome Kellan Fluckiger. I mispronounce your name every time -- from the Alberta Department of Energy; Kim Warren from Ontario and also David Burpee and Ivan Harvey from Natural Resources Canada and Carlotta Cahigas and Jose Famete from the Commision Reguladora De Energia in Mexico. I apologize for my pronunciation.

The Commission recognizes the importance of continued cooperation with our neighbors in Canada and Mexico as we not only share borders and the transmission grid, but potentially an ERO as well, good governance of the ERO, including the approval and enforcement of current effective reliability standards will benefit all of our nations. I look forward to hearing the views of the panelists. I'd like to ask my colleague if she has some comments she'd like to make.

COMMISSIONER BROWNELL: I don't want to take time away from the discussion. I think although EPAct has many, many important provisions this is probably the most important of all of them. Collectively, I think that we've

come a long way, but let's not settle for second best. I simply don't think we can afford to do that. I appreciate the work that's been done. I think we all recognize this an evolutionary process, but I think it's an evolutionary process that doesn't need another 25 years. It needs a couple of years and we need to get it right. So I'm glad to have been part of the beginning and will be like the Ghost of Christmas Past haunting everyone until we get it right.

CHAIRMAN KELLIHER: Thank you.

Joe, do you want to describe how we're going to proceed?

MR. McCLELLAND: Certainly. Good morning. Welcome to the Federal Energy Regulatory Commission on this holiday week. My name is Joe McClelland. I'm the Director of the Division of Reliability here at the Commission. As Chairman Kelliher stated, the purpose of this meeting is to examine staff's preliminary assessment of the reliability standards submitted by NERC in April for the Commission's approval. We appreciate the time and effort that our speakers put forward to appear here before the Commission today, especially during the holiday week. Thank you speakers.

I'd like to begin with a few housekeeping issues. Please feel free to step in and out of the conference room as necessary. The restrooms are located pass the elevators

in the left and right hallways. Also, at this time please turn off any pager or cellular telephones. Any presentation that we receive electronically here today will be posted on the FERC website appended to today's event on the calendar.

I'll proceed to the first panel. I hear some cellular telephone shutting off now. That's a good sign. The speakers of my first panel represent a cross-section of the electric utility industry. A representative from Canada, the North American Electric Reliability Council, the Edison Electric Institute, the ISO/RTO Council and the Electric Power Supply Association. They will provide perspectives about the effectiveness of the current reliability standards, area for improvement and a composition of a subsequent work branch to address work plan to address modifications to the extent necessary. In addition, panelists will address the International Coordination when reviewing reliability standards submitted for approval by the government regulators.

The speakers for our first panel are Kellan Fluckiger, Executive Director of the Electricity Division of the Alberta Department of Energy; Rick Sergel, President and Chief Executive Officer of the North American Electric Reliability Council; Michael Morris, President and Chief Executive Officer of American Electric Power; Charles Yeung, Executive Director of Interregional Affairs of Southwest

Power Pool on behalf of the ISO/RTO Council and Scott Helyer, Vice President of Transmission of Tensaka, Inc. on behalf of the Electric Power Supply Association. Each of you will have seven minutes for your presentations. I'll provide you with a warning when you have one minute remaining and I hate to do that, so please be mindful of the time. We'll begin with Kellan Fluckiger from the Alberta Department of Energy.

Kellan, welcome to the Commission and the floor is yours.

MR. FLUCKIGER: Thank you, Mr. Chairman, Ms. Brownell and FERC staff. I appreciate the opportunity to be here. I'm Kellan Fluckiger with the Alberta Department of Energy. I'm also representing the Canadian Federal Provincial Territorial Taskforce that has been quite involved in this process for some period of time. We really appreciate north of the border the process that the commission has undertaken to make this proceeding a rulemaking, to allow this kind of input and dialogue. We believe that that fact is critical to the transition and the creation of this new structure that we're about to create.

The comments I have today are less about individual standards than they are about process going forward and how we can continue to do this in a way that we believe will be effective, both for the U.S. and the

interconnected system north of the border. In all of this, we believe that it's important to clearly keep our goals defined. We're aiming at a system of standards to safeguard reliability, a system of monitoring and tracking compliance and a system of enforcement to perhaps publicize and penalize where necessary where that compliance is not forthcoming.

In doing that, we have so far and we would admonish us all to continue not to create unnecessary problems. This is a new process. It will be refined as we go and one of the key questions that I think you asked to start with, Mr. Chairman, was what do we do with all the standards? We think that's a key question. We don't think it's a problem at all to approve a subset of standards. Those that do meet the criteria, approve them, get them in place and let them begin to operate. We don't think it's a good choice to do the black and white sort of either approve them or remand them, but to create other categories -- things that can be conditionally approved with notes as to the deficiencies. Things that can neither be approved or conditionally approved, but perhaps just set aside with notes as to deficiencies.

One of the reasons that we think this is so critical is the Canadian model is different than the FERC model. You have the FERC, which is in charge of the entire

U.S. In Canada, it is provinces that have primacy and we don't have a central federal coordination mechanism. Some of the provinces, Alberta is one, Ontario is one and others, are already set up for enforcement of standards. Some are just getting organized. Some need legislation. Given that framework, the wholesale remand or sending back or disapproval of a number of standards would create a serious problem in Canada as we try to get our regulators to understand this framework and to participate cooperatively. It will be much easier if we have a set of approved standards that we can agree on and then a set of others that are set aside that need further work as opposed to creating a model that we just remand some because the Canadian regulators will also have this ability to remand or not approve in whatever fashion these standards. A difficulty would be, okay, FERC remands a large set. The Alberta utilities board and ISO remand a different set and if you have that model with several regulatory jurisdictions across Canada, it would be confusion. A better model, at least in our mind, would be to approve those that we can and then go to work on the rest of them to bring them along.

We have delegation agreements that are possible in the legislation. We think that is an effective tool and it should be utilized, particularly in the West. Alberta is part of the western interconnection which, as you know, has

a model in place and has had for a number of years -- the RMS agreement, whereby we have created a system of voluntary, mandatory standards through contract. That model has worked well and we did it the same way. We started with one set and then layered on more standards as we moved forward. That turned out to be an effective model that I think we can perhaps use in this context.

We also would stress one other piece and that is this framework is going to create the need for a whole new set of relationships. We have regulators in the Canadian provinces and FERC in the U.S. We're going to need to set up, perhaps, formal structures so that those relationships can be cultivated and work together so that when FERC takes an action the regulators in Canada understand what is behind that action and if a Canadian regulator feels the need to take a particular action with respect to a standard or set of standard that those don't come as surprise, that there's coordination ahead of time, that there's information shared ahead of time so that those kinds of things can be coordinated and people can understand what the thinking is behind that. I think that's particularly important as we set this new process up dealing with 102 -- the future and we have one at a time that will develop through this consensus process. That will be less problematic, but it's sort of giving birth to this new activity in structure. We

think that that's really critical. We would suggest that there is need to have some formal mechanism to coordinate between regulators as we get this process underway.

I want to address one of these questions more specifically. That is the one about the process using the international process for review and approval. At least with respect to Canada, we have a group already established, the Bilateral Electricity Reliability Oversight Group, which consists of representatives from Canada and from the U.S., FERC and others. We think that is an effective model. To either use that group or a specific group and to make assignments to the extent that there are thorny problems or issues that aren't yet resolved, make use of those kinds of forums to get input as you have in the past.

Thank you for the opportunity to comment.

MR. McCLELLAND: Thank you, Kellan.

Rick.

MR. SERGEL: Chairman Kelliher, Commissioner Brownell, Mr. McClelland, thank you. NERC is pleased to participate in this technical conference dealing with reliability standards we propose to be made under Section 215 of the Federal Power Act. NERC filed 102 proposed reliability standards in April. At the same time, we filed our application for certification as the electric reliability organization. This technical conference follows

on the preliminary staff assessment and as well as NERC's comments on the staff assessments, which we filed on June 26th.

NERC believes the Commission has an effective process underway to delivery quality standards in a timely manner. At NERC, the Commission staff and others who commented on the staff assessment generally agree some of the proposed reliability standards are ready for the Commission to grant final approval. Various commentors would have the list be larger or smaller. That's always the case. NERC identified 51 we believe are ready to be unconditionally approved. Not surprisingly, my remarks this morning focus on the fundamental question before the Commission. That's what to do with the others, what to do with the standards that require further work.

The Commission has a range of options. They can approve the standards in their present form. They can remand, conditionally approve the standards. That is make them mandatory and enforceable to factor into any determination of violations and penalties the limitation the standard may have. It should also be accompanied by a work plan to resolve those deficiencies. The Commission could designate the standards as good utility practice, in essence, reaffirming what it did in February 2005 and not doubt there are other possibilities, and in one form or

another all those possibilities have been presented to you in the comments you received. I went through those this past Friday. I lead the NERC staff through an exercise on decision-making. How we used buying a house as an example, but the key to effective decision-making is to carefully lay out the goals and objectives, the "musts" and "wants" before analyzing the alternatives.

With that in mind, I think it would be worthwhile to articulate what I think should guide the Commission's decision. First, the decision must meet the conditions of the law and the Chairman has already made it clear that needs to be done. But the decision should also encourage improving the standards. The decision should promote reliability in the interim. The decision should work effectively with our international partners and it should be timely.

To best meet those objectives, NERC strongly recommends that the Commission conditionally approve the standards that still need improvement. NERC believes the proposed standards state the requirements with sufficient clarity that those in the industry charged with the responsibility of maintaining the reliability of the bulk power system know what they're suppose to do. These are not new rules. They are the rules the industry uses today to plan and operate the system day in and day out. I'm just

going to use an example, if I could, TOP 6, which is monitoring system conditions says, "Each reliability coordinator or transmission operator and balancing authority shall monitor system frequency." It's on the list as needed working because it's missing measures and compliance information. But the standard clearly meets the statutory test as written. It's in the public interest to have this standard in place. It would harmful to not have it in place. It may benefit from the metrics, but they're not required and certainly not, in a legal sense, with the standard in place and mandatory, the right incentives will be in place to encourage all the parties to address the specific reforms necessary in an efficient manner.

With conditional approval there would be no gap in reliability standards. The Commission will establish up front the appropriate relationship with international partners and the mandatory standards will be in place promptly.

In conclusion, these standards meet the law. They're just reasonable, not unduly discriminatory and in the public interest. The requirements that people need to follow are stated in the standards. The Commission has already concluded that these standards constitute good utility practice and that jurisdictional utilities and other operating under comparable tariffs must follow them.

Conditional approval is the best solution for the interim because it makes the standards mandatory to the maximum extent reasonable and does so in a timely manner. It works best with Canada as it establishes a framework for working together and most importantly it encourages driving the standards to excellence without sacrificing long awaited mandatory enforcement.

I don't have time to talk about the other questions that were posed now, but I look forward to answering them during the Q&A. Thank you very much.

MR. McCLELLAND: Actually, Rick, you do have three minutes if you wanted to take a shot at it.

(Laughter.)

MR. SERGEL: As you can see, I take the seven minutes very, very seriously. What I think I'll do with that amount of time is talk about the users, owners and operators definition, if I might. We have proposed to do that through a registry. The reason we're doing that is we believe the ERO should have an obligation to those for whom it is holding accountable to these standards. That is, that it's our responsibility to notify them that there are standards for which they are to be held accountable. It's our responsibility to tell them if there's any training that's associated with that, to notify them of any changes in the standards, it's metrics, et cetera. To do that we

need to be able to know who those parties are. But more importantly, we need to be able to have that be a manageable list so that we can do that effectively. In order for the registry to be effective, we are encouraging on doing the most that we can to accommodate rolling up, that is, finding one organization that on behalf of others can be responsible for the standards.

All I can say at this point is we have sharks to the left of us and sharks to the right of us in terms of those who would say that we're either going too far or not going far enough in drawing the registry. But what we want to do and are attempting to do that we're practical about this implementation, that we have a transition and that in that period of time that we have all those entities that materially affect the bulk power system on the registry on Day One ready to go and that we are communicating with them and enforcing those standards that we have.

Over time we can work to increase the size of the list as is necessary to, yet again, get that last measure of improvement. But we are focusing on the practical and transition elements of this in building the registry.

MR. McCLELLAND: Just about perfect. Thank you, Rick.

Mike.

MR. MORRIS: Thank you very much. It's an honor

to be here and have an opportunity to share some ideas with this team. I'm here speaking on behalf of American Electric Power because I currently hold what John Rose said is the greatest title as EEI, that's Chairman Emeritus.

(Laughter.)

MR. MORRIS: I passed the torch to Jim Rogers just a few weeks ago here in the nation's capital. Having said that, let me again comment the Chair, the commissioners and the staff for the fine work that's been done to date.

It is clear to us those who will be living under these standards and hopefully complying with these standards, that there's been great effort to allow the industry to have a dialogue and to bring to the Commission its view of how it move forward in a more controlled, self-regulatory model.

The notion of the NERC turning into the ERO is something that American Electric Power has long supported along with many other of my colleagues and as a general principle of EEI as well. We are pleased with what we have seen to date. I would echo the comments of my predecessors by simply saying we have in hand about half of the standard, which seemed to be well in line with all the requirements which you have laid out. We would support very much the comments of Rick that those should be approved and put in place as quickly as we can as you go through your

appropriate process.

As to the others, conditional approval does make sense, but we don't have a gap in where we are and we would work over a period of time to get those to pass up to the muster that you would expect to have them implemented as well. I would argue during that period of conditional approval we would be soft on the penalty side of things. Clearly, awareness that you aren't living up to the conditionally-approved standards yet. Be cautious about how we implement penalty phases in that regard because you could then get us into quite a battle that would prove harmful for all of us in the process I would expect.

We really do believe that the inclusion of as many parties as you can in this process has been well thought through and well done by you and your team. And as you go forward in seeking input like this from as many voices in as many quarters as you can, you simply enhance the likelihood of coming up with a reasonable program for us to go forward with. We absolutely do believe that the inclusion of the team no different from what Rick said on who ought to be in the process, if you will, should be as broad as we can make. It has to include everyone who touches the system that can be effected by an event. I think some of you are aware that on occasion we utilities have some difficulty with our government partners who also

are big players, either in the substation connected to the system or in the transmission world itself, particularly out West.

I think it's important that all of those people be involved in this ongoing activity as well to ensure that you have the broadest reach. Because as we found out unfortunately in '03 it doesn't take much for the system to begin to cascade down. In some of the questions that you have posed to us you have asked about what do we do about prioritizing? I would argue that the NERC needs to come forward with their plan of those that are conditionally approved with a concise timeline on here's where we are. Here's where we hope to come back to you with something that makes sense so that you can again re-review it and get the number that are no longer conditionally approved higher and higher until we get all of the standards where we would like them.

In some of the other issues that you had asked us to make comment on, particularly to our friends north and south of the border, I can assure you from our experiences at INPO, particularly with the creation of Juano after the Chernobyl event, we need to be respectful of our international partners in this undertaking. I would argue that at INPO-Juano, we probably overstepped the boundaries, we the United States, by simply saying: You had this

problem; do what we do and things will be well.

I would argue that we should be, as we appear to be, very respectful of the Canadians and Mexicans as they play in this larger event and there's much to learn from our friends, both north and south of the border, and it's important that we take the opportunity to do that.

You asked the question about metrics and measurability. Absolutely essential. They need to be as clear as they can be. We have found over time at INPO is that metrics can change over time as we get better and better. One would hope that we do. Metrics might change. I think Commissioner Brownell may have said it. We won't get it perfect at the start. That doesn't mean that we should never strive not to be perfect as we go forward and take that process.

I would hate to spend so much time up front trying to really delve deep into some issue to ensure that we have it absolutely right when it would be better to implement and improve as time goes forward. So I think it's important that we have the opportunity to do that. Clearly, to the point of registration, again, everyone who touches the system ought to at least be involved when we go to revisions if we need to do that. Again, listen to the loudest community of voices that we can. At the end of the day, the ERO needs to set the standards and the FERC needs

to approve those standards. So voices to be heard, but not necessarily followed if it's whining and crying about "this seems too tough," "that seems too hard." That's what this is about is trying to up the reliability of the system and living up to those standards is very important.

Clearly, those of us in the user community, if you will, need to make sure that we are openly communicative about what has happened on our system. Self-reporting is probably the best answer to make sure that this potential undertaking has the highest degree of success and I think that's critically important. I'm a firm believer in the audit process. I know that we've done some of that. I would encourage Rick and his team, once designated, if that's the way the Commission goes, to broaden that audit activity. What our people learned when they are out on auditing TVA systems or Bonneville systems or you pick it, they learn a lot about good practices. That's how we can all get better as we go forward. And I guess I've punched my time clock.

MR. McCLELLAND: You still have a minute.

(Laughter.)

MR. MORRIS: I'm all out of fresh ideas. Thank you much for the opportunity to be here.

MR. McCLELLAND: Thank you, Mike.

Charles?

MR. YEUNG: Good morning. Let me first congratulate FERC staff on a job well done in analyzing the reliability standards by NERC for consideration as the standards for ERO enforcement. As reflected in our filed comments, the IRC members are in general agreement with many of the findings identified in that staff report. We're comprised of members from the nine ISOs and RTOs in the U.S. and Canada together. As the IRC, we collectively share our viewpoints and perspectives on what standards? Both the standards at NERC for reliability and those business practices at NAESB. Which ones are best to fulfill our responsibilities of independent operators of nearly two-thirds of the North American bulk power system.

Since IRC members don't own generation or serve load as load-serving entities, IRC represents a neutral and independent source of expertise from entities which are charged with maintaining system reliability and applying reliability standards on a day-to-day and minute-by-minute basis. The IRC efforts have been directed to meeting staff's request for input to assist the Commission in identifying, first, standards that can be implemented once. Second, standards that require immediate industry attention and third, the development of a plan to address immediate and longer term improvements which are necessary for these standards.

In our June 26th comments on the May staff report, we presented a proposal on how we believe NERC and FERC can best address deficiencies and begin as soon as possible. The enforcement of reliability standards that will achieve the purpose of the ERO as set forth in the legislation as we identified in our comments many requirements contained in the NERC filing are products of years of experience shared by NERC and transcribed into operating policies and planning guides. Many of the standards in that package were transformation of those policies and guides. They were products of a voluntary non-financial penalty reliability organization. The IRC cautions that to simultaneously launch industry resources into correcting all deficiencies within each of those 102 standards may not be most productive for the ERO to achieve its statutory purpose. There must first be an assessment of which ones are the clearest in applicability to implement and then which are the most critical to interconnected bulk power system reliability.

We therefore propose that NERC begin its compliance program under the authority of the ERO with the existing set of standards that NERC has already been monitoring under their 2006 NERC compliance enforcement program. This set of 40 standards put in that program have been vetted through the compliance program and have proven

to be measurable and enforceable, albeit, without financial sanctions. I say most of the 40 because even within that set of 40, as staff as correctly identified, some requirements have to reassessed as to whether they are appropriately written to come under the authority of FERC, which also approves and enforces tariffs with requirements that may, at times, seem contradictory or inconsistent with those reliability standards. I'll provide more explanation on this point later.

In our comments we've attached a matrix that the RIC used to provide an analysis of the set of those 40 standards. Let me stress that the IRC focused on these standards, not because they're the most important ones to maintain reliability, but rather because these 40 of the 102 are the closest to being complete and close enough to become enforceable and measurable standards. Many of the 40 do provide solutions to the problems that are high risk to a degree of reliability, but the IRC is aware that many standards outside this set of 40 is also there to address high risk reliability risk as well.

We note that the Commission is undertaking a process to rank all of its standards in this low risk/high risk category. We're participating in that effort. We believe that the high risk standards are the ones that the industry needs to focus on first. Not all high risk

standards are ready for implementation on Day One as the staff report identified. To get those standards that are high risk, but not ready for implementation we recommend that NERC begin a two- to five-year program to focus first on the high priority standards and revise them so that they're acceptable for enforcement. We believe our suggested approach recognizes both a need to apply both a measurable and enforceable standard as soon as possible and a need to ensure that industry allocates its resources to address the highest risk standards first.

I point out that just because an existing NERC standard is not ready for enforcement under the EPAct 2005 doesn't mean that they are not of any value as we've heard today so far. These standards are currently in place and they must continue to be enforceable under the voluntary terms that we have in place. I like to think of implementation of these standards that aren't ready for ERO Day One as enforcement under NERC classic procedures. We believe, although these standards are not clear enough for mandatory compliance, they are still the best set of standards the industry has today to ensure that the grid reliability is maintained. The IRC recommends that the Commission consider categorizing all the NERC standards that have been submitted, all 102. Those that we have identified in the matrix as a part of the revised program as well as

those that aren't in that compliance revised program into two categories. Category 1 would be the standards acceptable or those that are conditionally acceptable. Those that can be enforced under the ERO authority. Category 2 would be standards that weren't acceptable in their present form or not acceptable. Category 2 would continue to be enforceable under what I term NERC classic.

MR. McCLELLAND: One minute, Charles.

MR. YEUNG: Okay. On the matter of contradictory conflicting standards that I mentioned earlier. Certain NERC standards in the matrix are perhaps too prescriptive. When they were written industry was taking its first steps into open access and competition. These standards have been revised through the years and are much improved, but they still prescribe how one must respond to meet responsibilities for reliability rather than a what approach.

Since the beginning of open access, RTOs and ISOs have developed more innovative solutions to congestion management, scheduling and reservation that displace the need for such "how" approaches to standards. For example, IRO 006 for transmission line load relief -- most RTOs use market-based redispatch relief to relieve transmission constraints. A reliability standard to alleviate transmission overloads must also recognize local procedures

that the ISOs and RTOs use as a primary action and not rely on a "how" procedure as detailed in the TLR.

In summary, the IRC proposes the following process for FERC to consider (1) utilize the 40 compliance and enforcement standards as the initial set of reliability standards; (2) utilize the NERC violation risk factor ranking of the proposed standards; (3) utilize the IRC's recommended eight criteria as we've filed in our comments to screen all proposed standards; (4) based on that screening, categorize the standards into the two categories I mentioned, (1) would be acceptable or conditionally acceptable, and (2) would be not acceptable in the present form or not acceptable at all; and (5) for those Category 1 standards that are conditionally accepted identify their shortcomings and request NERC to begin immediately, update them under the Urgent Action process; (6) for the Category 2 standards direct NERC to implement a two- to five-year program starting with the highest risk standards first to review and revise those standards that fall under Category 2; and (7) coordinating the actions under the proposed Version 0 Standards with Canadian authorities to avoid confusion as to enforceability.

Thank you for hosting this conference and inviting me to speak on behalf of the IRC. I hope you find our comments unique and that bring high value to the

industry.

MR. McCLELLAND: Thank you, Charles.

Scott?

MR. HELYER: Good morning. Thank you for the opportunity to be here today and speak to you on this issue. I'm here representing the Electric Power Supply Association commonly known as EPSA. I'm the former chair of EPSA's Energy Standards Working Group and I'm the current chair of the NERC Planning Committee.

The Energy Policy Act of 2005 has established new roles for all of us in the electric industry. We've seen some dramatic changes with increased competition and the passage of various legislation and regulations. However, with everything that's occurred, the need for a reliability of electricity has not changed and the need for strong, clear reliability standards has never been more important than it is today. NERC has provided leadership in improving the reliability in North America. Among other things, the new standard element process has been implemented that provides all stakeholders with the means to propose, develop and vote on reliability standards.

EPSA appreciates the opportunity to have played a role in the development of that process and looks forward to working with a strong ERO to help assure that electric reliability is maintained and improved throughout North

America. EPSA believes that maintaining a wholesale power grid reliability and operating competitive power markets are mutually compatible. In fact, robust, well-functioning markets promote reliability. EPSA members fully understand the importance of a reliability power grid and appreciate the opportunity to be represented here today.

In its April 4th filing, NERC proposed 102 reliability standards covering the current and future operating conditions and planning of the bulk electric system. These standards have been, are and will continue to be a work in progress. Many of the proposed standards are considered by operators and planners in the industry to be motherhood and apple pie, and are based on many years of industry input that has lead to a reliable electric system. But as the Blackout report clearly points out, additional standards are also necessary in order to maintain and improve reliability. Further, the staff's review of the proposed standards has highlighted some areas where further work is warranted.

Some of these concerns may be a function of today's electric industry versus yesterday's industry because the FERC staff has correctly pointed out that the proposed standards form a solid foundation to maintain and improve the bulk electric system. But while always needing some further work and review, EPSA would agree that the

proposed standards form a solid basis and in general appear to be just reasonable, not unduly discriminatory or preferential and are in the public interest. Being comprised of companies whose business depends upon providing the most reliable, efficiently priced power in the industry, EPSA appreciates the widespread recognition reflected in the reliability title of the Energy Policy Act of 2005. FERC's policy statement and NERC's proposed rules of procedure of the need to closely examine potential impact that proposed reliability standards could have on competitive market operations.

While the ERO is focused on developing standards to maintain reliability, it is important to develop the understanding of how reliability standards will, to varying degrees, effect competition. While the statute requires FERC to give due weight to the technical expertise of the ERO, it states that the Commission "Shall not defer to the ERO on the effects the proposed standard may have on competition. Some examples of reliability standards that could impact commercial activity are obvious, such as standards relating to the calculation of ATC. Other standards, however, which may appear only to impact reliability such as the production of reactive power can also have a significant competitive impact.

NERC's proposed standards, development review and

comment process, if followed, is unlikely to result in a standard that is gratuitous or that has a gratuitous unwanted impact on competitive markets. Nonetheless, it is important for all stakeholders to recognize the oftentimes close link between reliability and commercial practices and competitive markets. It is through this understanding that strong reliability standards can be developed that properly consider and balance the interests in competitive markets.

EPSA believes that the industry is aware of the various shortcomings in the proposed standards highlighted by the FERC staff. We believe that the industry is in the best position to prioritize and address the various issues using the NERC standards process. If given explicit deadlines by the Commission, NERC's ANSI-certified standards development process is reasonable and appears to meet the goals set out by FERC in the Energy Policy Act. This is not to say that some changes in the process may not be warranted. For an example, some more face-to-face discussion could help ensure that various comments and proposed standards are clearly understood prior to and during the voting periods. But subtle changes aside, the current standards process is a workable system.

The NERC standards process covers a broad spectrum of industry participants, including all regulatory authorities who need or wish to be involved in the

development of reliability standards with active participation from all the industry sectors. The process is capable of yielding very good standards. The NERC standards process was developed to include regulatory entities in the United States, Canada and Mexico. It is clearly understood by all industry participants that the various regulatory participants have a vital role to play in the standard development process, beginning with standards requests and finishing with the approval of the proposed standards.

It is critical that regulatory entities participate in the process at every possible opportunity at every possible opportunity and assist our partner with the electric industry to develop a strong set of standards. Participation by regulatory authorities from the United States, Canada and Mexico will enhance communication amongst authorities and minimize, if not eliminate, the need to remand a standard back to the ERO.

Any FERC proposed standard remands will arguably reveal either a failure in the standards process itself, the failure of stakeholders to participate in the standards process or simply reflect divided and irreconcilable industry opinions. EPSA believes that should a proposed standard be remanded it go back into the standard development process queue at the point it emerged from the SAR Drafting Team originally.

Lastly, I'd like to comment on the staff's concerns about several definitions, including bulk electric system, bulk power system and the definitions of users, owners and operators. The definition of the bulk system, whether including the words "electrical power" is an issue that has been or will probably will continue to be discussed well beyond my years. It seems like every time we have a committee meeting that issue comes up. The definitions in the Energy Policy Act and the NERC glossary are not mutually exclusive. It is conceivable that both definitions can be used in a coordinated matter as guidance for developing standards.

However the definition issue is resolved, it is important that each reliability standard clearly define who is subject to it and what is expected of them. As such, the users, owners and operators of the bulk system should be clearly identified in each standard to avoid uncertainty. If a single definition of the bulk system is preferable, however, then that definition should be sent through the standards process for debate by the entire industry.

I appreciate the opportunity to be here today to visit with you on these issues and look forward to your questions. Thank you.

MR. McCLELLAND: Thank you, Scott.

This concludes the presentations of the speakers

from Panel 1. Do members of the panel have any questions for our speakers?

CHAIRMAN KELLIHER: Sure. As I said in my opening comments, let's assume there's some number of standards, whether it's 51, 40 or some other number that we think clearly meet the statutory standard and we can approve unconditionally, then the real interest turns to what's the remainder. How do we treat the other standards? We don't just have two stark choices -- approving unconditionally in perpetuity or until we remand, perhaps, in the future or remanding immediately. There are at least six different options I think the Commission has and there may be more than six.

One is to approve unconditionally without some kind of time limitation, without some kind of sunset. A second would be to approve unconditionally with some kind of time limitation and that may be appropriate where the standard doesn't meet the statutory test, but it's a high risk standard and we see the need to improve it over time. So perhaps its sunsetted in five years, just picking a term at random.

Another would be to approve conditionally. I want to ask some questions about that. What do people mean when they say, "approved conditionally," because I have some notion of what I think conditionally approval means. But I

think it's a little bit different than what some of the panelists think. Another would be to accept the standard but not approve it. Approve being the verb in the action of making enforceable, accepting it may be appropriate in some of the fill in the blanks standards. It really is a template for a regional standard. Theoretically, we could accept it. It's at the Commission but it's not enforceable and then a regional entity could draw on it to develop a regional standard.

Another would be to not approve it and not remand it, not conditionally approve it even. It remains pending at the Commission until the greater technical support is developed. Some of the panelists have talked about phasing in standards, making them enforceable over time and it could be that a standard doesn't fail from a lawyer's point of view, but it's not clear that it passes from a technical point of view and we need more information. The clock isn't running on us. We don't have to reject a standard after a period of time, so it could remain pending at the Commission. Then, of course, the sixth category is to remand or reject it.

So we really have these different options here. One of them, of course, is conditional approval. Let's assume there's some decent sized number we can approve unconditionally. There may be some that we can approve

conditionally, but what does that mean? By at least one of the panelist's description conditional approval is making it enforceable but without -- this might be Mike's -- making something enforceable but without the prospect of penalties being imposed for violating the standard.

That's really the status quo, I think, after the Commission's policy statement made compliance with standards good utility practice. We, in effect, said that there was a requirement to comply, but there wasn't any prospect of penalties in the event of violation.

MR. MORRIS: Mr. Chairman, I offered that in the notion that the conditional approval would be tied to some commitment by the ERO that they will supply to you in a very tight timeframe something that would move them from category A to category B. While they were in their pendency, I would hope -- I'm a strong advocate, not for business as usual.

CHAIRMAN KELLIHER: I wasn't using "status quo" in a pejorative sense there. My one sense is, if that's what conditional approval is, that does seem to reflect the policy statement from last year and I think that policy statement was a good thing and it was positive.

Another way to look at conditional approval is that it isn't enforceable until and unless some condition is met, perhaps the development of a performance metric. Once that metric is in place it is enforceable when the condition

is satisfied, the condition imposed by the Commission is satisfied and then, in effect, it is unconditionally approved from that point on.

So there also seems to be some confusion on does the Commission have to affirmatively -- I think this is something Rick raised in his comments. If there are certain standards we can't unconditionally approve, we should affirmative state that compliance with them is good utility practice. I'm not sure we actually need to do that because currently compliance is good utility practice. If there's a standard that we don't approve and make enforceable, we don't remand, it is still good utility practice. I don't think there's an affirmative action on behalf of the Commission to say this is good utility practice because that is the status quo. The standards are currently good utility practice. I'm not sure we need to affirmatively reaffirm that.

The difficulty would be if we were to remand a standard. That creates a curious situation where a standard of the Commission as formally found does not assure bulk power system reliability, is nonetheless still good utility practice. That seems to be an inapposite kind of result.

I know I promised a question somewhere in this in the near term horizon.

(Laughter.)

COMMISSIONER BROWNELL: We're all anxiously awaiting it.

(Laughter.)

CHAIRMAN KELLIHER: It's really more like a congressional question, a statement in the form of a question. So I'll have to come up with a question here. Let's talk about a work plan. Let's assume that at the end of the day, and I'm just assuming this for purposes of discussion, we don't unconditionally approve 102 standards and don't propose to unconditionally approve 102 standards in a NOPR, I can see NERC has currently provided a work plan to the Commission on strengthening standards. I think you proposed it to revise that sometime in November, I believe.

Assuming we issue a NOPR in September, I assume that affects your work plan because it could be that there are standards in all six of these boxes conceivably. Something that is unconditionally approved without any time limitation it seems the work plan really doesn't have to address. Then it really seems to turn to these high-risk and medium-risk and low-risk standards regardless of what box they fall in. It seems a high-risk standard that's remanded is something that should be a high priority for NERC in NERC's work plan. But a high-risk standard that is conditionally approved also seems to be a priority, perhaps a lesser priority.

If I could see how your work plan -- you really can't finalize it until we issue our proposed rules and indicate which of these boxes standards may fall in, again, assuming that all of them don't fall into the unconditional approval box. But how quickly would you be able to revise the work plan, assuming we issue a -- here's the question. I finally struggled towards the question. Assuming we issue our proposed rule in September and not every standard is unconditionally approved -- Mr. Yeung indicated that NERC is working towards developing tiers of standards -- high risk, medium risk and low risk. I don't know how close you are in that effort, but how quickly could you revise a work plan to focus on the high risk standards that aren't unconditionally approved? Is November still possible question mark?

(Laughter.)

MR. SERGEL: Let's talk about the work plan in the going forward mode first because I think that's a very important component of the ongoing relationship of the ERO to all of the stakeholders, to the Commission, to Canadian jurisdictions and we hope with Mexico very soon. How would we get to that work plan? We would believe that the work plan should be coming forth as a part of our budget process, which would ensure that it is posted. It is viewed. It's discussed extensively with stakeholders. That comes to our board ultimately through that process and would ultimately

be filed with the Commission in the middle of August each year. It would allow the Commission to be able to participate and their Canadian counterparts to be able to participate in that process. And ultimately, with the approval of the budget, we would then have the year's work plan as it relates to maybe other things, but certainly as it relates to standards be there. We would want that work plan not only be annual in that sense, but we'd also want to have a long-term plan so that we would be able to, from year-to-year, say, "Well, how does this fit into what we were trying to accomplish over the next five years?" How does the annual work plan fit with that? The work plan is essential because their is that much work to do. And if there's one great thing that's coming out of this, it's that we're all recognizing just how many opportunities there are to make the standards better. And if we make the standards better, we're going to make reliability better, but we have to prioritize that. We have to determine how much it costs to make those changes and evaluate that. That's all best done in this context of the work plan.

In terms of this cycle, because we're doing it for the very first time, I think the factor that's probably the most important is not so much how quickly we can revise the plan, but how much of the work do we get done that's completed or at least well along in being completed, meaning

it's being balloted or it's awaiting coming to our board. How much of that work is finished because the more of the work that we finish the more it's going to affect the plan. The more that we improve the things that the staff has already identified and put those behind us the less work there will be, the more that we'll met the test of being ready to be unconditionally approved.

So I think that while we would be more likely to be ready in the November timeframe, having completed a substantial amount of work and then be able to adopt our work plan accordingly, I think we're probably -- right now we're more cognizant of the gap that might exist with the Commission issuing an order in September where if it were slightly later than that would actually see the completed work and would be able to take that into account in what it said the first time. That would then enable us to fine tune and complete the work plan that would go with the Commission's proposed rule in time for the final rule.

I'd like to comment on a few of the other pieces, if I might. First, with respect to sunset, I believe that every reliability standard should have a sunset provision. We should always be going back and looking. I believe that placed with a five-year sunset originally and they had three and a half years to run, if you're not seeing nods back there, maybe I have it wrong. But I think a sunset is an

important part of that. I think with respect to the discussion of good utility practice --

CHAIRMAN KELLIHER: Can I interrupt. So at the end of that period of time it would no longer be an enforceable standard, so NERC, in advance of that would either say we propose to extend the exact same standard or we're strengthening.

MR. SERGEL: That's correct. Absolutely. It should go through that process.

MR. MORRIS: Or you found that it isn't essential and therefore you leave it be. Take it off the board.

MR. SERGEL: Exactly. In the comments of the ISO/RTO Council where it found one or two. Actually, well, we don't need that any more. I would think that the sunset provision is ideal for making that kind of determination -- well, we just don't need it -- as oppose to it actually having been negative in the interim. That would be an emergency action if you thought you had one wrong that needed to be fixed. So maybe there should be a sunset.

With respect to good utility practice, the concern is where the Commission actually makes the determination that, in fact, says that there's something about a standard that's not enforceable. There's something that's so unclear that it no longer meets this test for decisions to be made about it for the Commission to exercise

its authority and we're very concerned about that. It's why I choose to put the example in, which is to say monitoring frequency as requirement needs to be an enforceable standard. The fact that it's missing a compliance metric should not stop us in some fashion from being able to go and say if somebody wasn't doing that that we want to evaluate what that means. Yes, we should take into account by how much they have failed to meet it. But it should be, per say, unenforceable simply because it isn't as clear as we would like to be in the interim. It would suggest that when we hear plans of "It's going to take two to five years," well, that doesn't trouble me, per say. It troubles me in the sense that something would be unenforceable in the meantime, particularly, if it was having a black start plan. That should be enforceable. You should have to have one. If we can't do any better than you're suppose to have one, it's still better than not having the standard. There's a portion of these standards that we believe in every case is enforceable that is in the public interest. That's were we draw the line, getting to sort of a last point in response. What's the definition of conditional approval?

Our definition of conditional approval is it's approved to the extent that it is clear. If it says you're suppose to be monitoring frequency, that's clear. If the Commission finds that somebody wasn't doing that, it should

be able to find them in violation of a mandatory standard and it should be able to put a penalty and the ERO operating under the Commission's direction should be able to be presenting that to you. The fact that we may be able to do better and draw a line and say, well, what did it actually mean to not be monitoring where they're suppose to have two alarms instead of one? We know we can begin thinking about what it means and we should do that. But in the interim period of time, it's extremely important that the portions of the standards that are clear can be enforced and should be enforced. And if we draw the line there, then if it takes us two years to get the work done, then we'll have gone as far as we can making it as mandatory and enforceable as is possible given the quality of the standard. That's what I mean by "conditionally approval." That it's approved. It's mandatory and enforceable, taking into account specifically the limitations that have been identified, so if there's a limitation this doesn't have the metrics we'd like it to have. That would mean if we came back and are trying to hold somebody accountable for that based they were gone four minutes, right, and therefore that was a finding that they were not monitoring frequency effectively, the Commission should rightfully say, "Well, wait a minute. That sounds like you're getting awfully specific here relative to a measurement that isn't in the

standard" and it would be appropriate to say that you need to do better with identifying those metrics before that would be enforceable. That's how we define it. We would want there to be an element of every standard that is enforceable, if even where there are fill-in-the-blank standards there's a portion of it that should be enforceable. If you're suppose to have a plan, you should have one. That portion of it should be enforceable that exists. If the specifications of the plan come through the region, then we need to go through the process of getting what those plans look like and get that work finished as quickly as we can. That would be part of the work we have ahead.

MR. MORRIS: One of the ideas that you laid out, Mr. Chairman, that might work really well for all of us to get the standards issues sorted out so that the approvals could move from conditional to unconditional, particularly on the high risk category would be to approve them conditionally with a timeline. At the end of which, the FERC would create the standard. I would expect that that would put just enough pressure on this side of the table that we'd get about doing something that made sense. Because, for instance, I'm not sure what Rick was offering as an example, but if you're not monitoring frequency on your system every second of every minute, you're not living

up to your requirements. So if you've gone four minutes without checking things, God help you. If that's the industry standard, give us a half an hour to check this stuff, you ought to come back and say I don't think so. That's what this is really all about is improving the reliability. So conditional timeline at the end of which you all set the standard. I think that would get a great deal of attention from my colleagues.

COMMISSIONER BROWNELL: Would it also help if we gave that conditional approval with some recommendations of metrics? I'm really confused about enforceable with no metrics. I can't get my arms around that.

MR. MORRIS: I think that would be extremely helpful. Again, that would allow -- well, I don't want to speak for Rick, but I would think that would allow the ERO some boundaries within which to debate this issue. Again, with all deference to everyone on my side of the panel, I am a strong believer -- and our company stands for the process or the idea -- that at the end of the day, if the ERO won't set a standard, you should -- period. And we have to live up to those. That's how this is going to get better.

COMMISSIONER BROWNELL: Did you want to say something, Kellan?

MR. FLUCKIGER: I have two thoughts. One is about this last concept about the Commission creating the

standards. I want to think out loud for a minute about the interesting effect that would have with nine or so jurisdictions north of the border trying to create standards.

But in terms of conditional approval, standards that are not ready for prime time, however many there are, I think we need to know what the deficiency is, whether it's not specific enough in its enforcement, whether it's not just and reasonable or if somehow it's not enforceable as is. And I agree with you, I would hope, expect, want comments about what is the deficiency, either gathered from your own review and expertise or from the comments on the standards so that as you say these are the groups that are approved. These are not. We can conditionally approve them.

Conditionally approved can mean a bunch of things. Rick articulated one. It's approved to the extent that it's enforceable. One of the things we did in the West with some standards is to shadow enforce them, meaning violations were noted and publicized, but there was no monetary penalty associated with those for some period of time -- six months, a year or some time to allow the further development of the precise enforcement mechanism. So you violated this. You don't get fined, but it's part of the review process to understand that. What is the deficiency?

What is the urgency? We've talked about some critical standards. The group that are not enforced identifying the deficiency and then categorizing them as to the urgency. These are the ones that are really important to get done first, either because they're most related to system reliability and this other group can be done on a slower timeframe. I think that has to do with the work plan process. How many can we do and how many can we do right now after they're categorized?

The last piece I wanted to think about is, if we have the Commission creating standards, at the end of the day, I agree with timelines and deadlines. Don't get me wrong, open-ended stuff tends not to get done, but it emphasizes something that I wanted to say earlier that I think must be kept in mind because of the international nature. We're talking a lot about one piece of what I view as a parallel effort. One piece is actually "What do we do with these standards?" How many can we approve and how do we improve them and how do we get the rest of them over the goal line and all that kind of stuff, whether they're fill in the blanks or whatever they are?

The other piece of this that I think has to be done in parallel is what I would call -- there's the standards process and there's the regulatory relationship process that has to go in parallel and I think that it would

be really useful if you defined this -- that's what we're working on, but at the same time what's the timeline and process to develop these regulatory relationships? If they're going to be things like either commissions or boards or something like that, developing standards is sort of the hammer to get things moving. All that has to be done in coordination. Obviously, you creating a standard and Alberta creating a different one isn't going to work. Specifically, things like what to do if there's a remand that differs?

If you remand something and a Canadian jurisdiction doesn't or we do and you don't, we need to address these and this regulatory relationship and process parallel path that has to go on at the same time, establishing regular communication processes and those kinds of things. If that's done, then when problems show up we've already got these coordination processes established and we know what to do with the problems, and I'm focusing a bit more on the border issues than perhaps my colleagues, but that's what I'm here for.

I would really encourage us to take these processes about standards development to conclusion with timelines, deadlines and how to do them and also develop a written regulatory coordination process in parallel so that these will work in both places.

COMMISSIONER BROWNELL: Kellan, did you not say that -- you referenced a bilateral oversight group. Is there something in Canada where the provincial governments get together? Is there something there that we could connect with rather than doing it with all the provinces?

MR. FLUCKIGER: Yes. Every province is going to pass their own laws and so forth, but we do have a formal coordination mechanism called the Federal Provincial Territorial Taskforce. It is under the Council of Energy Ministers, which is a council that meets regularly and discusses a range of energy issues and this Federal Provincial Territorial Taskforce has been in existence for a couple of years and focused specifically and is the Canadian piece of this bilateral electricity oversight reliability group, which has U.S. DOE and FERC members as well and a couple of other people. Unless we create a better one, that to me looks like the group that ought to be assigned to tackle these problems and bring back something that will outline, perhaps, this regulatory relationship.

COMMISSIONER BROWNELL: I don't think we are helping the world if we create one more group.

My recommendation, Mr. Chairman, is take it as is.

MR. YEUNG: I want to clarify our ISO/RTO Council's definition of conditional approval. We defined

only those within the set of 40 compliance enforcement program standards for conditional approval or conditional acceptance. I think what's being discussed here, as far as this issue about no measures and how to enforce something and if you can't enforce can it be conditionally accepted, those probably fall under what the ISO/RTO Council defined as our Category 2, which is don't accept them, but immediately revise the standards to become enforceable by adding the measures. Our conditional acceptance standards have measures already under the Compliance Enforcement Program, however, those standards aren't recommended to be accepted immediately because there's still some clarifications needed in them. They're not yet clear or the measures aren't quite right or perhaps the correct approach on how the standards should be defined. So our definition of conditional approval is a little bit different, I think. What you all would think about here is probably more of what we're calling not acceptable, but be revised immediately.

One thing I want to point out is that when we made our assessment on which standards should be approved or which ones should be accepted, we felt like those are the ones that can have financial sanctions applied to them. Those that can be accepted immediately and conditionally. Again, the conditional ones requiring some, I would say, relatively small fix. An even relatively small fix would

require an urgent action process to fix, to repair it. But the ones that don't fall into a financial sanctions category, the ones I call the "NERC classic enforcement," those standards have proven to be effective under that voluntary method, so you're not really taking anything away from the reliability by continuing to enforce them through that method.

The program to immediately fix the high risk standards, of course, will elevate those standards to the level that they become enforceable, and as Mike Morris point out we want to go to the next level with those standards.

COMMISSIONER BROWNELL: I'm thinking perhaps I don't agree with your sense of urgency. I would not to be sitting in front of a congressional oversight hearing saying, yes, we identify some high risk standards and we identified a two to five year program to fix those. And, oh, by the way, in the interim you gave us this responsibility, but we kind of decided to take part of the old regime and let that continue. I don't see that reflected in EPAct. What I see reflected in EPAct is not a five-year phase in. It's continuous improvements to be sure, but it's enforceable and it's mandatory. And while they don't suggest we prioritize, I think they recognized in the Blackout report and those recommendations, not all of which are even reflected in these standards, and so I

appreciate the work that's been done and I've asked Rick many times about prioritizing what are the high risks and I look forward to those. But five years -- it just isn't going to cut it. I certainly don't want to be sitting in those chairs.

CHAIRMAN KELLIHER: I want to say I agree with Nora that I don't think that we're looking at a two- to five-year phase in of standards and I don't really think, at least speaking for myself, not really looking at field testing so much. NERC, in effect, have field tested the standards for the past two years because they've been reporting violations of the standards for two years. For those who want two years of field testing, they've just had two years of field testing in 2004 and '05. To me, I'm focused on the Summer of '07. I think our job is to get as many standards that meet the statutory test enforceable before the Summer of '07.

Did I say the Summer of '05? I meant the Summer of '07.

COMMISSIONER BROWNELL: '05 would have been great, though.

CHAIRMAN KELLIHER: I think that's the earliest that standards, under the law, could reasonably be enforceable. We've already accelerated the process by allowing NERC to submit reliability standards in their

application to be the ERO, so we've already accelerated things. But I really think we're looking at the Summer of '07 to have some suite of enforceable reliability standards not five years from now or two years from now.

I just want to ask one question and then let Rick respond. I just want to get you on record on something. One statement I made in my opening remarks was I don't think we have the discretion to approve, as mandatory standards, standards that we determine don't meet the statutory test. I just want do you share that view that under the law we don't have that discretion to make enforceable standards that we find do not meet the statutory test?

MR. SERGEL: I'm in complete agreement that in order to make a standard mandatory and enforceable it must meet the statutory test, which includes that it has to be in the public interest, just and reasonable, et cetera. We know what those are. It's why I keep wanting to put an example on the table, which we have this TOP6 and it's says that a balancing authority and others must monitor frequency. The question is, is that unenforceable because it doesn't have a metric to say how often or what that means. I just believe it is enforceable. It may have limitations on how one would do the enforcement, but we should not limit either the ERO or the Commission in its ability to go back and find that somebody who wasn't

monitoring frequency to do that.

This not something we're starting from scratch. If we were, it would be different. I'd have a different view. There's a hundred years of history of what it would mean to monitor frequency. Mike said they should be seeing it every minute, which is exactly right. Every second they should be watching it and the alarm should work and so forth.

COMMISSIONER BROWNELL: Then why isn't that the metric? It seems to me you've got one.

MR. SERGEL: I'm not suggesting that we can't do better on having metrics that are included in the standards. There are some limitations on that. Let me come back to that in a moment. What I want to do is draw the parallel, just for a moment, with how fast you can drive and the speed limits. We put up the speed limits. We know where they are even when they're not posted because you're suppose to know what kind of road you're on. But right in the book everywhere is a statement that says you can't drive any faster than the weather conditions permit. It doesn't get any vaguer than that, yet it's enforceable that you could be driving too fast driving the speed limit.

CHAIRMAN KELLIHER: And when the police give you the ticket, you basically have no defense.

(Laughter.)

MR. SERGEL: Been there. Done that. I think the question is whether or not -- and I think it goes to this timeframe -- we have lot of work to do and in that period of time I think it's incumbent upon all of us to try to find the line in which we can make those elements that are enforceable, that are clear and place those into effect as soon as we possible can. I believe that within each of the standards that line exists. Let me use a different example. To the extent that we have a standard that says you are suppose to have a black start plan, the fact that it's fill-in-the-blank and that there's more work to be done and that we ought to define the portion of that should not put somebody off the hook for the requirement to have the plan. That portion of it should be mandatory and enforceable because that's not unclear.

CHAIRMAN KELLIHER: To make a standard enforceable, it has to pass muster from both an engineer's point of view. It has to have technical merit and it has to pass muster from a lawyer's point of view. There has to be due process and a standard that really fails from the lawyer's point of view where it's impossible to tell whether or not you've actually complied is something I don't think we can make enforceable. It doesn't mean the users, owners and operators are off the hook because it would still remain good utility practice. But, to me, conditional approval --

normally at the Commission, conditional approval means approved when the conditions are satisfied. For example, a merger or whatever. It could be that, in that case, we could conditionally approve that standard, but the standard is not enforceable until the condition is satisfied, until the performance measure is developed. But it would remain good utility practice until it is enforceable under EPAct. It would remain good utility practice under last year's policy statement until it's made enforceable under our EPAct authority. So I don't think no one is off the hook if a standard has technical merit that we don't disagree with, but fails from the due process grounds. That's what I was trying to get across earlier when I was saying there really are these six boxes and things that we've found are good utility practice now, good utility practice last year remain so. The complication is if we actually remand something. I find it hard to see that compliance with a remanded standard could still be good utility practice.

MR. SERGEL: I promised to tell you a little bit --

CHAIRMAN KELLIHER: I want to get answers to my questions from your colleagues, but go ahead.

MR. SERGEL: On the metrics themselves, if we can divide these into two categories. The first is with the compliance element. The compliance elements to how often

will the auditor be there and what documents will they look at. And then, with respect to the metrics, if we were doing the metrics for what it means to monitor frequency, we would be determining what that list is.

CHAIRMAN KELLIHER: You don't want the auditors saying I think it should be one minute and another auditor saying, no, it should be 30 seconds.

MR. SERGEL: The auditor would then be looking at the metrics. But here's my concern. I think there's an assumption here that says, well, we're going to be able for each one of these to be able to have the maximum reliability by listing those elements of what it means to be monitoring frequency. We'll have metrics that the auditor can look at. These are the ones they're going to look at.

It's been my experience that "everyone wants to get you to that place where you want to write often how often the auditor's going to be there, what they're going to look at and the ones they're going to measure against." Invariably, what causes the problem turns out to be those things that didn't get on -- that didn't make it on the list. So I guess I would supplement my rationale for why we would want to make these broader statements mandatory and enforceable, notwithstanding have the metrics, that it will be extremely difficult to have those metrics, at least on my part, and not want to have the final statement anyway that

says, "And by the way, anything else that it turns out that you should have been looking at that is reasonable, you should have been doing that, too." I just don't believe that, in the sense that we want to be narrowly defining what the requirements are, if we've left something out of a black start plan, shame on us. But, notwithstanding, there are going to be elements that people will know on their own that should be part of their own plan. If they know that it should be there, then it should. And the fact that it didn't apply to everyone else shouldn't necessarily mean that we wouldn't b able to go in and be able to enforce that. If they knew they should have it, if they knew they were suppose to be doing it, they should.

I think we're taking the metrics to a place in which I think they're being defined too precisely. As difficult as it is, I prefer the system that gives them the discretion that enables them to ticket you as you say where you have no defense. But, nevertheless, I think that's an important part of the process to draw that line and understand that there are things outside of what you can precisely measure and monitor. But my primary concern, and I will stop with this, is that we're going to have lots of work to do. I just want us to be trying to see how far we can go. We want to get the most distance we can. What portion of this can we make mandatory and enforceable and

give to the ERO and to the Commission, their Canadian counterparts and hopefully one day to Mexico the maximum amount of authority as we work through the list, not working from the other direction and saying it's the due process rights of those who were involved or any confusion they might have over what it means to be monitoring frequency and we start from that and say, well, let's not make it enforceable until we get that right. I just want to see us coming from the other end. Certainly, we'll accept that there obviously are legal and technical issues about where to draw that line.

CHAIRMAN KELLIHER: I just want to clarify the concern about due process isn't some kind of beneficence towards users, owners and operators. It's just a concern that that standard could then be challenged as being void for vagueness, unconstitutional. It could be challenged in court and thrown out in court. It's not some act of generosity on the Commission's part. It's just to make something enforceable with a million dollar per day penalty behind it there will have to be a notice on what behavior is expected of them and to comply. We're going to consume that the great preponderance of users, owners and operators are going to be striving toward compliance and we want to make it easy for them, not illusive. And for the ones that do not comply, we want to make it easy to detect that and when

there's not a measure it seems to make it impossible from both points of view.

But back to my original question.

MR. MORRIS: Can I offer an answer, Mr. Chairman. I think you're exactly right. You could make the standard and you could enforce it, but on challenge you would lose, I suspect, if it isn't relatively clear with the kind of legal and technical support that you talked about earlier on. I think that we may get some real clear thinking on that by the Supreme Court with EPA and New Source Review one of these days in the not too distance future. That would lead all of us into a place that none of us really want to go, not this side of the table I would argue, and surely not you all either.

So as I frequently do in these kinds of venues, I'll go back to my broken record story. That's why I think there's some common sense about a conditional approval with a timeline during which you won't enforce penalty-wise and you will then set a date and if we, ERO, haven't come back with a standard at some date certain, you'll have it. You've got plenty of engineers. You've got plenty of technical capability. Lord knows, you've got plenty of lawyers.

(Laughter.)

COMMISSIONER BROWNELL: It's a problem.

(Laughter.)

MR. MORRIS: It would seem to me that that might be a workable solution to get us to where we all want to go and I couldn't agree more with Commissioner Brownell's theory. This isn't a two- to five-year window. We've been at this a long time. The EPAct is '05. I agree with you, Chair, that we ought to have this done by the Summer of '07.

CHAIRMAN KELLIHER: Thanks, Mike.

Let me ask question. I can't remember from a while ago. Do you agree that the Commission does not have the discretion to approve reliability standards that don't meet statutory criteria? And this does lend itself to a yes or no response.

(Laughter.)

CHAIRMAN KELLIHER: Let me start with Mr. Helyer and we can work to Kellan. Kellan, you don't have to comment on U.S. matter if you don't want to. I don't want to impose that on you.

MR. FLUCKIGER: What's that?

CHAIRMAN KELLIHER: My question was do the panelist agree that FERC does not have the discretion to make enforceable reliability standards that do not meet the statutory criteria from our point of view?

Scott?

MR. HELYER: Obviously, from a legal standpoint,

you don't have that authority. I think that's pretty clear.

CHAIRMAN KELLIHER: Thank you.

Mr. Yeung?

MR. YEUNG: I have to agree. I think that's the whole issue. If it's not measurable, how are you going to enforce it? How is someone going to follow it -- Summer '07 for the 60 standards that don't have measurable criteria in it as a very short timeframe?

CHAIRMAN KELLIHER: I tried to be careful. I said our goal is to make enforceable those standards that meet the statutory test before the Summer of '07. And perhaps will be 102 standards, perhaps.

MR. YEUNG: We focused on the set of 40 that had measurable standards and believe those meet the statutory criteria and are enforceable.

MR. MORRIS: No, we don't have that authority.

CHAIRMAN KELLIHER: Thank you, Mike.

Kellan, you can comment. Rick, I think, answered the question.

MR. FLUCKIGER: I would think you don't have that authority, but I think you've nailed the key question. What do you do in the meantime?

CHAIRMAN KELLIHER: It doesn't mean we remand.

MR. FLUCKIGER: You don't have to be erased and whatever. We can threat them differently. We don't have

authority to adopt them, but we do have ability to do other stuff as useful.

COMMISSIONER BROWNELL: Mike, you referenced that we need to be certain that the large public power authorities are part of the program. I think that was as a comment that you made. Is there something we're missing or something we can do to encourage that? If it's a concern, how can we address that concern?

MR. MORRIS: I think in your definition of users, owners, operators and those who are involved that's why I meant that it needs to be broad. It's also government entities. All of us have DOE facilities inside of our space and sometimes they're well-maintained and play by the rules. Sometimes they don't. It's a very serious cause for concern when you find yourself in a situation where a government entity is putting a strain on the system that you can't put a fence around. That's why I wanted to make sure that there is one.

COMMISSIONER BROWNELL: You referenced, Charles that there are some inconsistencies, perhaps, between the standards and the tariff provisions. Is the IRC taking that task on to identify those. What's the process for that because it seems to me you've got a lot of work going on? How is that getting handled?

MR. YEUNG: We've done that analysis with a set

of 40 in the compliance program. In the matrix we've identified some of the conflicts. The one I pointed out today was the IRO 006 for transmission loading relief. For the ones that are outside the matrix, that process a recommendation of a program to get them into enforceable statute would be the process to identify the conflicts.

COMMISSIONER BROWNELL: Rick, you may have answered this and I just got lost. But in your work plan, will you have tiers of importance recognized?

MR. SERGEL: Yes. Obviously, we take all the factors into account. How important they are or what's the relative difficulty of the work itself because some would be relatively straightforward like these compliance elements and measurements are easier to do than fill in the blanks. For example, notwithstanding their level of importance, we'd also take into account the amount of work that's required to do it. I think those are the two major issues -- how important is and how much work does it take? And from that you can put together the plan. There's obviously then the resources that one can bring to bear on it.

In this instance, because we rely so much on volunteers, it's really there just so much one can do with NERC staff or regional staff. That's not going to help very much because it's the industry. It's this broad-based group that has to come together on every one of these standards.

I agree with Mike on setting times for accomplishing certain tasks. I think it just needs to be done in the context of the work plan. That's the best place to do that as opposed to necessarily being directed at standard-by-standard within the teams themselves or within the order. It should be to the entirety of the plan, which is, as I've suggested should come to you and be before you and therefore you have an opportunity to sort of direct the plan at the end of the day.

MR. MORRIS: Might I raise another issue because I surely don't want to lose sight of this and I'm not sure the conversation will flow around to it. One of the things that's very important, and the Blackout report mentioned this very clearly, is operator training. We need to all understand that all of the standards, even in full compliance will some day lead us to a challenge and it's the ability of that operator in that session to react to that in a proactive way and in an intellectual way and in a practiced way that will allow us to avoid a repeat of the '03 event. Had there been a line of sight in the control room of the affect organizations that either could have been localized and/or avoided -- so that's an equipment issue and a standards issue.

But even when observed, what we have seen in the nuclear world is it's the control room operator experience

that comes through incredible training that allows us to react in a constructive way to the events that will come our way, notwithstanding these standards. I would hope that as we go through this process and I know we've addressed that issue, but I'd hope that becomes sacristan that the training and the accreditation of company trainings and the kinds of things we've learned over the years from our experiences at the Institute of Nuclear Power Operations I will lay very nicely on top of this and I want to make certain we don't lose sight of this because events will come our way notwithstanding what we all do.

MR. SERGEL: Just by way of the priorities, Mike has mentioned what was No. 2 on our list. I'll mention No. 1, which is the relay loadability in the so-called zone 3 relay issue. Both of those come out of the Blackout recommendations. Those are our two No.1 priorities and I do agree that the Blackout recommendations would be where you would start to look for that list. Those are scheduled for completion in the first quarter of '07 and the second priority are the fill-in-the-blank standards, black start, under voltage, under frequency protection, et cetera. The schedule for those is therefore probably laying that out in November, but that probably is a three-year project. There are other things. We have the operator and situation awareness and the voltage setting reactive power phaser

measurements. So in terms of at least at one level that plan is coming together, but we look forward to being able to do that annually with the stakeholders and specifically respond when we see the Commission's order we'll be able to fine tune it.

COMMISSIONER BROWNELL: Mike, I'd just like to add to what you said. I've been with a couple of utilities, senior women utility groups that meet pretty regularly and we've talked a lot about workforce development and I think that the concern is not only those identified in the Blackout report, but the aging workforce in the utility industry. I don't know how collectively either the associations or universities or whatever can come together given the work that NERC has to do. Maybe some supplemental work needs to address that because one assumes, as these standards get implemented, we're going to have upgrading and control. So then you're going to have or one would hope that we would have the addition of a lot of new technologies. We're just going to add another layer of complication in that sense. I think that is a real difficult issue to deal with. I don't think we can leave it to NERC. I'm not sure. I know EEI has had an aging workforce taskforce, but is there an educational effort that's going on in the industry?

MR. MORRIS: Most of us are working on that on

our own to make certain that we've got adequate resources to continue to keep the meter spinning, which is something we're all very interested in, as you can well imagine. The facts are we are blessed with a society, a generation who is coming up who are technically aware and you are right anytime you would go to an upgrade of your control situation, it's removing handles with laptop. It's an incredibly important task. We, as a company -- I think EEI as an industry are aware of this issue and is handling it relatively well. Many of us have reached out to local universities, either at the technical university level or the major four-year universities to ensure that we have adequate programs in the summer for young students to come work for us.

We're very high in that regard with some gender diversity issues and diversity in general to make sure that we get an adequate opportunity to provide job opportunities to these incredibly talented kids coming out of school. That is an important issue and it is a high tech change and the one thing we really strive for, at least in our company, is to make sure that our control room operators help design some of the technological implementations because they're the ones that are going to have to use it.

The simulator is probably the equally important part in that regard because that's where you time test in

the very frightening, yet the lights stay on scenario because they're not fiddling around with the lights. They're fiddling around with what could come that way.

COMMISSIONER BROWNELL: I turn them off when I try the simulator.

MR. MORRIS: That's why we try not to let you touch that.

(Laughter.)

COMMISSIONER BROWNELL: They see me coming in the control room. I commend you and you have provided leadership. I guess I'm worried that without a broader industry effort some of the smaller entities won't be able to afford to do what they need to do. I think while we all agree consolidation of some kind is part of our future. In the interim I just think maybe we need to have a mentoring program or something because I am concerned.

MR. MORRIS: I would offer something that's way out of line with this particular conversation, but it is an issue. Having served on my own university's board of regents for eight years, the current visa situation is killing the intellectual capacity of the higher education system to the extent that you all interact with appropriate folks in that regard laying in on that event. It's very important to the future of this country.

MR. SERGEL: Let me just comment on that, on the

training issue. I think that the training standard there is an opportunity for us to do better there. You're right, AEP and our readiness program has been cited for its outstanding effort in this area. The question is how do you translate that to others? There's two opportunities. The first is to make sure that the training itself can be made bite size. That's being done through using the continuing education credits so there's something about the design of the program that can help. That's being done.

The second -- and again, the staff work has been very strong on this matter -- and that is to try to be specific about what our expectations are of training. If we're worried about workforce, aging -- if we're worried about the quality of the workforce, we have to make sure that our standards don't slide downward. What are we expecting in the training program? What are we expecting them to be able to do and demonstrate? That probably raises the bar on what we're attempting to do in the standards area, so you should be holding our feet to the fire when you see the training standards to see if it seems to be pushing forward in the right direction.

CHAIRMAN KELLIHER: I wanted to ask Kellan, and he's been very patient, some questions about how things will work in Canada. How will standards be made enforceable in Canada? I'm not clear how the review will occur. What will

the role of the federal agencies be? Will review occur in each of the individual provinces and territories? Will it somehow occur under the auspice of the FPT?

MR. FLUCKIGER: The Federal Provincial Taskforce is a coordination mechanism. It doesn't have authority. It operates under the Council of Energy Ministers, which I talked about. Each of the councils is undertaking, first, a review of their legislative framework and second a series of actions to authorize, to create the framework for this enforceability. Ontario is on the panel this afternoon and already has a legislative framework in place as does Alberta, though we're proposing some refinements to our current transmission regulation to finish it.

British Columbia also has a mechanism that's different. And to answer your question, it is actually different in each province. For example, in Alberta, our ISO and our energy and utilities board, which is the commission there will both have a role. Our ISO already participates in the RMS mandatory standards process and has an agreement. We're going to continue that agreement-based framework and our board will be involved in ratifying standards as proposed by our ISO. So we have two entities, both of which operate under the auspices of the Ministry Department of Energy that will be involved in creating that framework.

I wouldn't want to describe exactly how Ontario's works because I probably will make a mistake, but they already have a mandatory compliance framework in place. We do as well for the existing RMS stuff. British Columbia is also a signatory to the RMS and is also proposing some refinements to their legislative framework. I believe in B.C., the BCUC, the British Columbia Utility Commission will be the principal enforcer there as oppose to us where we have a split responsibility.

The other provinces are in the process of creating the necessary acknowledgement mechanism. I think from what I understand of the details of each member of the Federal Provincial Territorial Group the federal group has a coordinating role, but the primacy in all of this is in the hands of the provincial regulator. We don't have, for example, any oversight with respect to market model or those kinds of things like FERC does here. Alberta's got a deregulated market. It's handled entirely in the province. The federal entities in NRCan and the NEB are the two federal. The National Energy Board don't really have involvement in any of those areas and I don't think we'll have much involvement in the mandatory framework. It'll be handled on a province-by-province basis, which is why we keep singing this broken record about coordination because it's going to be really important with several entities on

one side of the border and one down here.

CHAIRMAN KELLIHER: One of the interesting questions is what does this word "user" mean? What is the universe of users in Canada? If enforcement applies to users, owners and operators in each province, does the province have to affirmatively make -- the province or territory have to affirmatively make the standards, adopt the standards in some manner before they're enforceable?

MR. FLUCKIGER: Yes, at least the model in Alberta is that way. Our ISO is establishing right now a stakeholder process where they'll be reviewed by market stakeholders and so forth, and then the ISO will formally adopt those. We're going to continue a contract-based approach. We're making some assumptions there will be a successful conclusion of a delegation agreement between WECC and NERC. We're planning on having a contractual mechanism between our ISO and WECC whereby in contract they agree to enforce those standards. But still, internally, our ISO will go through a standards review process and will then formally adopt those standards and recommend them to our Energy and Utilities Board for approval. Then that board will adopt those also, not with a detailed further technical review, but simply because we didn't want to have a mechanism where the ISO participates with NERC in the development of the standards and then if there is a problem

also is the remanding authority. We're leaving that to the Board, which is how we have this two-part process. But, yes, they will have to be formally adopted in Alberta, at least, before they are in effect.

Our ISO is also undertaking the role of this registration that was talked about here where all the entities are identified. They're also undertaking a process of education. They've begun a series of meetings to talk with market participants. Okay, this is where you are in this framework. These are the ones that will apply to you, although that will take some time when the process is started as well.

CHAIRMAN KELLIHER: Will violations be subject to civil penalties? Will that be uniform? And the penalties might vary, I suppose, from province to province, but will civil penalties be imposed for violations?

MR. FLUCKIGER: Yes, our ISO has authority to fine market participants for breach of market rules and our board also has the ability to fine people. That's why we have two entities. We actually have an ISO that has that enforcement authority. And to the extent they adopt these standards, they will become effective rules that bind market participants, and, as such, they're able to make fines and so forth. We're very supportive of the notion that the FPT put forward about the similarity of penalties and so forth

across jurisdictions because of the obvious problem it will create if one jurisdiction fines this way and another fines a larger amount. It creates an incentive for differential compliance, if you will. So we're very sensitive to that and paying attention to that as well, but it is the ISO that will do that principal enforcement.

CHAIRMAN KELLIHER: What will happen if a user, owner or operator in a province that has not yet acted to adopt standards caused a blackout, caused some kind of reliability problem in Alberta, a user, owner and operator in a neighboring province or territory violates a reliability standard and then either has some serious consequence or let's assume it has some consequence in Alberta, but the province that the user, owner and operator is in hasn't yet made standards enforceable?

MR. FLUCKIGER: If a user, owner or operator in neighboring province did something, they were not adopted and it caused a problem in Alberta or the other way around?

CHAIRMAN KELLIHER: Right. So they violated a standard but it's not enforceable in their province.

MR. FLUCKIGER: We haven't address and don't have any mechanism right now for provinces to define across boundaries. For example, for the Alberta system operator, you know, to fine somebody in British Columbia or the BCUC to fine somebody in Alberta. We don't have a mechanism to

do that.

CHAIRMAN KELLIHER: The market participant doesn't comment to adhere to rules in Alberta when they sell in Alberta?

MR. FLUCKIGER: Market participants in Alberta must follow ISO rules. That's a condition of their participation. So it isn't voluntary for market participants to follow either ISO rules or Energy and Utility Board directives. Those are requirements and there are penalties associated with not following those rules. So, internally, we have the ability to do it, but I don't have the ability to reach across either to the U.S. or B.C. to do anything.

CHAIRMAN KELLIHER: I just have one or two questions for Rick and then I'd like to ask staff if they have some questions.

One is the universe of users? How do we define the universe of users and the user registry? Do you imagine that the universe of users will vary form standard to standard? Or do we end up with one universe of users that will be required to comply with all of the approved reliability standards?

MR. SERGEL: Going to the vision first, I think certainly the vision is that standards going forward and ultimately the ones we have would identify the facilities

that apply and/or let's just stay with the facilities for which the standard applies and the challenge here is that you have these two concepts of facilities and entities. You need both of those to get to someone that you're going to have enforcement. So the facilities side is not trivial, but it's more straightforward. That is to try to identify which facilities fall under this user, owner, operator. What facility is it that one would use that's necessary to protect the bulk power system where particularly in the U.S. comes the challenge and it's absolutely not straightforward is on the entities because we have so many different forms of governance and so many ownership concepts. Not only do we have the ownership concepts, but we have the relationship as to who actually does the activity on a particular facility. Who's the responsible entity for trimming the trees on that line regardless of who owns the line? It's bringing that together wherein the challenge lies because we have to be able to do that.

I think in the long run the standards will work toward identifying which of the facilities to which that standard applies. That should then be able to translate into which entities the standard applies to, but that last translation is by no means as simple as the first. It's more challenging to determine who actually -- who's responsible for that transformer or who's responsible for

the line.

CHAIRMAN KELLIHER: So the users will vary from standard to standard you imagine?

MR. SERGEL: Yes.

CHAIRMAN KELLIHER: An operating training standard, the universe of users there would be different than vegetation management or something?

MR. SERGEL: And under frequency and under voltage in particular.

CHAIRMAN KELLIHER: Thank you.

Colleagues?

MR. McCLELLAND: Considering the timeline that it takes to develop a reliability standard, how is the FPT planning to engage or not engage in the standards development process? Are you folks, as a group, waiting for standards to come before the FPT through the ERO? Or do you plan to be engaged as the standards are being developed?

MR. FLUCKIGER: I don't think the FPT Group itself, because each province is doing this in the way that they're doing it individually, the FPT Group is not going to be doing the review of standards and participating in the standards development process.

In Alberta, our IOS plus however many market participants choose to join and participating in the NERC process or WECC processes those are the ones that will be

participating in the standards development processes and also internal Alberta review processes. I don't think the role of the FPT is a coordination mechanism so we can have as much as possible unified Canadian provincial viewpoints and so forth to communicate messages that are similar and standard to you, but each province will have to deal with who is actually participating in the standards development and review processes.

MR. McCLELLAND: So that individuals then, individuals from the provinces, at least in your view, they'd be engaged or involved in the standards development process. Would they feed then the perspectives back to the individual members and they would reconcile or work through any differences they may have in standards? I guess it's conceivable that there may be provincial viewpoints on the standards that may differ. How will those be reconciled?

MR. FLUCKIGER: Well, from Alberta's perspective, I as the provincial government look to the ISO to participate in the standards development process and do the technical work. If they have an issue and we're trying to develop a common Canadian reflection to you, this is part of the coordination. We can't reach across provincial boundaries as we were exploring the Chairman's question or the U.S. to Canada, which is why this coordination piece is so important. I work on the FPT Group. I work very closely

with our ISO to understand where they are on the views and standards. I expect that process will be similar in other jurisdictions. In Ontario, they have an FPT member there and the coordination process. In the FPT Group, we then try to get common viewpoints and so forth. That group plus the bilateral electricity group between Canada and the U.S. and would include Mexico at the right time is the way that I think that coordination piece, particularly with respect to remand and adoption should take place, then the input to the FPT Group. We're also looking at expanding.

Let me say one other thing. The Federal Provincial Territorial Group right now is principally representatives of provincial governments. In many cases it doesn't have the membership of the regulator. For example, in Alberta, I'm it. I don't have anybody from my regulator on there. We have talked about either using some piece of CANPUT, which is the Canadian version of NARUC, or some entity in Canada to augment that group so we can include the regulators that will be involved in the different provinces. That's still in the development piece in terms of developing our overall coordination.

MR. McCLELLAND: I guess during that process if you could wave a magic wand and could have preference, you'd prefer that Commission staff be involved interfacing during that process as standards are being developed. As they're

moving through the pipeline, there's coordination between the two countries about the context of a standard, where it's headed and where it might end up in order that we might avoid what I think none of want to see and that would be a remand situation. So avoid that remand we'd be watching or your folks would be watching that standard development process and coordinating with Commission staff. Is that a fair summary?

MR. FLUCKIGER: Yes, the group we have right now is a bilateral group and the Federal Provincial Territorial Group. We may augment that to include the relevant regulators, but that is the group we have right now and our recommendation would be to use that as much as possible to do this coordination.

MR. McCLELLAND: Building on that platform, if I may, I'd like to ask the other four panelists what would be your preference as far as interfacing with Commission staff as standards are being developed. It's a very long timeline to get a standard before the Commission. It could be a year under maybe normal circumstances, maybe even longer, maybe a couple of years before a standard comes here. What would be your preference as far as interfacing with Commission staff as that standard's being developed so there will be no surprises at the end of the process.

Rick, we'll start with you, please.

MR. SERGEL: That's a very public process. It's ideal for the participation of everyone and we need to have participation by the Commission. I think it can be done. I think it can be done without in any way affecting the ultimate right of the Commission to have jurisdiction over the standards. I think, obviously, that has to be watched carefully and we have to make sure that we all abide by a few lines, bright lines. But we certainly need to have the Commission participate in the process of setting the standards.

What we're doing now, this transition, looking at the whole group is in part caused by the fact that there wasn't an opportunity to do all of this the first time through. So, hopefully, as we propose those standards and as they come in, in groups of two or three, they wouldn't be new to the Commission. You would have been living with for some time as would all of the other stakeholders.

MR. McCLELLAND: Just a quick clarification on that, so your expectation or your preference, at least, would be that you be provided feedback during the process so the Canadian regulators, whatever group that might be, or whatever mechanism those folks come up with, the Commission and ultimately our friends from Mexico -- would that be a correct summary?

MR. SERGEL: Absolutely. The common denominator

on your previous question is NERC. There are differences in Canada. There very well may be differences. Mexico will be unique. Maybe it'll look like one of the others, but we'll be the common denominator. So it's our job to make sure that we understand each of those processes and are able to work through it, whether that's directly or through a region. We fully expect to be able to do that.

MR. MORRIS: You're extremely inefficient if you don't take the opportunity to do that.

MR. YEUNG: I think the present NERC process with their standards authorization requests is probably a very good point for Commission input early on in the process when the standard is being scoped. You can think of it as almost like a NOPR process within the NERC process itself. This is where industry is notified of what the requirements are going to be or the intent of the standard is going to be. The participation of the Commission at that stage, I think, would be quite useful for the industry in developing the standard into the proper intent that the Commission envisions.

MR. HELYER: I think Charles makes a very good point about getting involved as early as possible. As I said in my comments, the SAR stage is very good point. One of the concerns with the process is a lot of the stuff that we're doing is through written comments. SARs get written.

There are drafting teams that are selected and go forward and start working on things. I think somehow we need to figure out a way to engage the staff, more of the industry in some face-to-face discussions along the way to just do a sanity check, if nothing else, as to where we're going.

If there needs to be a change to the process, then we just need to put that in there as kind of a little half-day session or something to say, "Here's where we're at on something." It can only help, I think, for all of us to get on the same page because we've got to get this right.

COMMISSIONER BROWNELL: How long does the SAR process last?

MR. HELYER: Rick, help me or somebody. Somebody said forever in the audience.

(Laughter.)

COMMISSIONER BROWNELL: I think that's the reason I'm asking the question.

MR. HELYER: I appreciate that. It's probably something that we need to tighten up on. It can get going and then comments are submitted and then we can go back and say, well, we don't like what we're hearing. We need to fix it and keep going round and round. We probably need to have some kind of point -- I guess, to the point you're getting to, we probably need to have some kind of point that says is this really the right thing to be doing or not and make sure

that we've got it kicked out.

We do have a process to deal with that to some degree, but Rick and others can comment on that. It is probably something we need to tighten up on I would think.

COMMISSIONER BROWNELL: If the Commission could kick start it, if it were very specific in either it's conditional -- whatever they do.

MR. HELYER: Absolutely.

MR. YEUNG: I would say that it could accelerate it, in fact, if it were specific.

MR. MORRIS: At the end of the day, to just augment my comments, it's inefficient not to use that process, but it can't go on forever and we can't whine forever. You're going to have to set the standards if we can't bring you something that makes sense, no offense to my friends from EPSA, but I would argue that reliability trumps commercial interest every time. That's what this was about. That's what the EPAct was about. That's what the Blackout report was about. So a dialogue you've got, but at the end of the day if you set a standard for that in your conditional approval with a timeline wherein you step in and make the standard if we can't come up with one, I think that would move everyone along smartly.

COMMISSIONER BROWNELL: This is where I make my speech about I'm not sure standards really are helped by due

process or democracy.

(Laughter.)

MR. SERGEL: We are adding staff to improve this process and we'll certainly have accountability to the plan. I think those will be two major differences from the past. If we say we're going to be doing something in three months, in fact, that will be in the plan. The Commission will have it. It will improve the budget. When we come back a year later, you're going to be able to say, "Well, how did you do on getting that one done in three months?" My guess is that means it will speed up from the way it is today. I should say that the leadership of the standards authorization committee was very instrumental in getting that done, so the industry has been very supportive of this. This isn't a recalcitrant industry and leadership NERC. It was really the other way around. This was the industry wanting to be quicker and more effectively done. I think we've done what we need to do now to implement that.

MR. HELYER: I would say one final thing on this. The earlier you can get involved, and I can say this as an engineer, help us engineers write some better standards. We believe we know what we need to do and I truly believe that. I've been involved in this on both sides -- on the utility side and on the IPP side. But when we get down to looking at some of these things and the lawyers start looking at it,

it's obvious we need a little bit of help on this even though we think we're doing the right thing.

MR. MOOT: We're always impress when we see engineers who can write.

(Laughter.)

COMMISSIONER BROWNELL: I would say keep the lawyers out of the room.

(Laughter.)

COMMISSIONER BROWNELL: The engineers operate the system. They should make the standards.

MR. HELYER: I don't want to go there.

COMMISSIONER BROWNELL: I do all the time. It's my job.

MR. MOOT: Here's a lawyer's question, Rick. Let me get you back into the enforcement conundrum and take your examples of black start and frequency monitoring. If you just say you need a black start plan, you could get a guy that writes on a piece of paper "In the event of a blackout, I'm going to call up my neighbors and see if they can help me. That's my plan." For your frequency monitoring, you could have somebody doing it every one minute, every six seconds, every two minutes, every eight minutes, every ten minutes. When you audit, in order to levy a civil penalty against these folks in the absence of clear direction, your comments say, "Well, we use our discretion." But it's not

just discretion on the amount of the penalty. It's discretion on whether there's even been a violation and I can see a situation where you say, "Look, we don't think you have the best practice. We're going to work with you on a compliance program going forward to get there." But that's very different than imposing a penalty for past behavior. In that scenario, I'm still questioning whether something mandatory is better than nothing. I don't know how that works.

MR. SERGEL: Again, my purpose today is to try to draw the line so that we move as quickly as we can toward making the mandatory, obviously, within the test of the law, but also taking into account these other factors. I think if we were writing on a clean slate, that is, if we were setting standards for something that hadn't been done before, then I would agree wholeheartedly because no one would know what the elements of the black start plan are. But they do know and the fact is that the reason there's not complete agreement is a combination of history, right, and the fact that they'll disagree on the last 5 percent.

It's not that people wouldn't know what should be included in the 95 percent. There are elements, though, that would be clear to everyone as to what it is you should be doing to have a black start capability. I just think there's a opportunity for us to, in fact, enforce the

concepts that they would have a plan if it came down to they wrote it on a sheet of paper, yes, that's an example. But the alternative is that we will not have any enforcement capability at all on a mandatory basis until we finish the work. That's the alternative. It's not like it's being reserved. We understand that will keep it in its current context to the best of our ability. But we wouldn't be able to have it be mandatory. I'm convinced that if we had an event in which the recovery was delayed and it was because somebody had a plan that was consistent with the region in which they were suppose to have all their phone numbers. They were supposed to be updated. They were suppose to be testing a piece of equipment and they failed to do all those things that it would be plain and clear that they had violated their own plan. They'd violated the plan. They were suppose to have one, knew what it was and they weren't doing what they needed to do and we should be attempting to preserve the right for that, have mandatory enforcement and not wait for that period of time until we all agree what the elements of those plans are going to be.

The concern is there is a lot of work to do that. I don't want to leave the Commission believing because we can decide let's wait until we get it done. That "get it done" is going to be between now and next summer. The question is, do we have to leave that one off if we didn't

get it done? I would say, no, let's just see. If worse comes to worst, let's make sure that we can go out and enforce and say let's at least see if you have the plan. Let's see if you were following your own plan, and by the way, it's not that open-ended because there are requirements from the region that say what they're suppose to be doing within that plan. It's just not the same across the continent and they certainly haven't had -- they haven't been through the same valid body testing that goes on and that's a very good process we're all defending in here and we should, but there is a lot of work that has to go on.

MR. MOOT: Let me ask a somewhat related question. You've proposed to have a six-month grace period for actual imposition of penalties. Some folks, including at the table, have recommended a longer period, say a year or more. Is your program designed -- your grace period designed primarily to give people notice of the amount of money they would have to pay or the more threshold question of were you actually in violation, particularly given some of the uncertainties we've just been talking about? Because that difference for purposes of our Order 672 is very important. Order 672 said we don't want penalties to be structured so people simply have a nice economic choice to say, well, it looks like that penalty is going to be low there, so I'm not going to upgrade my equipment. I'm not

going to hire more people. I'm not going to do training.

If the six-month grace period is just on the money problem and not on the violation part, I assume some folks here would have some concern.

MR. SERGEL: An example will help here. Within the new vegetation management standard, we'll have to determine what the level of severity is. And as a single event, a Category 3, 4 -- I'm not sure what it is, but the highest category. I presume that's 4. If it is, it will come with a substantial penalty and it could be that on a first contact there would be a substantial penalty and we know there are a number of those. Somehow I think the number is upwards of a hundred. So the purpose of phasing in the penalties is, in fact, for all of us to see how it's working. Is it reasonable when we put dollars to events? Do we have it right? And we can go back and say let's adjust that now that we understand how many there are. We know we've got the severity wrong here or we've got a penalty amount. We also are going to do everything we can to drive the compliance programs to consistency, the delegation agreements to consistency, but having a phase-in on the penalties is yet another opportunity for us to also make sure that we have consistency across the regions and whatever variances there are in the program. This will be another opportunity to drive it to consistency by actually

looking at the results of all our efforts. If we've got it right, they'll be real close. But if we aren't, we can move in and take additional action. Those are its two primary purposes.

As you can tell from my other comments, it is not at all directed at how much time anyone should have to understand whether they're in violation. We believe that's been going on for long enough. We believe that the participants understand what's required of them. They actually understand these standards and they will have had extensive grace periods to understand the standard. So, no, it isn't for that purpose at all. It's just for the money as your question posed.

COMMISSIONER BROWNELL: John bring up an important question, though, look at the telecom industry. They have played the economic game quite effectively in almost every state that I can think of, so the penalties are not being because they keep market share. The economics may be different here, but I think it's something to be learned.

MR. SERGEL: Very quickly on that. Penalties are one part of what we would do and we do intend to ensure compliance by directing that the violator come into compliance. So it's not a matter of simply chalking up the penalties and paying the money. Second is that the penalties will change over time if it's a second offense.

That also should help deal with it.

COMMISSIONER BROWNELL: Getting back to metrics, because I'm sorry, I'm concerned. If we all agree that this is an evolutionary process, why would you not have basic metrics? For example, you must have a black start plan and at a minimum it should contain the following elements, depending on other circumstances it may contain more, but it cannot contain less.

For frequency monitoring on a 7 by 24 basis by a licensed operator you can do more. You can have variations of that. Why wouldn't you start, though, because I also agree with John and that's so rare, that enforceability is going to be a real challenge whether it's the shame factor or a financial penalty if you just don't have some basics. Why not do that?

MR. SERGEL: That's right. That's what they're doing. Earlier on, I mentioned the schedule. I think one of the things we'd like to do is sort of resolve this dispute with respect to the questions of the metrics and the compliance elements by getting that work completed or at least as much of that work completed. That is ongoing and we would hope to do that. Hopefully, we can sort of take this portion of this debate and put this behind us. But with respect to, let's say, the fill-in-the-blanks, what we're attempting to do is say, well, there is a portion of

it. If part of it is you have to have a plan, we shouldn't make that part not enforceable simply because there's more that could be said and we're uncomfortable about that's unclear. We'll get the work done as quickly as we can. I just think that to the extent that we can put it in place that it has the effect that the Commission can, if it needed to and felt the facts warranted it and thought that it had the law on its side, that it ought to be in a position to be able to enforce it and have the penalty. I think the work will get done more quickly and more effectively in that environment.

I think to the extent that a decision is made, well, with respect to black start that's not in effect yet until we finished filling the blanks. We just maybe a long time getting that work done. I'd like to have both things. I'd like to see it as enforceable as it can in the interim and I'd like to see all of the parties sort of saying, "Gee, it's in our interest to figure out how measurable is this because in the interim we're somewhat exposed to somebody coming along and saying we' weren't doing something we didn't quite understand."

Again, I believe they do understand and that's the fundamental behind my position here. I think there is understanding of what it means to measure compliance. I mean to measure frequency or to know what the elements of a

black start plan are.

MR. MORRIS: I couldn't agree with you more. I think some of these things are very easy to solve and some minimum metric at the start is the way to go, which would improve over time that may give you the enforceability that you were speaking of earlier. Technically viable black start and the audit, the first time you look at the audit and said I'm going to call my neighbor, that's not going to get it done and the finding or your implementation at the RO wouldn't need to be financial at first. It might be 30 days to rectify this to a real plan after which we fine you. I think you would stand the legal test then because you've gotten metrics and technically viable. No offense, we lawyers, I'm one of them. The fact of the matter is my friends the engineers would stand the test on that one to show it isn't an "I'm calling my neighbor" wouldn't muster up to technical feasibility. It just wouldn't. So the findings don't always have to be financial and that could go to Rick's idea of some days to fix it.

Again, remember what the NRC does. The NRC doesn't fine you Day One. They have white findings and yellow findings. You get a red finding, you get a fine. But by then you've probably had some notion that what you're doing isn't right.

COMMISSIONER BROWNELL: I've seen lots of plans -

- business plans, technical plans and having a plan isn't necessarily the answer. I can waive the plan and then the lawyers aren't going to say, "You know what, they had a plan. That's all you asked them to do." Anyway, I don't want to beat a dead horse.

MR. CANNON: Just to follow up on this idea that there's going to be some transition period, some number of standards that the Commission may want to approve on some kind of conditional basis, I'm intrigued by what I heard Mike say, okay, how about if the Commission were to simply backstop that? And if, indeed, you got to the place in your work plan where something is supposed to be done and it wasn't in comes staff. They fill in the blank or they put what the standard ought to be. I'm not sure, as I look at the EPAct, that that's not one of the options that they laid out.

What I am wondering, though, is whether we could expect the ERO to put some type of default in. It says here's our work plan. Here's our timeline and monitoring frequency. If we're unable to come to consensus on that particular standard by six months from now, here will be the number that everybody will need to follow. There will be penalties associated with not following that. Then take as long as you need to, to work through some sort of consensus process to refine that number further. It seems to me you'd

move things farther along into a more enforceable state sooner with that kind of default mechanism.

MR. SERGEL: It goes back to the question asked us all. Could you impose a standard? Could you enforce the standard that didn't meet the conditions of the law? No, I can't do that. I don't believe that the law provides the Commission the authority to, in fact, set a standard and any element of it. But what I do believe is that, to the extent that we were determining the elements for the metrics of those, I do believe there's a much greater opportunity there for the ERO and maybe for the Commission to play a role if, in fact, the only question is to what extent do folks not understand what it means to have a black start plan.

If we've said, well, make no mistake what we think one looks like is this. And if you're doing those things, you're in a safe place then I think that does work and it could be that the ERO could do that on its own. That's a possibility that we would be defining things outside of the standards process.

Now having said that, and I don't have anybody in the back of the room ready to leap off the balcony here, it's still our preference and we believe that the appropriate way is to work it through the ballot body to get the technical expertise. We have a very small staff and we're not nearly as good at this as will be any one of the

individual companies much less the collective companies added together. They're the ones who know how to do this. So the primary path needs to be that it's worked through the standards process. But to the extent that proves to be slow to the point of -- I'll just use the word "frustration" -- if that's the case, there probably are other alternatives but only to the extent that, in fact, there's a standard in place which is only a question of "What does that mean?" Because then I think that could be supplemented as it will be by whatever the Commission says about each standard. I think the work of the staff in many cases where it tried to say is there ambiguity, part of that ambiguity will be clarified just simply by us having all gone through it. We'll know more about what was meant by the standard by simply having it all evaluated and having thought about it.

MR. MORRIS: I want to make it clear that I'm not speaking on behalf of EEI, but our company. I really believe may be a way out. I would argue that if you are approving the standards and we don't give you metrics that are satisfactory, you could probably substitute those metrics and I think that would pass muster. And if it didn't pass muster, I expect some of you could go up on the Hill with some of us in toe to say the industry is just fiddling around here. It's time to get on with it, so let's have a little bit of an amendment. That will give you

whatever authority you need to get this thing done and I think that would be accomplished. Again, I want to make sure I'm not speaking for American Electric Power.

CHAIRMAN KELLIHER: You're speaking as Chairman Emeritus there.

(Laughter.)

CHAIRMAN KELLIHER: That's an interesting suggestion because I can see -- if you look at the standards that don't have performance measures then fill-in-the-blank standards, I can see how under EPAct the argument can be made we can't fill in the blanks because then we're writing a standard. But if we're ultimately responsible for enforcement it seems could we clarify what we think compliance means, what the compliance measure is for a particular standard? That's not the fill-in-the-blank category, but the ones where the standard is reasonably clear, but it's less clear what the compliance measure would be. That's an interest proposal.

In the NOPR, we could at least consider doing if a standard we feel we can't approve now -- well, if that can make the difference that a standard that we might otherwise have to conditionally approve based on some future submission of a performance metric, we can suggest a performance metric in the NOPR, seek comment. That might lead to a larger universe of standards being approved

unconditionally in a final rule.

I agree with Rick. It seems your overriding concern is to not have a gap or to minimize the gap and we have the same interest. I just think there's more than one way to get there. I'm just not comfortable with the path of making standards enforceable that arguably fail from a lawyer's due process grounds. I think it means it would be impossible to prove a violation in some instances or enforcement action might be considered so arbitrary that the courts overturned it. I'm not sure either of those is a stronger approach towards reliability than a default of applying the policy statement from last year, but it's a lot of food for thought.

This has been actually a very interesting panel. I've enjoyed it tremendously and we're wrapping up almost exactly on time. I thank you for that. We do not have lunch for our panelists today. I apologize for that. So, to the extent you're lunching at FERC, you're at the tender mercy of our unregulated monopoly, the Sunshine Cafe.

(Laughter.)

CHAIRMAN KELLIHER: I apologize for that. Thank you very much. We will reconvene at 1 o'clock for the second panel.

(Lunch recess.)

A F T E R N O O N S E S S I O N

(1:00 p.m.)

CHAIRMAN KELLIHER: This meeting is resumed. We're closing the doors. Panel II, very impressive. You're already in place. Why don't we start with Kim Warren?

Joe, do you want to refamiliarize people with the rules and how much time they have?

MR. McCLELLAND: If I can kick off Panel II, how is that? The speakers at our second panel will provide more in depth perspective about the issues covering the first panel, including the appropriate priorities when revising reliability standards, processes associated with this effort and metrics needed to ensure reliable bulk power systems. Again, panelists will address the aspects of international coordination when reviewing reliability standards of submitted for approval by government regulators.

Again, I' like to take this time to remind folks to please turn off any pagers or cell phones. I know that we've had a break and those may have come back on. At this time please turn those off.

I'll start the introductions for the second panel. We have Kim Warren, Manager of Regulatory Affairs of the Ontario IESO; Allen Mosher, Director of Policy Analysis of the American Public Power Association. Actually, Allen and Steve I have you backwards, but that's okay. Remain

where you are.

(Laughter.)

MR. McCLELLAND: Steve Cobb, Manager of Transmission Services for the Salt River Project that we have for the Large Public Power Council; Dave Whiteley, Senior Vice President of Energy Delivery Services at Ameren on behalf of the Edison Electric Institute; Jim Nixon, Director of Energy Markets of Alcoa and Steve Ruekert of WECC.

We'll begin with Mr. Warren. I'd like to remind the panelists that you have seven minutes for your presentations. When there is one minute remaining, as rude as it may be, I will interrupt you and say you have one minute.

Mr. Warren, the floor is yours.

MR. WARREN: Good afternoon. I'd like to begin by commending the Commission and the staff for the quality review of the NERC standards, for proceeding with this technical conference and also your intentions to move forward under the NOPR process. These efforts provide an opportunity for broad and inclusive input from the industry, which is great. We appreciate it.

My comments are made from the following perspectives, my province, Ontario, shares a geographic border with six U.S. states and is interconnected with three

of them. It's also interconnected with two Canadian provinces. My organization, the Ontario Independent Electric System Operator is the NERC reliability coordinator for Ontario, the enforcement authority respecting compliance with NERC and NPCC standards by all entities in Ontario and an organization that has always and will continue to be heavily involved in all aspects of NERC and NPCC.

The ISO is also an active member in the affairs of the Canadian Electricity Association, the organization representing the wholesale electricity industry in Canada and a member of the ISO/RTO Council. The ISO has also had extensive discussions on the subject of the ERO with the members of the Provincial Territorial Electricity Group.

At the personal level, I spent my entire career in system control systems in making reliability standards and interconnective systems generally work in real time. I'll confine my comments to the international aspects of the Commission's final two questions. What coordination is necessary with other federal, state, federal and/or international regulators to ensure a good transition to mandatory reliability standards and what processes should the United States, Canada and Mexico follow for review and approval of reliability standards to meet possible time constraints?

I will, of course, draw on the positions

advocated by the ISO in this proceeding, but I will also reflect other responses made by the CEA of the IRC and NERC. There is widespread agreement among these parties and others on how the Commission should now proceed. There's universal agreement on the importance of having a single set of reliability standards common to both countries. Coordination among regulators will be essential in achieving this commonality. Bilateral principals provide a good framework for defining this coordination.

FERC and the Canadian regulators could potentially recognize NERC as the ERO in the immediate future. This would, in turn, set the stage for the regulators to rule on the 102 standards submitted by NERC three months ago. Rulings by regulators, in turn, create the need for coordination mechanisms between regulators prior to their issuing rules. The need to define coordination mechanism is therefore upon us today.

The time has come to take all this good conceptual work done to date to its logical and urgently needed conclusion by defining the specifics of the coordination necessary amongst regulators. Another area of widespread agreement concerns remand, namely that the issuing of a remand by any regulator for some of the 102 standards would be of concern in the provinces where the standards are currently mandatory and enforceable. One

regulator would be rejecting a standard other regulators have accepted. This is a prime example of where inter-jurisdictional coordination mechanisms should be applied. Or where there is recognition that the substantial use of a remand in a present proceeding would set a bad precedent given that remand is widely seen as a mechanism to be used rarely and as a last resort.

At the November 18, 2005 FERC technical conference, I expressed this concern as follows. The challenges will be in implementing the remand function in a manner that it never takes place. Or if it does take place, that there is consensus among regulators on the need for a remand. I also stated that we suggest that the exercise of a remand would represent a failure of the process. Such a failure would most simply be a failure of the development process that created the standard proposed by the ERO. For example, a standard that was judged ineffective in providing for an adequate level of reliability.

For this reason, the IESO and others have recommended that the Commission simply decline to approve a standard judged on acceptable rather than issuing a formal remand. As stated in the responses of the IESO and the IRC, the end result should be the same if the Commission were to proceed in this less formal manner. Various respondents have expressed the view that the current standards must, at

a minimum, retain their current voluntary status in the United States until such time as they become mandatory and enforceable, i.e., until they become approved by the Commission as part of the present proceeding or as approved subsequently following revision by NERC.

Standards in Canada would likewise retain their present applicability which is mandatory and enforceable in several provinces. In the recommendations that I have captured, some of these themes, including the timelines given by NERC in its ERO application for coordination among regulators the intent to provide the Commission and Canadian regulators with some specific features to be recognized in the coordination mechanisms. Regulators should develop international coordination approval remand mechanisms now.

It is important that FERC and the Canadian regulators develop specific coordination mechanisms consistent with the bilateral principles. Ideally, this should be completed prior to a date of recognition by FERC and the Canadian regulators of NERC as the ERO. In any event, this must be completed prior to FERC or any Canadian regulator making any decision other than approval respecting the applicability to the present date NERC standards.

NERC in its ERO application recommended the futures of such a mechanism, including the development of a memorandum of understanding among FERC and the provincial

regulators respecting the features of coordination. This should be taken as the starting point.

I would like to speak to the possible options with respect to the present day NERC standards. FERC should approve a standard judged acceptable in its present form. That is, having an appropriate content enhancing reliability and the like, not being unduly discriminatory or preferential and in the public interest. This approval should be no sooner than the 60 days following the recognition of the ERO by the Commission, allowing time for coordination with any Canadian regulator that maybe contemplating a remand of the standard.

The standard would become mandatory and enforceable in the United States. The standard would also retain its current applicability in Canadian provinces, enforceable in Alberta, Ontario and New Brunswick while not enforceable in other provinces until such time as the appropriate enforcement mechanisms are adopted.

FERC should conditionally approve a standard judged acceptable on a conditional basis. That is, having relatively minor deficiencies regarding its content and/or its enforceability. Depending on the particular characteristics, it would at a minimum be mandatory in the United States and at a maximum both mandatory and enforceable. The Commission should notify Canadian

regulators of its intent to issue conditional approval and allow 60 days for the coordination for Canadian regulators prior to issuing the conditional approval. A Canadian regulator contemplating condition approval would likewise notify FERC.

Coordination is needed here because conditional approval would involve FERC or a Canadian regulator sending NERC a request to initiate a standards action. Such coordination would be directed at avoiding the confusion that would be created by having two regulators sending separate, conflicting requests to NERC or simply from NERC being asked to change a standard that other regulators find acceptable.

FERC should decline to approve any existing NERC standards judged not acceptable in its present form. That is, having deficiencies regarding its content or its enforceability to preclude making the standard mandatory and enforceable. This action would have substantially the same effect as a remand, but would avoid creating the precedent of a formal remand. We would see remand options as acceptable, last resort tools for regulators only once the regulators have established a suitable coordination mechanism.

Presently, if FERC declines to approve one of the existing NERC standards, the standard would remain in effect

in the United States on a voluntary basis until such time as the standard is revised by NERC, resubmitted to the Commission and approved by the Commission.

Today, in looking to the future, FERC should notify Canadian regulators of its intention to remand a standard or in the instance, declined to approve a standard with reasons, and allow 60 days for coordination with Canadian regulators prior to issuing the order.

I'd like now to speak to the lessons learned from Ontario's compliance and enforcement experience. Ontario has had -- some of our observations that we've seen over these four years with mandatory enforceable reliability standards include our efforts on behalf of Ontario as the IESO who is accountable for all compliance within the province to all NERC standards. Under the authority of the Interior Market rules, which include both market and reliability impact-based requirements, the compliance arm of the ISO monitors and enforces compliance with NERC standards, NPCC standards and our own market rules on all entities.

As for my observations, first, enforcement involves a significant amount of work. For example, to establish that all parties understand their responsibility and generally to establish an effective working relationship. This is true despite the fact that in Ontario

it's clear who is responsible for what because of the comprehensive nature of our market rules. Elsewhere where the extent of the applicability is not yet firmly established and where there may be new players, you can expect a considerable effort will be required during the transition period to fully establish compliance mechanisms.

Secondly, investigating potential reliability violations also requires a considerable amount of work. There are always different circumstances around an alleged violation and these must be established if justice is to be done. We've investigated a number of alleged reliability violations over the past four years, however, we have seen only two confirmed violations. There have been many more market-based investigations and breaches during this timeframe.

Thirdly, parties are highly motivated to avoid violations and to contest them once there is an alleged violation. We conclude that maintaining corporate reputation is a major motivator. We have the ability to levy financial penalties, including very substantial ones for significant violations. But the imposition of penalties has not played a major role. We also note that our ultimate objective is to achieve compliance with the industry standards rather than focus on the penalties themselves.

Finally, I'd like to comment on the under

recognized role of education. Education is the essential element for moving a developed standard forward into practical real time application. It should be appreciated that maintaining reliability requires far more effort than being able to recite a manual of specific procedures. I see the lack of practical education to be a critical, unfulfilled need and one that NERC, the regions and the industry must address in parallel with efforts to develop the standards themselves. Thank you very much.

MR. McCLELLAND: Thank you, Kim.

Steve.

MR. RUEKERT: Thank you. My name is Steve Ruekert, Director of Standards and Compliance at the Western Electricity Coordinating Council. I appreciate the opportunity to speak here today and I intend to keep my comments brief.

I have only two points I would like to make before the Commission today. I'd like to point out that both these points are based on our experience with our voluntary/mandatory compliance program in the West, the RMS. These two points are we firmly believe that a phase-in approach to making reliability standards mandatory is essential, and we also believe that all reliability standards should be field tested before implementation. We believe the phased-in approach to implementing mandatory

standards is preferable and important for several reasons. The phased-in approach will allow us to implement mandatory compliance with those standards that are ready to be enforced today without enforcing standards that are not ready. Standards with clear and definable requirements and measurements that include all compliance elements can and should be implemented as soon as possible.

We should continue efforts on refining those standards that are not ready. Standards that are ready for enforcement should not be delayed any longer because of standards that are not complete, conversely, standards that are not ready for mandatory compliance should not be implemented just so that those that are ready can move forward.

In their comments on the FERC staff assessment, NERC identifies at least four possible alternatives with respect to the proposed reliability standards. I believe in their comments NERC proposed what they identified as Option 2. We've heard enough about that today and I won't go over that any more. We do not agree with this alternative. We believe that this additional layer of factors, which include factoring into the determination of violations and imposition of penalties, the fact that some standards are missing elements or that they're fill-in-the-blank standards would only add to the complexity of determining sanctions

and lead to less consistency between the regions. We've heard that we want consistency between the regions and the more subjectivity we introduce to the process the less consistency I believe there will be.

We support a form of what NERC refers to as Alternative 3, whereby the Commission would approve a subset of the proposed reliability standards as mandatory and enforceable in the U.S. and conditionally approve the remaining standards with the understanding that bulk power system owners, operators and users would be expected to follow these conditionally-approved standards.

NERC and the regional standards would monitor compliance with these conditional standards as it the case they would not make formal findings of violations nor set penalties for violations of the standards. I believe there is some benefit of monitoring and enforcing compliance as there is done today. In addition to monitoring and reporting compliance, simulation of sanctions will be calculated and noticed to the entities in violation. This would serve as a form of field testing that would provide valuable information to NERC. The Reed general entities and the users, owners and operators of bulk electric systems.

My second point I would like to make is that we believe field testing is important as well. Field testing serves as an outreach and educational program to have all

users, owners and operators of bulk electric systems understand what their obligations are. We've heard several times today that the entities know what they should be doing. They know what the requirements of the standards are. I believe that there are organizations out there today who are not members of a regional reliability council and do not fully understand all their obligations. I think for certain entities, balancing authorities, et cetera, they do. Some of the smaller entities don't understand what they're going to be required to do. Field testing helps us assure that the requirements and measures of the standards are effective, workable and measurable.

Field testing provides a reasonable period in which to become compliant. After all, the purpose of enforcing mandatory reliability standards is not to collect money. It's to promote compliance with the standards which, in turn, will improve the reliability of the bulk electric system. It should be viewed a period where you don't have to comply, but it should be viewed as a period where we will help those that are out of compliance become compliant as quickly as possible.

We also believe that the length of the field testing period should vary depending on the specific standard being field tested. That the length of the field test needs to be such that a full examination and at least

one reporting period and the associated results is completed. For reliability standards that are reported annually, this would mean at least a one-year field test.

I would like to thank the Commission for the opportunity to present this information today and I look forward to answering any questions you may have at the end. Thank you.

MR. McCLELLAND: Thank you, Steve.

Allen.

MR. MOSHER: Thank you, Joe. I want to thank you for the opportunity to speak to you all today. I think we're making great progress to move forward or reliability standards, to get them in place. We hope as many as possible within 2007. And the ones we can't get done within 2007, shortly thereafter. That is the basic message that we've got. We are making progress, but we are going to hit some bumps along the road and we're hear to work with you to try to get there as soon as possible. That includes bringing our members along with the process to embrace what the Commission and others have called a compliance culture of making sure that all entities understand their obligation to comply with reliability standards and that they do that effectively and efficiently.

Let me express my thanks to the Commission staff, to Joe's group and others on the Commission that worked on

the staff assessment. It's done a service to the industry by framing the issues. It's moving the debate more forward much more quickly than we've had in the earlier round of comments that were less focused, but it certainly brought out some issues that I had not anticipated. It's obviously going to drive our comments in the fore. It was a service to the industry that you did that before you issued a NOPR. That doesn't necessarily mean I agree with everything that was said in that assessment.

(Laughter.)

MR. MOSHER: But nonetheless, it defined the issue and that's the most important part of any policy debate to define what the problems are.

I'm going to put a couple more issues on the table for you all to think about and hopefully to be reflected within the NOPR. One of the things that I've been running through my brain since we started the process of moving towards mandatory standards is the idea of a reliability budget. I'm thinking of the budget that NERC spends, but rather what are we spending industry-wide on reliability. That's on a total quality perspective, not bulk power system reliability but all the way down to the end user. What's the best way we can spend our money to get the maximum, highest quality service to customers? That entails a balancing act.

Certainly, a lot of money we spend at the bulk power systems a lot of it is going to be spent more at the local level and there's some real trade offs there. Some of this is made possible because of new technologies. Some of the things that Rick Sergel has talked about in other meetings that we had, possibilities for improved visualization of the bulk transmission network. Things that were not physically possible a few years ago because the IT technology was not there. That could be extremely expense, but it could be extremely beneficial in terms of our ability to understand how the system has performed. There's a level of granularity in how we model a system that is much better today than it was a few years ago, again, because the IT tools are there. But how we spend this money is very important. I've got a lot of members. They serve their customers locally and they are really concerned about keeping the lights on locally. The calls they get are when the tree falls on the local 12-KV line. That's what brings the attention of the general managers there, not what's happening with the bulk power load. When it comes the choices that the Commission needs to make, a lot of my remarks will be about the area of applicability. That is, who do these standards apply to? How is the compliance program going to work and should it even apply to many of these members, so many small members of the American Public

Power Association? The same argument applies to small cooperatives and actually for many small generators.

The preferred approach would to have very precise applicability in each standard to say to whom it applies and to whom it does not apply. That's kind of hard because right now the existing standards sometimes are pretty clear on who they're applying to, but in many cases I think they're a bit vague mainly because the standards are written at the bulk power level, the bulk electric system level and they really weren't developed with small municipal cooperatives in mind. This really goes to the definition of the bulk electric system versus the bulk power system issue. That was framed pretty well within the staff assessment.

I would strongly urge the Commission to consider the definition of the bulk power system to be consistent with NERC's definition of the bulk electric system. There are regional variations in how the bulk electric system is defined and I'm pretty certain it does not encompass all the facilities that are not used in local distribution of electricity.

If you have that broad net and say that NERC standards must apply to all elements of a bulk power system that includes everything that's not local distribution, then you've got to go back to ground zero and reassess each of NERC's standards to make sure that you're not looking at the

small entities for which the standards are clearly inappropriate.

If you go with the bulk electric system definition as it has been developed and applied in each of the regions, we will undoubtedly have some food fights, but we'll be able to work it out because at least starting at the right level. Downstream, if you needed to bring in a lower level of facilities, then you can do that. It's within the Commission's authority under, I believe it's the Chevron Doctrine, to interpret the scope of the statutory authority and you need to be able to do that to fully ensure the reliability of the bulk power system.

Right now we'll start with the bulk electric system, going on from that point, applicability. If you do go more granular, you need to think about applicability to small transmission owners is one set of issues and then small users of the bulk power system as a separate set of issues. Here I'm talking about entities that really are load-serving entities, small distribution providers and also some small generators.

NERC has done a service to the industry in developing an set initial compliance registry criteria. Something that's been raised in this docket. It's also in the ERO certification docket. I won't talk about the substance because I think it's more in that docket than this

one, so John you don't have to cut me off. But it is an important issue and it shows how judgments can be made to reduce the compliance cost to the industry by targeting enforcement, targeting standards on the entities that have the most impact on the bulk power system. I liken it to standards that you would have airline pilots -- the standards of training and situational awareness and the tools they've got to work with are vastly different for a 747 or a 777 pilot flying into O'Hare than for an individual that has a small Cessna that flies into a regional airport. On the other hand, if that Cessna wants to fly into O'Hare, he has to have a better set of tools -- navigation and communication than would an entity that's only going to be landing in a small airport in the middle of Iowa.

The things are much the same I'd say in the bulk power system. You can't target standards to have maximum impact. That goes back to that first standard here, visualization tools, training. What's the appropriate training for an operator? In Mr. Morris' system, it's probably a lot higher than for a small municipal electric utility that owns only 69 KV transmission lines. Do they all need training? Yes. Is it necessarily the same training as NERC would require? No.

Let me touch on one or two other issues very quickly. To simplify the compliance burden, there are

possibilities of both contractual and regulatory options to delegate responsibility and here I have in mind the idea of adding provisions within the pro forma tariff, for example, that would allow transmission operators who are transmission service providers to use a contractual mechanism for under frequency load shedding. For example, these assumptions could be worked out between municipal joint action agencies and their members where the joint action agencies would take the responsibility. And let me just close to say that I agree wholeheartedly with Steve Ruekert's comments on the WECC RMS model. A phase-in program has been essential to let people understand their obligations. The learning goes in both directions. WECC learned much in the process as did the users of the grid. An extended period will be needed for many small municipals, but we'll get through it. Thank you much.

MR. McCLELLAND: Thank you, Allen.

Steve?

MR. COBB: I'm Steve Cobb representing the Large Public Power Council. I think I was chosen because my name was easier to pronounce than all the other folks. I really appreciate the opportunity to speak to this panel today and it's very evident to all of our 24 members, which represent the largest public power entities in the United States that FERC is doing a fantastic job in reaching out to the

industry participants. It's very apparent to us. We appreciate that as well.

From our members perspective, we strongly support mandatory reliability standards and we have for decades. We consider the current standards to be mandatory and will continue to do so in the future once the standards are approved as mandatory. We're committed to making the ERO and RRO standard development processes successful. Our firm belief is we participate in those activities and we will continue to do so. We also believe that participation in the initial set of ERO standards requires a definitive timeline. We're thinking in terms of two years. The industry's feet need to held to the fire. We're in support of that.

One thing we do need to keep in mind, especially when we're discussing issues about the future NERC work plan, the industry has a major stake as far as resources in making that plan successful. We need to take that into account, not only FERC staff being heavily involved in this issue and resources there, but the industry itself. We've been proposing new standards and making sure they're acceptable for the mandatory criteria. As far as the FERC staff effort, I think it's getting to be kind of the unanimous concurrence that staff did a great job. There's two examples that I want to provide that really go beyond

just giving Joe and his crew a pat on the back.

I think that the produce they produced really represented more or less an audit of what the current state of the standards are and I think it was a really wakeup call and provided a lot of attention to the industry when we review that report where are we at. For an organization that has gone through a significant amount of change over the past 10 years, it's always good to have an objective observer come in, perform an assessment of the product that we've created and as the report shows there area various shortcomings that we need to deal with. As far as how this report has impacted the West, I'm very active within the Western Electricity Coordinating Council. We recently took what are known as our minimum operating reliability criteria and more or less followed suit with the creation of a version Zero, if you will, of those criteria.

After the report came out, we scrutinized the work that we had performed and realized at that point that our minimum operating reliability criteria or standards would not measure up to the standard that FERC staff has set. So based on that, we are more or less pulling back at this time and we're going back and reevaluating the standards that we have created on the operating committee based on this scrutiny to improve those standards.

Joe, it went beyond just a report that everybody

agrees with. I think it represents a benchmark in a couple of different areas. The membership believes that the ERO mandatory standards must represent good laws for the industry and we believe a key aspect of creating these good laws or standards is a disciplined approach.

As Commissioner Brownell mentioned this morning, we want to do it right. To do it right, we've got to have some sort of a quality assurance program. This is one of these items that LPPC in its filed comments stated "This is a problem." The question becomes, okay, you've identified a problem. How are you going to fix it? In the process of reviewing that problem, we've come up with some very basic ideas on how to approach it and we believe one of the primary ways of fixing it already exists. That's the NERC standards process development document or the standards manual.

What we've identified and what staff has identified are basic problems with bad standards. They lead to maybe four or five different areas that can cause problems, disagreements over interpretation and basic confusion and you definitely want to keep that basic confusion away from the operators that are actually out there operating the system every second of every day. We have subjective enforcement of criteria which has been alluded to earlier in this morning's panel. We'll talk

about it a little bit more in a few minutes. Legal disputes and, most importantly, wasted industry resources. I think Allen was headed in that direction. It's kind of a holistic approach. We've only got so many real sources. We want to do the right thing. How do we effectively use those resources across the finish line? One wonders in some cases how we got to where we are today. I think that really there are more or less four periods of time that have had an important impact on this current state of affairs, if you will. We started out with legacy policies. These were polices that were created over 20 or 30 years since the mid-'60s.

After the Northeast blackout, we had to go quickly and revise those policies to make them more responsive to operators as far as avoiding blackout conditions. So we did a quick fix on those policies. The next move was to the Version Zero standards. I think that incredible effort and dedication by a lot of members of the industry was one of those items where they said we want to make a literal translation of these policies into these Version Zero standards, but I'm curious and I think that our members are curious. If we looked back and we asked all those folks that were members of those drafting teams are these documents ready to become mandatory standards in the near future with the appropriate measurements and more less

hard, solid, fast laws that the industry is going to fly by, I would think that a lot of those drafting team members would have said they're not going to be ready and I think the staff report indicates that.

Now we move into the new era of mandatory standards. Mandatory standards represent unique problems in that you can come up with great requirements for the industry, meaningful requirements. But the second piece of that is developing meaningful measurements. Those meaningful measurements are not slam dunks. In the NERC standards manual, it basically says that all requirements that are offered that go into play as far as the standards go must be measurable. We can see from the current state of affairs that we haven't exactly made the grade on that, but we can.

I remember in a past life when I was in a heavy industrial production environment we'd have management meetings. The three criteria were safety, quality and quantity. But as you talked to your cohorts, you know, you'd hear something like why is every time we get close to a deadline it's always quality, quantity, safety? I don't think that within our industry today the focus has always been safety and will continue to be that of safety. But as far as quality and quantity, post-Northeast blackout, we had to move quickly to fix some things. That expeditious

approach and those fixes cost us some quality.

Now it's time to step back and make sure that a good quality assurance program is implemented. So one of the major points we want to get across is utilization of the existing foundation and that is the NERC reliability standards process manual. We also believe that FERC compliance staff involvement in the development process is extremely important. The process already exists within that process manual to provide an administrative means to address quality assurance issues. There's a process manager and support staff to ensure that those standards live up to what we need them to be.

We also would like to maintain or to investigate new ways to expedite the process. No one believes that the ANSI process should be pushed aside. It's an important part of an open process. We want to maintain that. However, we need to determine other ways to expedite the process and move these standards through quickly through ways that we would propose and I'll wrap up with these: to involve the FERC Division of Reliability in the standard development process. That wouldn't be just from the first standard authorization request coming on the scene. That would be involvement within the standard drafting teams to provide some guidance. We don't want to go through a two-year process and at the end of that two-year process have a

standard that's submitted to FERC that they believe is inadequate. So some feedback within the possible legal bounds that we can get it within the drafting teams would be a good idea.

There's also other opportunities. One quick example before I close is that within the NERC standards process there is the ability to post a standard request and a draft standard simultaneously and move them through the process. More quickly, we believe that capability that already exist should be utilized and other means to expedite the process should be investigated.

MR. McCLELLAND: Thank you, Steve.

David.

MR. WHITELEY: Thank you. Good afternoon. I want to thank the Commission and the staff for inviting EEI to participate in this afternoon's panel. We believe that all 102 of the standards do meet the statutory thresholds. They're ready for approval, but certainly more work is to be done. By our tally, 45 of the standards are fully ready to be mandatory and enter the compliance enforcement process and have penalties assessed as appropriate. That leave 57 that we believe should be conditionally approved. They would still be mandatory and could enter the compliance enforcement process, but the ERO would not issue a penalty certainly until those 57 standards are fixed or modified.

I will point out that the Commission would be informed by the compliance enforcement process results and could take what actions that it deemed necessary in the interim before the ERO could issue penalties as appropriate. I point out here that consistency of the enforcement process and enforcement of the standards is going to be a challenge going forward. The NERC penalties and sanctions taskforce identified this issue early on. I was the chairman of that taskforce and participated in the many debates over the sanctions table and the application of that table. One group wanted more specificity, sort of a look-up table so that you know actually what the dollar sign would be. Others wanted great flexibility and certainly a balance between those two seems to be the appropriate answer. But in either of those extremes or even in the middle, missing compliance elements and fill-in-the-blanks standards cause a particular challenge there because consistency being a key you don't have the specifics to judge the consistency against. So how do we fix that. We believe that the existing standards should be fixed through the existing process rather than some special or expedited process and that there should be a prioritization of the standards. By our tally, 26 of the 57 standards we call "Bucket 2" in our comments are high priority standards. They have either a high priority against system planning or operations or a

great impact on the system.

Certainly, of those 26 priority should be given to those where there's a blackout recommendation that touches that standard or if it's simply a missing compliance element those should be easier to fix. If you look at those 26, 11 of those 26 standards touch blackout recommendations. These should certainly be first. Just as specific examples, COM 1 and 2, the EOP 2 and 3 and the MOD 14 and 15. Those are examples and there's five others if my arithmetic is correct. Of the remaining 26, there's 15 in the next category that don't have blackout recommendations that's a touch standard, but they're still considered high priority in our view. These would be examples like the balancing authority; No. 2, the EPO 9 and the CIP01. These are missing measures or fill-in-the-blanks. They could come as the next layer after the blackout recommendations.

Clearly, NERC has made great strides in working on the Blackout report recommendations. This was mentioned this morning. Some of the work in the relaying area is very important and continues. They're to be commended and applauded for that. These are very technical issues. For example, how relays operate when voltages are about half of their normal rating, very technical and very difficult to wrestle with and don't necessary lead themselves to one size fits all answers. The compliance elements and requirements

need to be filled in. They're a fundamental part of the standard and to fill them in later effectively changes the standard and that's why the recommendation is to use the existing standards process because that's where the real technical merit, the industry input comes into play and assures that we really get the standard right as it's developed.

That said, not all compliance elements are the same. Some are very simple -- yes, no. Some are very detailed. Take, for example, Table 1 on the planning standards. That's a pretty detailed list of what tests the planners have to put their system through as part of their process. Others, for example, in a rating methodology standard may be yes, no, do you have it, do you not have it. So compliance elements are important, but they don't all look alike either.

Again, better compliance element descriptions lead to more consistency in the standards and they add to the ability of the compliance process to yield more consistent results. Our point is that the so-called "in flight maintenance" of standards with missing compliance elements is problematic because in the compliance process you're not sure what you've got as you fly the airplane forward. That is problematic in our view.

Finally, I'll just wrap up by encouraging the

FERC staff to be involved with all the stakeholders in the industry in the standards development process, both as modifications to the existing standards go through that process and as new standards are developed. Staff input up front would be very helpful in helping the industry reach the correct and best standards available. With that, I thank you for the invitation to participate.

MR. McCLELLAND: Thank you, David.

Jim?

MR. NIXON: Thank you, Joe. First of all, I'd like to thank the Commissioners and staff for the opportunity to be here. Alcoa has great interest in this effort as well as the other efforts in EPAct 2005 and we wanted to come and participate and put forth our voluntarism to participate where needed. Alcoa is a very, very large industrial customer in this country. We have over 3000 megawatts of what we call "smelter load" scattered over most of the regions of the country. Therefore, we basically consume a very large amount of electricity, almost 100 percent load factor, 7 by 24.

Electricity represents 30 to 40 percent of our costs of our making our product, which competes on a worldwide commodity market. So the price of electricity and the reliability of electricity is extremely important to us. So much so that our history shows that we've gone to great

lengths for reliability. We have spent a lot of money in the past to build our own generation and localize transmission to deliver that generation to our plants to increase our reliability. In many instances we appreciated the existence of the local utility. We preceded the Tennessee Valley Authority, the New York Power Authority and so on. We were there before they were, built our own hydro plants, coal plants and I'll called them localized transmission of 161 KV. We perform many functions of a utility. We are a FERC registered utility under the name of Aloca Power Generating, Inc. We operate about 1800 megawatts of generation across the country all feeding our own facilities.

We perform many of the functions that the NERC standards are designed to guide and we're a balancing authority, a transmission owner and operator, generation owner and generation operator and so forth. We generate about 25 to 30 percent of our own electricity needs and then other facilities depend on the grid for its power. In some locations where we're behind the meter with our own generation, we do not impact the grid greatly nor is the grid designed to support us. In some areas the grid could not even support our load that we did not generate. Other areas we're hoping to come in on the grid, so just a little background on where we are and where we're coming with some

of our comments, if you will.

Again, Alcoa greatly values reliability and recognizes the extensive efforts that NERC and the staff and FERC and its staff have put into this effort. We think it's a good effort. We have some concerns as other people here have, but overall it's hard to argue with trying to improve your system and your operation. For us reliability is very important. If one of our aluminum smelter losses power for more than four hours the aluminum solidifies in these pots. As a result, the plant is out of service for at least three months and will suffer anywhere from 10 to $50 million in damages. They literally have to jackhammer product out of the pots, of which there is hundreds in each plant, and start over. So a loss of power is extremely damaging to us.

Likewise, because we use so much power, a slight change in cost is also very, very difficult to bear. In terms of what we see needing to maybe improve the process that's going on up-to-date is the following. What we haven't seen is a clear defined goal of what we are trying to accomplish here. Yes, we're trying to increase reliability. Yes, we agree that reliability is not as good as it should be following the 2003 blackout, but what is the level of reliability that we want at what cost? What are designing the standards to accomplish? I haven't really heard that specifically other than to improve reliability,

but part of the goal here is to define a product here that meets these goals and meets it on the cost benefit analysis basis.

If you don't know what the goal clearly is, and you haven't evaluated what each standard does, how much bang for the buck you get from each standard, how do you know that you've got a good product here. I think this pause to find out where we out and FERC's review of the standards to date is an excellent time to say we need to step back and maybe change the process a little bit so we can move forward expediently, but in a way that we are getting the biggest bang for the buck and we're getting the most important standards in place first.

We've got to design the standards to meet the goal. We've got assess the modes of failure and the probability cause and occurrence of each failure that the standard is designed to protect. We must write the standards based on the reliability impact and the probability and risk of occurrence of the failure of the standard as designed to protect. We must weigh the cost of implementation against the reliability benefit derived.

Standards are not complete without the specific goals, performance metrics applicability impact, probability and cost defined. The applicability really applies to what facilities does the standard address and also who is

responsible for seeing that the standard is met so that there's two phases of the applicability. There's been a lot of talk about bulk electric system versus bulk power system and there are differences in the definitions surely, but there's always going to be differences. You really need to look at these standards and apply them differently to different parts of the grid based on whether in one area of 138 KV system is a backbone system or is the 138 KV system virtually grown into a distribution system because it's overlaid with 765 KV or 500 KV grids. One size doesn't fit all here. There has to be -- I think each standard should address what part of the grid it applies to. Sometimes that's going to differ in geographic locations for the type of standard you're talking about. So we need to know who complies with the standard, who pays for the standard, the cost of reliability must be assigned and allocated based on benefit derived.

Most standards do not meet the requirements of 672 yet. That's been said many times here. We believe they must meet that before they're approved. And if they don't, they should remain either a voluntary standard or conditionally approved, but certainly not have any penalties associated with them.

The blackout recommendations should -- there's been the question of whether the blackout recommendations

should be given priority. If you properly rank the importance of the standards and what they're trying to protect from, that will fall out. If they're more important than other standards, they'll show up higher in the ranking. You've got to define the goal, rank the standards, complete the standards with metrics and cost benefits and this will result in the best and most timely completion of this task, hopefully, within 2007. Certainly, not by January of '07.

I guess I'm about out of time. I basically want to thank everyone for listening and for the opportunity to participate and we do stand ready to help in any way we can.

MR. McCLELLAND: Thank you, Jim. This concludes the speakers presentations. Do members of the panel have questions?

CHAIRMAN KELLIHER: I'm going to pick up where we left off with the first panel. At the very end of the first panel, the proposal was made that the Commission might be able to look at some of the categorical deficiencies that the Commission outlined in its preliminary assessment. One of them was some number of standards lack compliance measures. So the standard actually might be perfectly good, but it's impossible to prove whether or not compliance is occurring or non-compliance is occurring.

It was floated that the Commission actually might be able to supply the compliance measure because under EPAct

we can't modify a proposed standard but you can argue that the compliance measure is not the standard, per say. It's how the Commission will enforce the standard ultimately and I was curious what people thought about that. If you were to kind of take that and say that might be viable, there's really another category where a different approach might help minimize the number of standards that might have to be remanded or not approved. I can understand NERC's concern about gap. I think it's a concern a lot of people share trying to minimize the gap. In a perfect world, we'd be approving 102 standards. All 102 would clearly meet the statutory test. We'd be approving them. In a perfect world, that's what we'd be doing, but we might be dealing with a perfect world. We don't want to be unnecessarily remanding standards that might otherwise gotten into the position where they meet the statutory test, but this other category is the ambiguous standard, at least they are by our measure 14 standards that are ambiguous and lend themselves to multiple interpretations. Again, there's a due process concern there.

We can't change the standard, but to the extent we might have an idea of how to fix that standard, we can identify the deficiency. Conceivably, we might not have to remand those standards. We could identify a deficiency in them and it would then give the ERO an opportunity to make

them less ambiguous.

Again, my first question on the first panel was a very roundabout type of question, but let me start off where I started. What do you think about the notion of the Commission, in its proposed rule in the category where certain standards lack performance measures and compliance measures, of us perhaps proposing compliance measures, seeking comment and then possibly supplying that in a final rule? I don't think that runs afoul of EPAct because we're not writing the standard. We're specifying how compliance would occur. Do you have a general reaction to whether you think that's a good approach? The advantage of doing that is, at the end of the day you have more of the 102 would be enforceable in a manner consistent with EPAct than might otherwise be the case.

David?

MR. WHITELEY: Thank you. Well, part of what I said during my prepared remarks would be something that you would miss in taking the approach of supplementing a general standard with compliance elements sort of on the fly. That is, you miss the industry input, the stakeholder input, the debate that goes on in the standards development process, which, yes, it does take time but it adds the quality of the finished work product because all of the participants can come to the table and engage in a debate to make sure that

the compliance elements are inserted correctly. They're the correct ones that have the correct definition. In that process you'd be giving that part up. That would be just one thing to take note of.

By way of maybe an extreme example and I realize this is very extreme, you could say, well, let's approve one operations standard. You'll operate your standard well. That's the standard. Then as we put it into compliance we start inserting some compliance elements or the Commission inserts compliance elements. Effectively, you are rewriting the standard or you're defining the standard as you go. The question is how far from that very extreme, vague standard do you need to go before you really don't need to do anything else other than approve and put it in place? I think it's our position that the standards are basically there except for those with some of the missing compliance elements and those can be very quickly put back through the process to add the compliance elements and revise those that are of the highest priority first, effectively making the best use of the existing standards development process so we don't give that up in the process would be one thought.

CHAIRMAN KELLIHER: I don't see how it's much different from the status quo to do what you propose. You propose that there's some number -- 45 standards, perhaps, the Commission could unconditionally approve and enforce,

meaning penalty authority would be behind enforcement of those standards. Another 57 we might conditionally approve, but basically waive any penalties. To me, it's not clear how that is any different from the Commission's current approach or our policy statement where we expect anyone that has an OATT to comply with the NERC standards as good utility practice, but there's no penalty for failure to comply. It seems your approach is the same for the 57 of the 102 standards.

MR. WHITELEY: Maybe it's a very fine point, but the 57 would still be mandatory. The compliance enforcement process could still take place, which means the reviews, the audits, the factfinding would still take place, but that the ERO would not issue the penalty. The results from the compliance enforcement process could inform Commission action should they decide to take it on that particular item. Practically speaking, it's a step forward. It doesn't get completely to the ERO taking all the action from development through enforcement and issuing a penalty, but it gets you the largest step you can take without reaching into the problematic area where you don't have a firm definition within the standard where there's either missing elements or there's a blank that needs to be filled in.

MR. MOSHER: In answer, Mr. Chairman, to your first question, if the Commission has a specific problem in

mind, they ought to tell the industry what it is. You may suggest ways of fixing a missing compliance element, either a measure or a requirement, to say this would, from our perspective, meet muster. But I think the requirements and the measures are an integral part of the standard itself. At least, that's my thinking subject to checking with counsel and doing some research. But I think it is part of it. Basically, NERC has to present you ultimately a package that's been voted on by the membership or voted on by the registered ballot body and approved by the NERC board of trustees. But if you tell us what the problem is that you've got, I don't see why we can't have an expedited process to turn that back around. If it's just a missing element or something that's ambiguous that you think is legally not enforceable, we need to fit that pretty quickly.

If there's a technical deficiency, then it gets a lot more complex. If think you have a particular problem with Planning Table No. 1, if there is a problem in there and staff has a judgment, staff is not the industry and the industry needs to come up with technical standards there. That's a much more difficult problem. But in terms of legal lack of clarity, you definitely have the word on that because again, no apologies, we have my engineer friends here. They did not go to school and study English, most of them.

(Laughter.)

MR. MOSHER: Unfortunately, some of the standards as they're written aren't that good.

CHAIRMAN KELLIHER: Let's take the 14 that are under the preliminary assessment that are under the preliminary assessment that are ambiguous. They lend themselves to multiple meanings. Let's just assume there's adequate technical support for them, but that they're just not written in a way they can be fairly enforced. For that reason, we may conclude that we can't make them enforceable if they can't be fairly enforced. They fail from a lawyer's point of view, from a due process point of view. We could remand with an explanation and say this is how you fix each of the 14. Or we could not remand but somehow issue some kind of deficiency notice. I'm not quite sure what the vehicle would be and say these are the flaws of the 14. We're not remanding them, but these are the flaws with them. Maybe that could be in the NOPR itself, not saying that we are proposing to remand these 14, but right now we can't approve the 14. These are the deficiencies in them. The deficiencies are corrected, which might be easier to do than correct a technical flaw. Or provide quickly a technical foundation for a standard. Is that a better way to proceed instead of remand with explanation? Somehow issue some kind of deficiency notice and invite a modified standard being

proposed since we ourselves can't modify them.

MR. MOSHER: If I could again, I think if it's a deficiency like there's an incorrect cross-reference, for example, which exists in the existing versions of those standards. There are a couple in there. If it's that kind of technical correction, I'm not even sure if it has to go back to the registered ballot body. Again, if it's a technical issue of the standard, then that needs to go back through due process. But it's possible some of these things could be turned around very quickly.

CHAIRMAN KELLIHER: Mr. Whiteley, you seemed pretty optimistic about the speed with which NERC can turn around 57 or perhaps standards. Are you alone in your optimism?

(Laughter.)

CHAIRMAN KELLIHER: We were talking about evolution this morning that made me think of grade school and the chart of human development. That was uneasy. I thought about geologic progress, also probably, maybe incremental. I want start using incremental rather than evolutionary because I keep on seeing the Cro-Magnon man.

(Laughter.)

CHAIRMAN KELLIHER: What's the basis of your optimism?

MR. WHITELEY: The basis is our analysis of the

57 and breaking them down into groups of high impact to the system, medium and low impact to the system and then coordinating that with blackout recommendations. When you do that sort of stratification, the numbers get smaller and easier to deal with. Those that are missing compliance elements nothing basically wrong with the standard, but it does have to go back through the process. That doesn't mean it'll take a week. It does take several months. But again, we've got the identified batch of those and they can be put into the process relatively quickly. Just as quickly as if, for example, you'd come to the determination that a standard doesn't meet the threshold and can't be approved. Then something else is going to have to be developed. So that's going to take time through the process as well. I guess I remain optimistic that the high impact, high importance standards could be fixed in a relatively quick timeframe.

CHAIRMAN KELLIHER: You think, in the event -- let's take your number 57. That's 57 we can't approve and make unconditionally. We can't unconditionally approve them. The first cut would be the risk level -- high risk, medium risk, low risk.

MR. WHITELEY: High risk can blank our recommendation of the way we would make the first cut. There may be some debate over, you know, is that a 11 or is it 12 or is it 10. Certainly, those are numbers that you

can deal with.

CHAIRMAN KELLIHER: Mr. Cobb?

MR. COBB: I don't have any specific numbers for you, but when it comes to a requirement missing a measurement in some cases there's a good reason why that measurement is missing. That is the requirement doesn't really align itself with one and there was that disconnect in the initial process of offering that requirement where you've got a descriptive statement or an explanatory statement or whatever. One wonders if perhaps the drafting team under those circumstances just said we can't figure out how to measure this.

CHAIRMAN KELLIHER: It could also be there were multiple measures and there wasn't a sufficient level of consensus around any one particular measure. Maybe there are measures, but there wasn't enough consensus in the consensus process.

MR. COBB: It's probably in all of the above type thing. I think each one of them has a specific set of circumstances. One of the items, as far as prioritizing of standards, for rewrite in order to reach the highest priority first a lot of disturbances are created based on failures that represents what somebody would assume, looking at a specific standard at face value, you'd say, well, that seems to be somewhat unimportant. But taken as a whole a

number of what we would consider lower priority standards can add up to problems.

One thing we do need to keep in mind is this close-ended approach, this definitive timeline we need to pursue to get through all of these standards and make them mandatory -- just a side note.

CHAIRMAN KELLIHER: Mr. Warren?

MR. WARREN: I would agree with what David Whiteley's been saying here. I do think it's appropriate that you allow the industry to modify the standards. I do think the metric is part of the standard. I'm not sure that's an area that any regulator should be venturing into. I also believe that the industry has been flagging what they believe is the high profile or high priority standards that would require some attention through their submissions. That superimposing what the blackout recommendation is, is very much an appropriate way to go to try to resolve this. The actions by any one regulator can have effects in other jurisdictions and that's where the appropriateness that I was speaking to starts to come into play.

CHAIRMAN KELLIHER: Thank you.

Yes, sir?

MR. RUEKERT: I think, just to follow up a little bit on what Steve Cobb said, I think the reason some measures are missing is that sometimes is the hardest part

of the standard.

CHAIRMAN KELLIHER: To identify or to agree on?

MR. RUEKERT: Both. It's a lot easier to tell somebody what they have to do than to tell them how you're going to measure whether they did it or not. You're right. There can be multiple opinions on how that should be determined and maybe the reason there's not a measurement is that they just couldn't get consensus. That all being said, whatever measurement was developed, using whatever process, I still feel that there would need to be a field test to make sure that now that we have this is it really going to work? Are we just going to get out there to find out that it still doesn't clearly measure what needs to be done. You need to field test this to make sure that whatever was developed was going to work.

CHAIRMAN KELLIHER: Can I just comment on that? I think a lot of what people are trying to finesse, and I don't mean to use "finesse" badly, but the problem that I think people are addressing from different perspectives is a recognition that it may not be the perfect world. We may not be looking at 102 standards that clearly meet the statutory criteria, so what do we do? Some propose, well, let's conditionally approve them but waive all penalties. Others are saying let's field test it for two years and the suggestions seems to be because otherwise it would be unfair

to actually require compliance with standards that have some defects.

We're looking at, perhaps, conditionally approving -- I'm speaking for myself -- there may be standards that are conditionally approved but they're only enforceable when the condition is satisfied. The basic problem we're all addressing is the possibility, however real, that some number of standard we can't make enforceable at the same time as others. How do you finesse that? Field testing seems to be one way to perhaps gloss over defects in the rules to say, well, let's field test it and the imperfections won't really mean too much during the field testing period.

I'm not being critical of the field testing approach because I think the other approach which says "Let's approve it, but waive all penalties" it's hard to see there's a real big difference between those two and also defaulting to the current practice. Under the Commission's policy statement anyone who has an OATT is expected to comply with the NERC standards and there's a requirement to comply. There's no penalty for non-compliance. There's these three different approaches towards the very same problem. What do you do when standards don't meet the statutory test and can't be made unconditionally mandatory?

Yes, sir.

MR. COBB: I guess I would suggest that every company has a different culture within the industry, but I think some of the things we've discovered in the last is that the field testing that Steve is referring to is not like holding a company -- holding them harmless. What we're after is compliance to a reliability standard, not issuing monetary sanctions.

CHAIRMAN KELLIHER: Sorry to interrupt. It seems like what NERC has been in the past two years. They will identify violations of reliability standards. There's no penalty imposed for that violation. Isn't that, in effect, a field test because the standards have been applied for 2 and 1/2 years now? One year there were 300 violations. There were no penalties imposed. As a result, it just seems like that looks like a field test to me. It hasn't been called that.

MR. COBB: There's kind of a nuance there in that many of the standards that we're looking at obviously don't have measures. We're really talking about field testing the measures, not necessarily the requirements. But based on what we've experienced in the West, and I can attest to this personally, this field testing is just like it's live except there are no monetary sanctions. So if the company does not comply with a particular measure and they would have been issued a monetary sanctions, they get a letter. And I've

heard from my friends around the industry it's like, boy, I wish I could just have paid the $10,000 before the CEO saw that letter. There are ramifications associated with non-compliance even though there aren't monetary sanctions.

CHAIRMAN KELLIHER: Let me ask a question a different way. How many of the panelists think that we should unconditionally approve all 102 proposed reliability standards in their current form backed by civil penalties, no waiver penalties? How many think we should approve all 102 unconditionally, civil penalties attaching?

MR. WARREN: Actually, the nine policies were mandatory and enforceable in Ontario in 2002 and they moved into the 102 standards as we are today and it's working today.

CHAIRMAN KELLIHER: How about the Americans?

(Laughter.)

MR. WARREN: I've got to go now.

(Laughter.)

CHAIRMAN KELLIHER: I'm just curious. How many of you think we should unconditionally approval all 102?

MR. RUEKERT: I would say no, not yet.

CHAIRMAN KELLIHER: Mr. Cobb, Mr. Whiteley, Mr. Nixon?

MR. NIXON: No.

CHAIRMAN KELLIHER: I think we're all pretty much

-- in the first panel Rick was trying to have the line include as many standards as possible. We have the same interest. We don't want a gap, but we also don't think we have the discretion to approve standards that fall short of the statutory test. It just seems that everyone, all the American panelists think that some number of the standards do fall short of the statutory test currently. Then it leads to a practical discussion of, well, what do we do about that and how do we remedy that?

Colleagues?

COMMISSIONER BROWNELL: I'd like to pursue the field testing for a minute. You say you've been doing it, Steve, for two years. If I asked WECC for a report, could you give me a report on the outcomes of your field testing of the standards you've been measuring and what you've learned and what that's told you about the development of metrics? Could it tell me if there's commonality? If 50 percent of the companies flunked the test, that probably says there's something wrong with the standard. Can you give us that kind of information?

MR. RUEKERT: I believe we could. I believe we have the mechanism to indicate --

COMMISSIONER BROWNELL: I believe that would be helpful. I just wonder how much field testing in some cases we need to do. I was struck in the Blackout report by the

fact that many of the same causes in the last blackout have been around for the last seven blackouts. How many years do we want to take to kind of figure out at least some of the common elements. And David, you're a wonderful optimist. I don't know that anything's gotten through the process on an expedited manner. Maybe, as we talked about this morning, maybe a little more direction or recommendations from our staff would help that. Timelines might help it, but I heard a number of you talk about a two-year, three-year process when I think the Chairman said this morning quite clearly Summer of '07. I didn't hear two or three years, but there's something in between taking another two or three years and getting it right and maybe right isn't perfect, but it's better than it is today. We need to get more direct.

Allen, I have a question for you. Did I hear you talk about two sets of standards? One for small participants and one for bigger participants?

MR. MOSHER: Again, it depends on your definition of the bulk electric system and its application in particular to small versus large transmission owners, really defined more by voltage whether you're operating a local transmission network that is not operating in parallel with the extra high voltage network.

If the Commission wants to reach down to voltages

that go just above distribution, then you may just need to have a different set of requirements. The overall standards may be the same, but the requirements and measures might be different. For example, on the issue of training take a backup control center, I would be very comfortable myself -- speaking for myself as a non-engineer here, but understanding that a large balancing authority may be required to have a full backup control center with simulator and extensive training of its operators, not just in NERC standards, but many other attitude. That clearly would not be necessary for a smaller utility that's operating in a 69 KV network over which there are no significant parallel flows from the EHV network.

Again, where do you put your money? Would it make more sense to have the smaller system not spend the money on that kind of training and instead pay through its transmission rates, pay to the larger entities?

COMMISSIONER BROWNELL: Do the engineers agree with that?

MR. WHITELEY: Not in every case.

(Laughter.)

COMMISSIONER BROWNELL: Allen, the other thing that has been suggested over time, though, is that the industry is fragmented and some of the smaller entities, perhaps, would be strengthened by consolidating their

efforts so they could, in fact, afford to a greater extent some of the training issues and the technology investments that will have to be made. Is that something that your members are talking about?

MR. MOSHER: Certainly, we are promoting APPA members joining joint action agencies so they can get up to a minimum scale to participate actively in the bulk power market. That is a good vehicle for them getting to a scale through jointly-owned generation and hopefully to jointly-owned transmission to become full participants in the bulk power market.

I'm not suggesting, again, that these joint action agencies ought to have a waiver from NERC standards, not in any way. I'm just pointing out there are practical problems for small entities getting up to the standards if you're really going for excellence at the bulk power level. You would be basically writing standards that would very tough for some small entities to comply with. But I agree with you, at least conceptually, about some consolidation among joint action agencies.

Obviously, every utility is protective of its own autonomy. It wants to be able to serve its own customers and make its own choices. Thus, some of the rules could basically present a barrier for that particular market model, which NERC standards should not do. They should not

make a choice among different forms of market participants.

COMMISSIONER BROWNELL: I wasn't suggesting that they should. On the other hand, one might say that if you're choosing cost and benefit and you're making some decision as has been suggested here, you have to be a grown up to play in the marketplace of reliability or anything else. That's what I was looking at and it wasn't commenting on whether it's public power or co-op or a small IOU. If you can't afford to do what you need to do uphold your end of the responsibility, you have to ask is that the right thing. So it's not the particular market model. It's the particular ability of that market participant to meet their obligations. I think if you ask customers I think they'd put reliability up there as No. 1.

MR. MOSHER: As long as those issues are rationally considered, that is the impact on small entities, which I think the Commission has an obligation to under the Regulatory Flexibility Act. Then you've met your obligation. We need to be conscious of those issues, but we should not compromise reliability. There's no question about that. The question is, again, how do you write the best standards that we can have for the least amount of money to have the maximum benefit for the ultimate ratepayers?

COMMISSIONER BROWNELL: And it can be overseen,

which is why when we discussed regional variations we put some pretty clear messages out there that they need to be justified under certain grounds. The operator training we talked about is more expensive and more difficult if you have a lot of variations on the theme -- the oversight, the monitoring, much more difficult if you have a lot of variations on the theme.

COMMISSIONER KELLY: I had some questions related to the issue that Nora brought up. I heard from both Allen and Jim concerns about the cost benefit analysis that has been undertaken. It's my understanding that the entire standards development process does a very good job of analyzing the benefits and weighing the costs and coming up with a standard. Are you saying that that current process is inadequate? And, if you're saying it, shouldn't we be focusing on changing that process rather than producing something new vehicle, some new reliability budget idea or some new post hoc cost benefit analysis?

MR. NIXON: I think, overall, you're looking at an overall picture and a lot of the costs haven't fallen out yet. As far as I'm concerned, we haven't seen a budget for the ERO. We haven't seen the ultimate cost of compliance because the standards aren't in place.

COMMISSIONER KELLY: Don't you think that in the development of the standards that those are taken into

account?

MR. NIXON: I would hope that they are. I have not seen great evidence that they have been given a lot of consideration as yet. I think each standard has to stand on its merit or its value. There's a great amount -- I think there's a great set of criteria here for improving the standard. It should have these various components and it should be in the public interest and it should not be unduly discriminatory and so forth. You have great guidelines here for approving these things, yet we're talking about how do we get around this because a bunch of these standards don't meet that. Why don't they meet that? We have not -- if the standard is truly very, very important and has great value and is a cost benefit, it should easily meet the requirements that call for that, but it's not -- the applicability, the importance of that standard to a small utility or a large utility complying or to a different voltage level in different parts of the country. Those are all important factors that have to be looked at from standard to standard or from group of standards to each group to build up to get the biggest bang for the buck.

I have never seen here where people have said not all the 102 standards should be eventually passed, yet we're all sitting here saying that all 102 have to be passed. We've got to find a way to have applicability for these

standards to pass. If it's that hard, should there be a standard? Is 102 the right number? I don't know. I don't know them all by heart, but I do know that if you want to make something mandatory and have financial penalties with it, it should clearly be defined measurable, applicable and assigned. And if you can't do that, maybe it should be that type of standard. Maybe it should be good utility practice or maybe it should be a non-mandatory standard or whatever, but not necessarily everything that comes up through NERC -- sorry guys -- should necessarily be adopted. We're talking about in the process why are we going so much iterative process. If it doesn't make it, if it doesn't pass muster, sometimes you say, gee, maybe it's not the right rule.

COMMISSIONER KELLY: We do have criteria in the statute that we're suppose to look at -- and I'm not disagreeing with you -- that we should look at that criteria. What I'm raising is the specific issue that you addressed earlier and so did Allen about the cost benefit analysis. What I'm proposing is, is that cost benefit analysis is part of the development of the standard and that that's where that should be taken into account so that by the time the ERO gives us a standard and ask us to approve it that should have all been worked out in the process rather than there's some post hoc analysis that's done here.

MR. NIXON: I agree. It should have been done by

now. To the extent it hasn't been done, causes us more concern in terms of seeing the stuff approved because we don't know what it's going to cost us.

CHAIRMAN KELLIHER: It must have occurred, at least on vegetation management, surely the vegetation management standard reflects some industry notion of what the costs would be for alternative standards.

MR. NIXON: I believe even your staff report commented on the fact that the cost benefit analysis wasn't completely evident.

CHAIRMAN KELLIHER: For vegetation management or just in general?

MR. NIXON: In general.

COMMISSIONER KELLY: Allen?

MR. MOSHER: Each of the individuals note on behalf of their companies in the registered ballot body for a standard. They make an assessment. We've had at least one proposal to have a formal requirement for benefit cost analysis. I believe that standard authorization request was not approved.

COMMISSIONER KELLY: By that you mean a measure that would determine benefits?

MR. MOSHER: We're trying to a form of benefit cost analysis for a standard, but I think it was judged by many that it's just too hard to do that kind of

quantification. You know we need certain operations. The question is how do you do it?

COMMISSIONER KELLY: How about the notion of a qualitative cost benefit analysis. I agree that sometimes it's very difficult to come up with a quantitative and once you say you're going to have one there's a lot of games that can be played.

MR. MOSHER: You can get hamstring by your own requirements. What I was trying to get to is a broader question. As Rick Sergel's office says, how do we get to excellent? Where are the best places to put our resources here? You've got to step back from the individual 860 requirements that we've got in the 102 standards to make that kind of assessment. That's something I think the Commission needs to think about and that NERC needs to think about. You need a game plan to figure out where we're going to go. Part of that is sort of being overridden by the immediate need to get the existing standards all cleaned up and get them in place as soon as possible. That's what we have to do first.

The next step is to figure out where we go for excellence. That would appear probably in the late 2007/2008 work plan for NERC. What's our excellence plan. Right now we need to figure out how to get the ones that are acceptable to the industry approved and in place for

enforcement some time in 2007. Then, by the end of 2007, I guess we're hoping that we can get the others completed unless there's major deficiencies that have to go through entirely due process. I hope it's a very small set that isn't completed by the end of next year, but this compliance process is multi-year. You think about like training requirements. The requirement is that an operator needs to go through 120 or 160 hours of training, depending on what functions he's performing over a three-year cycle. Obviously, you can't demonstrate your full compliance until you go through that cycle there because each entity that has to comply can say, "Oh, our operators are going to get to that next year. We've got too many other things to do." You don't want to get to a point where you get to 2009 and find out that you've got major overloads because there are only so many trainers in the company.

The point is that this process is going to be multi-year to go through the whole cycle of getting standards of place and documenting compliance. It's an ongoing process.

COMMISSIONER KELLY: I had a question for Kim related to Ontario's adoption of the standards as mandatory and enforceable. It seems to me that the general way the rule of law works is that we come up with the best standard we can for whatever behavior we want to regulate and we

attach a penalty to it. And then, to the extent that it isn't quite right, the way we compensate for that is by allowing defenses so that the one who's enforced against has the opportunity to say why they shouldn't be penalized. I was wondering if that's the way it works in Ontario. Or if you have had experience in the enforcement arena -- if it's been good, bad or indifferent?

MR. WARREN: Let's see, we've had probably 200 breaches of the market rules on the market side that have been investigated and sanctioned. That will go back about 4 and 1/2 years now. Only two on the reliability side. Probably I'm going to gather 40 to 50 investigations on the reliability side. They look at criteria such as what's the history, frequency, duration. Was it inadvertent? Was it negligent? Was it deliberate? Did someone gain from it? Things of that nature.

The reliability side they tend to be fairly cut and dried, frankly. And from the reliability side you have to remember that we're not only imposing the NERC standards, but we have the NPCC criteria itself, also the Ontario market rules and subsequently, the manual. So it adds a little bit more granularity. It's sort of helpful in making a determination.

As I tried to indicate earlier when I was speaking maybe too quickly, there is significant push back

from an entity when they're notified of alleged breach of a rule or standard -- significant. They do want to talk. They do have reasons for their actions, whether you deem them to be appropriate or not. So there is considerable discussion that goes back and forth between the compliance and investigation monitoring side and the entities themselves and arguably third parties to gather other information. They have access to taped conversations, all kinds of information, data, submissions, whatever in these determinations, but they will make a decision. So we have some significant experience in this arena. We do have dispute resolution mechanisms and the like that can ultimately go to our regulator for a final determination if necessary. But those have not had to have been utilized. The entities that have been found in breach and have agreed with the breaches finding, I guess you could say. They are made public, but it's not usually the monetary sanction that's an issue with these folks. If it's made public, that's what certainly drives behavior.

We've also found certainly on the reliability -- sometimes on the market side, you can say there were some extenuating circumstances. But on the reliability side, we're surrounded by folks who are definitely always trying to do the right thing. That is one of the reasons why we've seen such good behavior around reliability and such few

instances and few sanctions. I hope that's helpful.

COMMISSIONER KELLY: Thanks, yes.

Allen, I had a question for you about the bulk power system versus the bulk electric system. I think that I heard you say that those facilities that would be covered under a bulk power system, APPA believes eventually should be covered, but that the standard should be considered in its application to smaller facilities. Is that what you said?

MR. MOSHER: I'm not certain exactly what I said, but my intent was to say, coming out of the box, that the Commission could construe bulk power systems to be consistent with NERC's definition of the bulk electric system, which allows for some regional variations that need to be justified on those facilities that, again, are on a part of the bulk electric systems. So in one region it maybe only EHV facilities, 200 KV and up. On the other it may actually go down to 69 KV. It depends on the configuration of the systems and how facilities are operated, whether they're operated in parallel or not and whether you have a local network that's again running radial from the EHP network.

COMMISSIONER KELLY: Who would make that decision?

MR. MOSHER: All you have to do is say that we

construe the definition of the bulk power system for now to be consistent with the NERC definition of bulk electric system, but we will require justification of regional variations. That's my quick answer. Now I'm sure there will be many pages written in response to whatever you say, but that is the gist of the matter.

COMMISSIONER KELLY: It seems to me that the bottom line is, in the end, we all want the same result. We want facilities that contributed to the integrity of the grid to be covered by the reliability standards and the standards that cover them should be appropriate and not more burdensome than necessary. So I wonder whether it really makes any difference whether you start with the bulk power system definition or whether you start with a bulk electric system definition. The point is to ensure that the appropriate facilities are covered one way or another. That we aren't going to end with whatever definition we start with.

MR. MOSHER: I think I agree. We need to target compliance. We need to make sure that the compliance program is effective. My great concern is that by bringing in many small entities that NERC and the regions will lose focus. Not only will we have increased compliance costs because many small entities are now forced to monitor what's on the NERC website and adjust their operations. But NERC

will also have to spend an increasing amount of time tracking compliance for small entities that have a much less significant impact upon the operation of the grid.

COMMISSIONER KELLY: On the other hand, to the extent that there is a significant impact on the operation of the grid, it should meet the appropriate standards and be tracked.

MR. MOSHER: I think the operative terms that needs to be defined is what is a "material impact"?

COMMISSIONER KELLY: Thanks.

CHAIRMAN KELLIHER: Staff questions?

MR. McCLELLAND: I guess I'll start with Jim and ask each of you to respond to this question. Should the Commission staff review the standards for technical adequacy?

Jim, when reliability standards are submitted to the Commission, should part of that review by staff here at the Commission, should that include a review of the technical adequacy of the standard itself? I guess I say that in context of the legislation. The legislation specifically says that the Commission should give due weight to the technical expertise of the ERO. What are the speakers views about staff reviewing the standards for technical accuracy?

MR. NIXON: I think staff certainly ought to be

reviewing the standards that they meet and have specific components called for in 672 as it regards to specific technical merit. I don't know the complete capability of your staff, Joe, but obviously there are many experts in the industry working on the standards and we've got to give them clear -- I basically yield to their expertise, but at the same time I think a third set of eyes on the technical merits and the fact that you may see things that you want to question are certainly appropriate. The whole goal here is to come back with excellent standards that improve the reliability and obviously meet the legal and regulatory requirements.

So I think that, to the extent that your staff recognizes or questions a technical merit issue, it will be challenged. It's part of a healthy review.

MR. McCLELLAND: That's Jim.

David?

MR. WHITELEY: Staying within the four corners of EEI as comments we would recommend that the staff participate in the standards development process, modification process, participate in the development as it goes forward with all of the industry stakeholders. That said, it would be my view if at the end of the day that the staff differs from what the rest of the industry comes up with in a standard. You've got to do what you've got to do,

which is to inform the Commission and then it's before them to decide does it or does it not.

MR. McCLELLAND: Thanks, David.

Steve?

MR. COBB: I think the critical issues is that I mentioned earlier that staff be involved in the standard request process as well as the standard development process because when it comes down to it, it's really a pay me now/pay me later. We don't want to go through a two-year process of getting a standard approved -- this may sound familiar -- only to have it remanded by the Commission and we've lost that two-year process. So one would assume whether or not staff is a passive or active participant in the standard development process, there are going to be reports flowing back up to the Commission and there may be decisions made on those comments. So if we get them out in the open and we can deal with them as soon as possible, address them and move forward, it's a good thing for the industry and it's makes for a more efficient process.

MR. McCLELLAND: Allen?

MR. MOSHER: I assume that the Commission, when it received a proposed standard, is going to put it out for notice and comment. So the Commission is going to have an opinion and has to make a judgment on what the commentors say. I'm guessing that like the review of NAESB standards,

you're going to encourage the industry to be active in the NERC process rather than wait. And I believe it's been called "sandbagging," wait until the very end to comment at the Commission.

This parallels what Steve and others have said before. It would be helpful to have the Commission staff involved in the standards development process all along. You should not hold back at the end of that process if it turns out that the standard in some way technical deficit. Remand it and let us know why.

MR. McCLELLAND: Steve?

MR. RUEKERT: As you move down the panel, at this end it gets harder and harder to come up with anything original.

(Laughter.)

MR. RUEKERT: I would like to agree with what David Whiteley and Steve Cobb said, though I think the activities should be all during the development process. I would hate to see the review wait until the end, especially if the only option at that point is a remand. As I think Steve said, that means you may throw two years of work away and start over and I would hate to see that.

MR. McCLELLAND: Thanks, Steve.

Kim?

MR. WARREN: I'll try for the new piece. I agree

with the new piece, but as you are coming to these findings I think you should be communicating it with the other regulatory groups involved with international aspects with these standards so we get a common voice that's going back into the industry process and allowing the industry to work through your issues.

MR. McCLELLAND: One more question. Again, I'd just like to get it from all the panelists. I'll start with you, Kim. Can you envision a scenario whereby the Commission should remand a standard?

MR. WARREN: Not at this time.

(Laughter.)

MR. WARREN: I think remand is something that is contemplated for an ERO and the ERO does not yet exist. I think we need the coordination aspects that I spoke to earlier. I think we need to get those mechanisms up and running now. There may be a time in the future where it's possible that a remand is appropriate, but I don't see that for present-day standards.

MR. McCLELLAND: Thanks, Kim.

Steve? We're reversing the order so you'll have something more original to say on the way back.

(Laughter.)

MR. RUEKERT: I can't imagine that if the process is followed as is outlined and described in the procedural

manner and you've had input from the industry an open and fair process, I can't think of a reason there would be need to remand one.

MR. MOSHER: Having worked either for the Commission or in front of the Commission for a number of years, I expect there will be remands. We will produce a standard at some time or another that will be deficient in some way and that the staff assessment identifies a number of ways in which existing standards are deficient. It's likely that we will make a mistake in the future. We'll have either a conflicting standard, one that doesn't make sense. This goes to one of Steve's earlier points about quality assurance and quality control.

These standards are complex. They're 860 requirements in here. It's very easy to go through a process where you could end up with two drafting teams working on separate parts where you don't cross check them clearly and it gets up to the board of trustees, people have voted on it and it just hasn't occurred to us that we've got a conflict. So these might end up remanded. I hope it will be a rare event, but my experience over the last few years of the number of deficient filings with the Commission under Sections 205 and 206 -- well, we're likely to see them under Section 250.

MR. COBB: I would echo everything that Allen

said. Based on my experience, I would be surprised to see the first remand as a result of compromising some commercial situation.

MR. McCLELLAND: Thank you, Steve.

David?

MR. WHITELEY: I would say you could definitely come up with a hypothetical that will mandate a remand. With that said, since I've been branded as the eternal optimist, I'll say that I would hope that that is extremely rare. That the industry process does create a quality product that doesn't require a remand and certainly not with this first batch of 102.

MR. NIXON: I think we have a very good process of development and a very good process of review of the standards, which should result in few remands. But I, again, believe that there should be remands at times because not all standards put forth may ultimately pass the test of being written well to the point that they are mandatory and carry financial penalties. That doesn't mean they should be good utility practices and good guidelines, but should they be mandatory standards with financial penalties? I suspect some of them may not pass muster in the long run.

COMMISSIONER BROWNELL: Everybody talks a lot about the process and if the process is followed, then the outcome is in and of itself good. What I've heard is the

process involves so many people with so many diverging opinions and business agendas that it has the effect of basically driving toward mediocrity. Should there be an opportunity for minority opinions, for example, as something moves through the process, should there be a supreme court of engineers within NERC that is kind of a tiebreaker or does an internal review. I mean the industry loves process and I'm always a little bit suspicious of that, to be honest with you because it also doesn't like change. I just keep hearing the process isn't having the outcome it was intended to have, which is the excellence that Rick is looking for. I know it's a sacred cow. I just have to ask the question. I've got two more weeks.

(Laughter.)

MR. NIXON: I think the ERO ought to have a final sign off from a review committee at whatever level I don't know, but certainly development by committee is hard and this is one large set of committees that are going on in parallel, which means there's opportunities for standards to fight one another even. So I do believe that the ERO should be set up to sort of police that to some extent and have the final review -- senior engineers or whatever to see that it meets the qualifications of what a standard should be before it is submitted to FERC.

COMMISSIONER BROWNELL: We're going to have to

get you a bodyguard.

MR. WHITELEY: If you want my resume for the court, I'll forward it to you.

(Laughter.)

MR. WHITELEY: Your points are well taken. It's a great question. The process does take time. Therein lies its strength that you do get those diverging views. You do get the opportunity to debate through, although sometimes it seems like endless rounds of debate -- all of the issues -- so that the work product really is a good work product. That, after all, is really the goal. There are strengths in it, but your points are well taken.

CHAIRMAN KELLIHER: Any other staff questions?

MR. MOOT: I've got a couple for Steve. On your field testing questions, is it the same as what NERC has proposed for a six-month trial period for the standards? No. 2, is the field testing everything is live except the penalties or could you issue a remedial order saying you've got to change what you're doing because you're not in compliance? And the last was why do you think more than six months is necessary -- like a year?

MR. RUEKERT: Maybe the first two questions are almost answered the same. In our field testing of the RMS, everything was live except the penalties. You were expected to comply with it. If you didn't comply, you got a letter

of notification. It outlined exactly what your penalty would have been under the mandatory compliance portion of it. As I believe Steve said, you know, you maybe heard the comment before that they'd much rather pay the simulated sanction than see that letter go all the way to the CEO. There's one step further and that is if you make it public. Sometimes I think the organization would rather quietly pay a penalty than have this put out in the public that there was a violation of a mandatory standard.

But getting back to the question, everything was the same. Notifications were made, penalties were calculated and reported to the organization, just not assessed.

MR. MOOT: But did you have the authority to order a change? For example, if we agreed with WECC that there ought to be a year of field testing and we're one month in and somebody's in gross violation, would your opinion be that the ERO could say you've got to fix your operation now or do they have to wait another 11 months?

MR. RUEKERT: I don't think we did that. We didn't have the authority to do anything anyway under the law. All ours did was escalate the simulated penalty. Maybe under this new world, yes, they should step in and say you need to do something. We didn't have that authority. We didn't do it.

To answer your third question about the six months versus a year, for some of them -- let me just take vegetation management -- if you incur the first vegetation outage, outage by vegetation contact and it's a certain category, potentially you're already Level 4 because certain categories, certain outages are at Level 4. Say you get one in the first one or two months, you can't issue a penalty. You can't tell them what level they were because it's a yearly cycle event. So they could get their second outage towards the very end of that year, so then what do you do? Do you go and say, well, we have previously assessed you as Level 3, but now we're redacting that Level 3 assessment and assessing you Level 4, which carries a larger penalty? Do you then say, well, you were Level 3 and we've already penalized you for that? Now we're going to penalize you for Level 4. So that things could take a full year to determine what level of non-compliance there is. You can't, after six months, tell somebody where they're at if they had a full year to complete documentation. It's a new document requirement and they have a year to complete it, you can't go in, in six months and say, well, from what I see here you're going to get done by the end of the year, so we're going to penalize you now.

MR. COBB: These field tests don't result in behavior that's essentially flat until the monetary

penalties start and all of a sudden the behavior becomes good. At the very beginning, you're going to have a number of folks that are complying with the standard until they get the necessary processes in place. That includes training people, developing the necessary software, all the data collection mechanism. But from that very start the performance, the compliance picks up and it's a negative slope from there on out.

Of course, obviously there a lot more attention is paid as soon as the dollars start getting assessed. But everybody we've had experience with wants to do the right thing.

MR. RUEKERT: If I could add just one thing. I haven't said it yet, but I really believe that people want to be compliant. I don't think they want to be non-compliant as long as they can and then be compliant. The field testing, as I pointed out earlier, some people simply just don't know what they have to do and they say, "I didn't even know I wasn't compliant." By the end of the field test, they are compliant but they do want to comply.

MR. CANNON: Just a couple of final questions from my end, David you mentioned stratification of the 57 standards that still need some work. In that stratification process, did you all look at the interrelationships between certain standards? That is, if you changed standard exits,

got some implications with regard to standards Y and Z?

MR. WHITELEY: I would say we didn't quite get down to that level of detail. This was more a look at the standards, view what it's about, get some consensus around the table as to where it ranks. That next level of detail -- this was like a first level cut at prioritization, so that level of detail that you're describing we didn't get to.

MR. CANNON: I would suggest it would be helpful.

MR. WHITELEY: Certainly, it would be something to consider.

MR. CANNON: Then the other question -- I come back sort of full circle to the question that the Chairman started with for this afternoon's session. I heard Steve, I guess, talk about a two-year timeline and holding industry's feet to the fire. I guess in the spirit of trying to bolster David's optimism about how quickly industry can rally around doing these things, when the Chairman asked what about if we were to specify certain compliance elements, I got sort of a universal reservation about the regulator venturing into defining what the compliance elements should be. But if we were to do that as a backstop, it's a way of holding people's feet to the fire. Do I get any different reaction?

MR. WHITELEY: I'll say that we still have the reservation that, in effect, by changing or putting in place

compliance elements, compliance requirements you effectively change the standard because they are part and parcel of the standard. That said, as a backstop for greater definition, speaking as an individual here, from my system I would rather know more and have more detail and know what the rules are that I have to comply against versus something that's vague, that's simply been thrown over the transom into compliance and then I don't know what the compliance office is going to do with it. So I'd prefer to have those if they're going to come. But, again, our position would be that they ought to come by development through the process as opposed to simply add it in later.

MR. CANNON: Others?

(No response.)

CHAIRMAN KELLIHER: I think Commissioner Kelly had a question. Are you done, Shelton?

COMMISSIONER KELLY: I had a process question. FERC has tried very hard with this proceeding to fashion it as a rulemaking rather than have the ERO present us with something that we then adjudicate. We did that because the rules around the rulemaking, the procedural rules are so much different than the rules around an adjudication. We thought it would be important that we be able to talk about this in public session rather than isolating the decisionmaker. What is your opinion on future ER rules and

future standards proposed by the ERO? Should we approach it the same way? Should we try and conceive a process so that we can have a rulemaking surrounding those? Or should future FERC decisions regarding approval or disapproval of future ERO-produced standards be an adjudication? Do you have an opinion?

MR. MOSHER: Strongly prefer the rulemaking approach. I think that's crystal clear. We need to have the dialogue. There's just too many ways for this to go wrong not to have the informal dialogue. We're suppose to bring an industry consensus to you. There will be dissenting views. We need to have a dialogue and they need to be heard, but the proceedings shouldn't resemble a contested rate and tariff proceeding where the ex parte rules are to apply. I just see the two categories as different.

CHAIRMAN KELLIHER: Any other questions?

(No response.)

CHAIRMAN KELLIHER: We're just about on the money in terms of time. I have very brief comments. I think, to me at least, this was a very helpful technical conference. I thought it was very interesting. I want to thank all the panelists, both this panel and the prior panel. I thought it was interesting that there seems to be consensus that the Commission really does not have the discretion and option that is not available to the Commission is approving all 102

standards unconditionally backed by enforcement powers and civil penalties. I think there was a consensus that's not available to us. So the question really is what is the number? What number of the 102 can we approve unconditionally backed by civil penalties and what do we do with respect to the remaining standards?

NERC is reasonably concerned about a gap. They don't want a gap arising. I think there's different ways to address that. I share that concern. We're moving towards a rulemaking and our hope is to issue a NOPR in September that would define what boxes the proposed standards would fall in. As I said this morning, we're not just faced with two choices of improving unconditionally or remanding. We have actually some interesting options and that's what we have to work on the next two months is to figure out what boxes do these 102 proposed standards fall. It doesn't look like we can put all 102 in the first box, so how many fall in the first box? How many fall in the others?

As Commissioner Kelly just suggested, I think the rulemaking approach is absolutely the correct approach to deal with reliability standards. Otherwise, ex parte rules would apply. We'd be really hampered in our dealings with our Canadian and Mexican colleagues. So this is a more difficult exercise because we're dealing with 102 standards. I don't think we'll be getting 102 submitted to us in one

whole batch in the future. In effect, NERC is trying to give birth to a 102-pound baby.

(Laughter.)

CHAIRMAN KELLIHER: Maybe next time it'll be a one-pounder or a five-pounder. So it's harder this time. So I want to thank everyone. It's been a long day.

(Laughter.)

CHAIRMAN KELLIHER: That's a metaphor that's been in my head all day since the very first panelist spoke, so I had to get it out. But I want to thank everyone for helping us today and we can still talk. We don't want more written comments. I think we can say our record is closed now, Mr. Moot. Our formal record is closed, but it is a rulemaking, so we can still talk and we have two months before we have to issue a proposed rule and at some point we will have new commissioners here to help us craft the proposed rule.

Thanks everyone for helping us today. This meeting is adjourned.

(Whereupon, at 3:05 p.m., the above-entitled matter was concluded.)