TESTIMONY OF DAVID K. OWENS
ON BEHALF OF THE EDISON ELECTRIC INSTITUTE
BEFORE THE COMMITTEE ON ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE
MAY 15, 2006

Mr. Chairman and Members of the Committee:

I am David Owens, Executive Vice President of Business Operations for the Edison Electric Institute (EEI). EEI is the association of U.S. shareholder-owned electric utilities and industry affiliates and associates worldwide. We appreciate the opportunity to testify on the implementation of the electric reliability provisions contained in the Energy Policy Act of 2005 (EPAct 2005).

Today's electricity market requires a mandatory reliability system, with enforcement mechanisms that apply to all market participants. Beginning in 1999, a broad group of stakeholders, including EEI and its individual member companies, strongly supported federal legislation to achieve this goal. Reliability legislation was included in every significant energy bill considered by Congress this decade. The August 2003 blackout underscored the need for mandatory reliability standards, and we were very pleased that EPAct 2005 contained the reliability provisions.

EEI commends the Federal Energy Regulatory Commission (FERC or the Commission) for its leadership in implementing the provisions of the EPAct 2005 that authorized the creation of an electric reliability organization (ERO). FERC has met the aggressive timeline set by the Congress in EPAct for establishing the regulatory basis on which the ERO will be created.

EEI also commends the efforts of the North American Electric Reliability Council (NERC) to prepare its application to be certified as the ERO and to ready itself to assume

the significant duties of the ERO. We strongly support the prompt certification of NERC as the ERO.

In the months ahead, FERC and NERC will continue their work together to implement the reliability provision of EPAct and establish the ERO. Important steps in the process include establishing mandatory reliability standards, delegating the enforcement authority to regional entities, and ensuring that the regional entities properly enforce those standards. To accomplish these goals and create the strong electric reliability system envisioned by Congress, EEI believes the Commission and NERC need to focus on many issues, several of which we will highlight in our testimony today: establishing clear and measurable reliability standards, developing an effective compliance and enforcement program that assures due process, and leading the transition—effectively and promptly—from today's world to the new era called for in EPAct 2005.

Transition Issues

The ERO transition plan – how, and how fast, does NERC plan to move from today's reliability mechanisms to those called for by the Energy Policy Act – is one of the major challenges facing FERC and NERC. A smooth and prompt transition involves many steps, which must be completed in a relatively short amount of time in order for the ERO to be operational by January 1, 2007.

For example, following certification of the ERO, reliability standards must be approved. Regional delegation agreements must be executed and approved by the Commission. Regional compliance programs must be revised as necessary to provide consistent enforcement and due process to be ready when reliability standards are

approved and enforceable. Throughout the transition, mechanisms must be in place continuously to assure reliability during this period.

Another aspect of the transition is outreach to the entities among the "users, owners and operators of the bulk-power system" who may be interacting with NERC for the first time and who must comply with the reliability standards established by NERC and approved by the Commission. As a first step, these entities must register with the region(s) in which they operate. A number of parties commenting on NERC's application to be the ERO have suggested that some entities may be too small or not covered by the statute and therefore should be exempt from the registration process.

We feel very strongly that there can be no exceptions from the requirement to comply with applicable reliability standards based on size or the nature of an entity. A small entity that violates a vegetation management standard by having a tree over-hanging a power line can have as serious an impact on the reliability of the electric grid as a large utility. The electricity system is only as strong as its weakest link. All owners, users and operators of the bulk power system must register and comply with reliability standards.

We believe it is imperative that the transition to the ERO be completed by January 1, 2007, so that we have in place the mandatory compliance enforcement system set forth in EPAct. EEI and its members will continue to offer input and assistance to NERC as it works to implement the ERO provisions within this timeframe. We will also continue to support the efforts of the regional reliability councils to fulfill their roles as Regional Entities under the statute.

Reliability Standards

NERC has filed 102 proposed reliability standards for approval by FERC. The Commission has opened a rulemaking docket to review these proposed standards. As the first step in the process, Commission staff soon will release its proposed assessment of the proposed standards, followed by a technical conference at which stakeholders can comment on the proposed standards and preliminary assessment. The goals of this process should be to establish clear, measurable reliability standards that are the basis of the statutory scheme and to get these standards in place at the earliest practicable time.

Maintaining a reliable electricity system in the U.S. is both a national and a regional matter because significant expertise and experience reside with the regional reliability entities. In addition, some of the reliability standards that will be developed will be regional in nature to reflect the differences in regional operations, systems, resources, and other important factors.

Compliance and Enforcement

Significant reliability expertise and resources reside within the eight regional reliability councils. The reliability provisions of EPAct 2005 sensibly provide for the ERO to delegate certain compliance enforcement functions to the regions. At the same time, however, the ERO, with the Commission, will need to exercise close oversight over these delegated functions.

It is crucial that the Commission and the ERO demand consistency and accountability from the regions, both in how they investigate problems and in how they apply any penalties. The regions will be exercising delegated statutory authority to levy

penalties that can reach $1 million per day. Delegation of this authority requires that the regional compliance enforcement procedures and the enforcement decisions that are made under these programs are legally sustainable and meet rigorous federal standards for due process. Regional compliance enforcement programs can best ensure this if they follow a consistent model that affords necessary due process protections to entities subject to the statute's requirements.

Consistency in standards and compliance enforcement processes is particularly important since many of the entities who must comply with mandatory reliability standards operate in more than one region. The regions must treat all parties fairly and even-handedly with respect to the conduct of investigations, confidentiality and other matters surrounding enforcement. And the regions must uniformly apply any enforcement penalties. Sanctions must consistently fit the severity of violations regardless of the region.

Conclusion

EEI and its member companies, along with the other stakeholders involved in this critical initiative, are committed to achieving what Congress intended in EPAct 2005: A strong, mandatory electric reliability regime that applies to all users of the system, with effective and fair enforcement mechanisms. We believe that the reliability provisions were among the most critical and important in EPAct 2005. Through proper implementation of the reliability provisions of EPAct, American consumers will have increased confidence that every time they flip the switch, the lights will turn on.