

STATEMENT OF SUSAN J. COURT, DIRECTOR
OFFICE OF MARKET OVERSIGHT AND INVESTIGATIONS
FEDERAL ENERGY REGULATORY COMMISSION

AT THE PUBLIC MEETING/WORKSHOP WITH STAKEHOLDERS
REGARDING NRC GENERIC LETTER 2006-XX:
GRID RELIABILITY AND THE OPERABILITY
OF OFFSITE POWER

JANUARY 9, 2006

Good afternoon. My name is Susan Court, and I am the Director of the Office of Market Oversight and Investigations (OMOI) at the Federal Energy Regulatory Commission. (For the purposes of this statement, I will refer to my commission as the F-E-R-C to avoid confusion with your commission.) I have been a member of the FERC staff for 24 years, and have held a variety of positions. Before becoming OMOI Director two months ago, I served as Chief of Staff and, as such, had the honor of signing the 2004 Memorandum of Agreement between the NRC and the FERC. Accordingly, I am very pleased to participate today in this workshop on the proposed GL on grid reliability and the operability of offsite power.

At this time, I would like to introduce two of my colleagues, who will also be available to answer questions. Mr. Bruce Poole is an engineer

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with the FERC's Division of Reliability in the agency's Office of Energy Markets and Reliability. Ms. Deme Anas is an attorney with the FERC's Division of Enforcement in my office, OMOI.

As you know, the FERC is currently engaged in crafting rules to create an Electric Reliability Organization (ERO) and develop the procedures to establish, approve, and enforce electric reliability standards. This rulemaking is mandated by the Energy Policy Act of 2005 (EPAct). As a member of the FERC's Reliability Division, Mr. Poole has been involved in that effort, which is pending final agency action. Mr. Poole was also very active in the FERC's efforts following the 2003 Blackout, which in large part prompted the FERC's involvement in reliability matters before the passage of EPAct.

Ms. Anas was very instrumental in developing the FERC's Standards of Conduct applicable to electric and natural gas companies subject to the FERC's jurisdiction. As it is our understanding that the request to have the FERC participate in this workshop was primarily sought because of the operation of these standards and their impact on offsite power, I will briefly describe the Standards of Conduct and the provisions that the FERC has made with respect to nuclear facilities.

In November 2003, the FERC issued a final rule on the Standards of Conduct for Transmission Providers in an order entitled Order No. 2004, which became effective on September 22, 2004. The regulations

promulgated by Order No. 2004 are codified in Part 358 of Title 18 of the Code of Federal Regulations.

In brief, the Standards of Conduct govern the relationship between FERC jurisdictional natural gas pipelines and electric public utilities (hereafter referred to as Transmission Providers) and their Marketing and Energy Affiliates. A Marketing Affiliate is a Transmission Provider's energy sales unit unless the unit engages solely in bundled retail sales or an interstate natural gas pipeline's sales operating unit. An Energy Affiliate is an affiliate of a Transmission Provider that: 1) engages in or is involved in transmission transactions; 2) manages or controls transmission capacity of a transmission provider; 3) buys, sells, trades or administers natural gas or electric energy; and 4) engages in financial transactions relating to the sale or transmission of natural gas or electric energy. A jurisdictional gas or electric company can be affiliated with either or both. Energy Affiliates can also include nuclear power plants that generate electricity sold into the wholesale electric market.

The Standards of Conduct are designed to prevent the Transmission Providers from granting undue preferences to their Marketing or Energy Affiliates. The Standards require a Transmission Provider to: (1) function independently from its Marketing and Energy Affiliates; (2) treat all transmission customers, affiliated and non-affiliated, on a non-discriminatory basis; and (3) operate its transmission system in a way that

will not unfairly provide benefits to its Marketing or Energy Affiliates. The Standards of Conduct also require a Transmission Provider to ensure that employees of its Marketing and Energy Affiliates have access only to information available to the Transmission Provider's transmission customers, *i.e.*, the information posted on the company's OASIS or Open Access Same time Information System. The FERC requires electric Transmission Providers to post on an OASIS, an internet-based website, a variety of information to give all users of the open access transmission system access to the same information. Likewise, the Transmission Provider must assure that these affiliates do not have access to any information about the Transmission Provider's transmission system that is not available to all users of its OASIS. As the FERC said in the Final Rule, the Standards of Conduct will help to ensure that Transmission Providers do not use their access to information about transmission to unfairly benefit their own or their affiliates' sales to the detriment of competitive markets.

As relevant here, the FERC has also adopted several exceptions to the constraints on communications between Transmission Providers and their Marketing and Energy Affiliates. First, under emergency conditions, a Transmission Provider may take whatever steps are necessary to keep a system in operation. Thus, under circumstances like those experienced during the 2003 Blackout, a Transmission Provider would be permitted to

engage in any type of communications and to share any employees needed to keep the system in operation. Subsequently, the Transmission Provider would be required to report to the FERC each emergency that resulted in any deviation from the Standards of Conduct.

Also, as a general matter, the FERC permits a Transmission Provider to share with its Marketing and Energy Affiliates information necessary to maintain the operations of the transmission system. This information is defined as information necessary to operate and maintain the transmission system on a day-to-day basis, but does not include transmission or marketing information that would give a Transmission Provider's Marketing or Energy Affiliates undue preference over a Transmission Provider's non-affiliated customers in the energy marketplace.

Of particular note here, the FERC has explicitly stated that this exception covers nuclear plant operators. During the rulemaking proceeding leading up to Order No. 2004, one commenter expressed concern that nuclear plant operators belonging to an Energy Affiliate of a Transmission Provider would be prohibited from receiving information they need to satisfy certain requirements of the NRC's regulations. The commenter also pointed out that station blackout rules require that nuclear stations have real-time information on grid disturbances and duration of power unavailability under 10 C.F.R. § 50.63. In Order No. 2004, the

FERC ruled that the Transmission Provider would be permitted to share this type of information with its Energy Affiliates.

The FERC has also permitted Transmission Providers to share with generation dispatch employees information necessary to perform such dispatch, provided that such information does not include specific information about individual third-party arrangements.

In sum, the FERC's Standards of Conduct are intended to prevent the communication of commercial information that could give a company's affiliates an undue advantage in the market. They are not intended to impede necessary communication between operators of transmission systems and nuclear power plant generators.

On behalf of the FERC, Chairman Kelliher and other members of the FERC, I thank you again for inviting my colleagues and me to participate in this workshop. We would be happy to answer your questions.

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