

Statement of the Western Governors' Association to the
Federal Energy Regulatory Commission
Technical Conference on Electric Reliability Organization Certification
December 9, 2005

The footprint of the Western Governors' Association covers the entirety or parts of all three electrical interconnections. Most of the comments in this statement focus on the Western Interconnection.

1. What role should States and Provinces play with regard to reliability standards?

Western Governors believe that the setting and enforcement of reliability standards are imbued with the public interest and that elected officials and their appointees are the most appropriate entities to express the public interest.¹ The Governors also recognize that, with the exception of the Electric Reliability Council of Texas, the reliability of the power systems in our States depend on the behavior of those within and outside the borders of our States. Reliability is a regional endeavor that crosses State and international boundaries. Thus State governments will play a largely advisory role with respect to regional reliability standards, though they will play a much greater role in the effort to achieve the broader goal of delivering electricity to customers reliably. This broader goal encompasses not only reliability standards for planning and operation of the components of power systems but also assessment of and action to ensure the adequacy of electric generation capacity to meet reasonably anticipated loads.²

As the Commission recognizes, the Energy Policy Act of 2005 has directed the Commission to step well outside its traditional role as an "economic regulator." In Section 215, Congress set the goal of electric system reliability. It provided the Commission with a tool, the authority to approve and enforce reliability standards, to help meet that goal. However, Congress did not give the Commission other tools necessary for a reliable power system, tools such as the authority to order construction of generating facilities.

¹ The Governors also believe that the appropriate body to develop and enforce reliability standards is the lowest level organization for which there are no impacts from its decisions which go beyond the geography of the organization. No significant reliability issues extend beyond the boundaries of a synchronous AC electrical interconnection. Therefore, subject to FERC certification, a Western Interconnection-wide reliability organization should be the primary body charged with developing and enforcing reliability standards in the states within the Western Interconnection. Such delegation and deference to a Western Interconnection body is particularly appropriate given the different electrical characteristics of the Western Interconnection, which require reliability standards appropriate to the challenges of ensuring the reliability of a grid characterized by long distances between generation and load centers.

² States and Provinces in the Western Interconnection also directly contribute to decisions of the Western Electricity Coordinating Council (WECC) by providing four members to the WECC Board of Directors and participating in WECC member committees.

Congress recognized that ensuring system reliability will require a collaborative effort among FERC, the States, and in the case of the Western Interconnection, with Canadian Provinces and the Government of Mexico. Congress provided tools, such as deference and delegation to interconnection-wide regional reliability entities and systematic advice from Regional Advisory Bodies, to enable the Commission to execute its responsibilities in a way that meets the reliability needs in different electrical interconnections and achieves comity with our Canadian Provincial and Mexican partners.

The reliability responsibilities Congress has assigned to the Commission require a much different approach than it has used in its traditional role as an economic regulator. The authority to approve and enforce reliability standards is one important tool to ensure the reliability of regional power grids, which have been described as the most complex machines devised by man. However, the setting and enforcement of reliability standards is only one of many tools necessary to ensure system reliability. The danger is that if the only tool you have is a hammer, everything looks like a nail. To bring all available tools to the job of maintaining reliability requires that the Commission adopt a significantly different approach to reliability than it has used for economic regulation. It requires that the Commission go to new lengths to collaborate with States and our partners in Canada and Mexico to reach the goal of the reliability of the three regional electric power systems in North America.

Western Governors have stated that they are ready to assist the Commission as full partners in this important endeavor.

2. How should the Commission receive input for approval of reliability standards from the States, Provinces, Regional Entities, and ERO?

In most of the Commission's work, the Commission operates under a very strict ex parte rule that prevents interested parties from providing input to FERC with respect to proceedings before the Commission. In matters of economic regulation, and also in any appeals that may reach the Commission on alleged violations of reliability standards, adherence to this very formal limitation on communication is necessary to ensure fairness to parties. By contrast, the approval of reliability standards that are promulgated by the ERO and regional entities in open processes, with due process to affected interests, may warrant consideration of a more open dialogue between FERC and interested parties to ensure that FERC understands all of the complex considerations that went into the promulgation of the proposed standards. In particular, if there are to be ex parte limitations in this area, FERC should consider relaxing them for the purpose of receiving a free flow of communication from the ERO, Regional Entities, individual States and Provinces, and groups of States and Provinces.

In Section 215(j) of the Federal Power Act, Congress authorized a new vehicle by which FERC may receive advice from States on reliability issues and other topics on which the Commission wants advice from States. Congress also recognized that the Commission should pay particular attention to Regional Advisory Bodies organized on

an interconnection-wide basis and authorizes FERC to defer to the advice of an interconnection-wide Regional Advisory Body. At least for the Western Interconnection, the Western Interconnection Regional Advisory Body should be the primary entity the Commission should look to for advice.³

It is important to note that the Congress established the same standards for decisions by a Regional Advisory Body as the Congress established for action by the Commission – that the action is just, reasonable, not unduly discriminatory or preferential, and in the public interest. By viewing the issues through the same lens, Regional Advisory Bodies and the Commission should have significant common ground.

Finally, while the Commission should place primary reliance on the advice of Regional Advisory Bodies when such advice is available, the Commission should also entertain input directly from State and Provincial agencies.

3. What test should the Commission use to determine whether a State-developed rule conflicts with reliability standards?

The Commission should apply the provisions of Section 215.⁴ In essence, this means that the Commission should not disturb a single State rule unless it appears that the implementation of that rule will harm the reliability of the power grid that is relied upon by neighboring States or impose significant costs on consumers outside the adopting State. This determination will be very specific to the facts and circumstances of each situation and thus it is premature to try to develop a more specific test for the Commission's decisions on such matters. Historically, Western States have not sought to establish State-specific reliability standards applicable to the bulk power system. Western States have relied upon the technical expertise and judgment of the Western Electricity Coordinating Council and its predecessor the Western Systems Coordinating Council. With close coordination among the Commission, WECC and a Western

³ Western Governors have adopted a resolution indicating the intent to establish the Western Interconnection Regional Advisory Body. (See attached resolution.) It is anticipated that the Governors will be filing a petition for the Commission to establish that entity shortly after the Commission adopts final rules to implement Section 215.

⁴ Section 215 provides: “(i) Savings Provisions- (1) The ERO shall have authority to develop and enforce compliance with reliability standards for only the bulk-power system. (2) This section does not authorize the ERO or the Commission to order the construction of additional generation or transmission capacity or to set and enforce compliance with standards for adequacy or safety of electric facilities or services. (3) Nothing in this section shall be construed to preempt any authority of any State to take action to ensure the safety, adequacy, and reliability of electric service within that State, as long as such action is not inconsistent with any reliability standard, except that the State of New York may establish rules that result in greater reliability within that State, as long as such action does not result in lesser reliability outside the State than that provided by the reliability standards. (4) Within 90 days of the application of the Electric Reliability Organization or other affected party, and after notice and opportunity for comment, the Commission shall issue a final order determining whether a State action is inconsistent with a reliability standard, taking into consideration any recommendation of the ERO. (5) The Commission, after consultation with the ERO and the State taking action, may stay the effectiveness of any State action, pending the Commission's issuance of a final order.”

Interconnection Regional Advisory Body, in the Western Interconnection we do not anticipate that the Commission will need to address the issue raised by this question.

4. When should Regional Advisory Bodies be convened and for what purpose?

Under Section 215(j) Regional Advisory Bodies are convened upon action by petition of Governors to the Commission. The purpose of Regional Advisory Bodies is to provide advice to a regional reliability entity, the ERO and the Commission. The statute delineates that such Bodies provide advice in four areas:

- “(A) the governance of an existing or proposed regional entity within the same region;
- (B) whether a standard proposed to apply within the region is just, reasonable, not unduly discriminatory or preferential, and in the public interest;
- (C) whether fees proposed to be assessed within the region are just, reasonable, not unduly discriminatory or preferential, and in the public interest; and
- (D) any other responsibilities requested by the Commission.”

Western Governors believe that the Commission has a unique opportunity to utilize the flexibility Congress granted under 215(j) to fully engage the States and Provinces who undertake to formulate and provide advice through Regional Advisory Bodies. The Commission should view Regional Advisory Bodies as essential partners that can help the Commission make informed decisions on reliability standards and can help put in place all elements necessary to promote reliability, many of which are not under the authority of the Commission. To reach this collaborative goal, the Commission’s rules need to ensure that Regional Advisory Bodies have access to all information necessary to fulfill their responsibilities and that there is sufficient time to allow such Bodies to review the information and provide informed advice prior to action by the Commission. In addition, the Commission should ensure that the work of Regional Advisory Bodies is funded under the fees that the ERO and/or Regional Entities will collect from end users who benefit from the reliability efforts of those Bodies.

While the statute quoted above provides for three specific areas in which Regional Advisory Bodies may give advice, it also allows the Commission to request those Bodies to undertake additional duties. There is one area related to the reliable provision of electric power to consumers where the Commission may find that Regional Advisory Bodies can be particularly helpful, and that is in organizing State and Provincial policy on resource adequacy. As noted in answer to the Commission’s final question, in the Western Interconnection, considerable work in this area has been undertaken, largely as a result of the initiative of States and Provinces. While Section 215 specifically leaves to States and Provinces the decision on whether and how to require load serving entities to acquire adequate supplies of electricity to meet their anticipated loads, Section 215(g) provides that “The ERO shall conduct periodic assessments of the reliability *and adequacy* of the bulk-power system in North America.” (emphasis added). Thus the Commission may look to the ERO, and through the ERO to Regional Entities, to take such actions as are required to provide accurate assessments of the adequacy of the power

system even if there are restrictions on the Commission's ability to unilaterally regulate in this area. Thus, the Commission may find it useful to consider seeking the assistance of Regional Advisory Bodies in this area where a productive partnership between the States and Provinces and the Commission is needed.

5. What role should the States, Provinces, Regional Entities, ERO, and the Commission play in determining resource adequacy?

The Commission is appropriately distinguishing resource adequacy from the related subject of reliability standards. Resource adequacy deserves careful consideration and the Western Interconnection has already invested a great deal of effort in examining this issue. WECC, for example, has adopted a goal of developing and publishing resource adequacy criteria and the States and Provinces, through the Committee on Regional Electric Power Cooperation (CREPC), have endorsed an approach to resource adequacy.⁵ The West is pursuing a collaborative approach between WECC and the States and Provinces for addressing this complex issue. The Governors have focused attention on this issue through adoption of a resolution specifically requesting the regional entities to conduct an assessment of Western Interconnection system adequacy.⁶

Because the fundamental responsibility for ratemaking and procurement traditionally has resided with State and Provincial regulatory agencies and the governing boards of non-jurisdictional load serving entities (LSEs), these entities have the primary role in evaluating adequacy and deciding what resources are needed to maintain an adequate system for their own jurisdiction. To make informed decisions, such entities require a good understanding of the availability and adequacy of resources within the larger region in which they reside. In the case of the most of the West, this larger region is the entire Western Interconnection. This inter-relationship has led the West to conclude that a collaborative partnership is necessary to successfully put into place all the elements of a resource adequacy approach. With the passage of EPAct, the FERC, the ERO and the Regional Entity could all contribute to the partnership.

Key elements of a successful collaboration would include establishing requirements for well-documented information on loads and resources, agreeing on necessary assessment parameters, developing specific regional adequacy targets/guidelines, completing annual adequacy evaluations under stressed conditions

⁵ Link to CREPC Strawman

<http://www.westgov.org/wieb/meetings/crepcfall2004/briefing/WRATstrawman.pdf> .

⁶ In WGA Resolution 03-19, the Governors: "Request that the Committee on Regional Electric Power Cooperation, the Western Electricity Coordinating Council, and the Seam Steering Group-Western Interconnection assist in the development of a comprehensive assessment of whether there will be sufficient generation and demand response resources to meet electricity demand, sufficient transmission to move generation to load, sufficient natural gas resources and infrastructure to fuel natural gas power plants, and sufficient energy and infrastructure to avoid extreme scarcity, high prices, and the ability of market participants to exercise market power. Such analyses should assume normal and abnormal weather conditions, including drought and extreme temperatures. Such analysis will be valuable to both policy makers and market participants."

and, taking action to achieve adequacy targets through State, Provincial and local entity decisions. Provisions for funding for all of these elements will be essential. Although the WGA has not approved a specific collaborative approach for these elements, in the interest of encouraging dialogue on December 9th, the following is offered as an illustration of one way the roles might be defined to result in an effective partnership.

Appropriate roles for the Commission would entail ensuring funding resource adequacy evaluation, availability of necessary data, and completion of robust interconnection-wide resource adequacy assessments. This can be done by:

- Including within mandatory dues under Section 215 the cost of developing robust interconnection-wide resource adequacy assessments. Such dues would be the most efficient means of ensuring that the costs of assessments are borne by all consumers in the Western Interconnection.
- Establishing a requirement that regional resource adequacy assessments be transparent, use publicly-available data, include analyses of fuel supply availability, consider extreme weather conditions, and be of sufficient geographic granularity as to allow State and Provincial regulatory commissions and the governing boards of non-jurisdictional LSEs to make informed decisions.

A complementary role for the ERO would be to adopt a standard that requires the development and adoption of interconnection-wide resource adequacy guidelines/targets. WECC and ERCOT should be the appropriate entities to adopt such guidelines/targets within those interconnections. Finally, the ERO would share with the regions information on new tools to assess resource adequacy that may have developed in other regions.

With respect to the Western Interconnection, WECC will have important responsibilities. First, WECC would continue and enhance its current role in acquiring detailed data on loads and resources, including energy efficiency/demand response, transmission, and generation. It is also the appropriate entity to develop interconnection-wide load and sub-area resource assessments that are transparent and evaluate load and resource availability under a range of possible conditions. To be credible and useful to the ERO, FERC, investors, LSEs, and State, Provincial and other regulatory entities, such assessments must use publicly-available data, be well-documented, include analyses of fuel (e.g., natural gas and water) availability, consider severe weather conditions, and be of sufficient geographic granularity to be useful to decision-makers.

WECC's roles would also include developing and publishing resource adequacy guidelines or targets. This is necessary so that the overall region can have one common, recognized benchmark(s) against which to reach conclusions regarding adequacy. These targets would be used as a yardstick to evaluate adequacy, and would not be enforceable against individual WECC members or LSEs except as provided by State and Provincial governments.

States, Provinces, and the governing boards of non-jurisdictional entities would retain the most pivotal role under this collaborative approach -- the responsibility for decision-making regarding resource acquisition and ratemaking, contracting, procurement and prudence. Such decision-making entities should:

- Require the LSEs under their respective jurisdictions to provide quality and timely data to WECC and the ERO;
- Collaborate with WECC in preparation of load and resource assessments in the Western Interconnection;
- Support WECC in developing and publishing resource adequacy guidelines/targets (voluntary), in order that a common benchmark for evaluating adequacy can be made available; and
- If desired, adopt their own mandatory resource adequacy requirements, such as has been done in California; these would then be used in place of the WECC guideline/target for that geographic area of the interconnection.

Attachment: WGA Resolution Establishing a Western Interconnection Regional Advisory Body