**Commissioner Sam J. Ervin, IV, North Carolina Utilities Commission**

**on Behalf of the**

**National Association of Regulatory Utility Commissioners**

**Before the**

**U.S. Nuclear Regulatory Commission**

**Remarks on Grid Stability and Offsite Power Issues**

**January 9, 2006**

ENCLOSURE 9

My name is Sam J. Ervin, IV. I am a member of the North Carolina Utilities Commission. I serve as Chairman of the Committee on Electricity of the National Association of Regulatory Utility Commissioners (NARUC). In addition, I served as the Chairman of the Nuclear Issues and Waste Disposal Subcommittee of the Electricity Committee from late 2002 until early 2005. I am speaking today on behalf of NARUC. I would like to thank the Commission for the opportunity to address you today on the important topic of electric reliability standards and the role of the States in maintaining reliable service.

NARUC is the national organization of the State commissions responsible for economic and safety regulation of the intrastate operations of regulated utilities. Specifically, NARUC's members have the obligation under State law to ensure the establishment and maintenance of such energy utility services as may be required by the public convenience and necessity, as well as ensuring that such services are provided at just and reasonable rates. NARUC's members include the government agencies in the fifty States, the District of Columbia, Puerto Rico and the Virgin Islands charged with regulating rates and terms and conditions of service associated with the intrastate operations of electric, natural gas, water, and telephone utilities.

My statement today is an update of the statement that Commissioner Robert M. Garvin of the Wisconsin Public Service Commission provided to this Commission on behalf of NARUC on April 26, 2005. On that occasion, NARUC described the *Resolution for State Action on Mandatory Reliability Standards*, which was sponsored by the Electricity and Energy and Natural Resources Committees and adopted by the NARUC Board of Directors on February 16, 2005. In essence, that resolution encouraged State commissions to consider making compliance with existing NERC reliability standards mandatory under State law. NARUC adopted this resolution because Congress had not yet passed legislation authorizing the development and enforcement of mandatory reliability standards.

NARUC consistently supported proposed legislation that would have resulted in the implementation of a mandatory reliability regime given the interest that all State commissions share in the preservation of a reliable bulk power system. As you know, the Energy Policy Act of 2005 (EPAct 2005) was signed into law on August 8, 2005. Section 215 of the Federal Power Act, enacted as part of EPAct 2005, provides for the creation of an Electric Reliability Organization (ERO) with the authority to adopt and enforce mandatory reliability standards. NARUC applauds the adoption of this reliability provision and has attempted to assist in its implementation to the greatest extent possible.

On September 1, 2005, the Federal Energy Regulatory Commission (FERC) issued a Notice of Proposed Rulemaking (NOPR) for the purpose of developing rules governing the approval and operation of an ERO as contemplated in Section 215 of the Federal Power Act. In the NOPR, the FERC proposed regulations addressing such issues as the criteria that an entity must satisfy to qualify as an ERO, the procedures that must be followed in an enforcement action, the criteria under which the ERO may agree to delegate authority to propose and enforce reliability standards to a Regional Entity, and the manner in which the ERO should be funded. Prior to the issuance of the NOPR, NARUC participated in discussions with other interested parties in an attempt to arrive at a consensus approach to the implementation of the reliability provisions of EPAct 2005.

On October 7, 2005, NARUC filed comments addressing the issues raised in the reliability NOPR. In its comments, NARUC urged the FERC to recognize that the North American Reliability Council (NERC) currently develops minimum national reliability standards through an open stakeholder process, that there are differences in the design of the bulk electric system in different parts of the country, that regional reliability organizations currently implement the national standards promulgated by NERC in a manner consistent with regional conditions, and that FERC should build on the existing structure in implementing the new reliability legislation. Although NARUC recognized that existing regional reliability organizations will have to adopt and implement certain changes in order to be eligible to receive delegated authority from the ERO, NARUC urged the FERC to allow the existing regional reliability organizations the opportunity to transform themselves into the Regional Entities envisioned by EPAct 2005 in order to preserve the existing storehouse of regional reliability information and to provide continuity to the new organizations.

The logic behind NARUC's emphasis upon the importance of preserving a significant role for Regional Entities should be obvious. Historically, regional standards, criteria, and rules have gone beyond the level needed to prevent cascading blackouts by attempting to provide reliability requirements intended to ensure that local problems do not develop in the first instance. The current allocation of responsibilities recognizes that a national organization lacks the local knowledge of system events and conditions necessary to effectively implement and enforce reliability standards that exists at the regional level. Similarly, a national organization lacks the regional knowledge of local system design, demographics and requirements necessary for customized regional reliability rules. As a result, while NARUC fully supports enforcement of the provisions of the reliability legislation calling for the adoption and enforcement of national reliability standards, NARUC also believes that the differences among regions necessitate a significant role for Regional Entities and that the FERC should recognize this fact in the final rule that is adopted in the reliability rulemaking.

NARUC's participation in the reliability rulemaking proceeding has not been limited to the filing of comments. On December 9, 2005, Commissioner Allen M. Freifeld of the Maryland Public Service Commission participated in the FERC Technical Conference on electricity reliability standards on behalf of NARUC. At that time, NARUC stated that States have a significant role to play in the maintenance of reliable electric service and noted that EPAct 2005 specifically preserves the rights of the States to act to ensure the safety, adequacy and reliability of electric service within its boundaries so long as such State action is not inconsistent with any reliability standard developed by the ERO and approved by FERC. As a result, in NARUC's view, responsibility for the maintenance of a reliable bulk power system is shared among State, regional, and Federal authorities. NARUC looks forward to the adoption of the FERC's reliability rules and will continue to participate constructively in the process of implementing the reliability provisions of EPAct 2005.

Last year, NARUC informed you that several States participate in the NERC reliability standards development process. On July 27, 2005, at the request of the Ad Hoc Committee on Critical Infrastructure and the Committee on Electricity, NARUC's Board of Directors adopted a *Resolution on Increased Public Utility Commission Participation in NERC's Standard Development Process*, in which NARUC encouraged State commissions to join the NERC Registered Ballot Body and participate in the development of and the casting of informed votes on electric reliability

standards applicable to the bulk power system. Since the adoption of that resolution, other State commissions have taken the steps necessary to participate in NERC's standards development process. NARUC believes that State participation in the development and approval of reliability standards will continue in the future.

At present, NARUC actively participates in NERC in several ways. NARUC and various States are active observers of NERC activity. NARUC and seven individual States are registered as voting members of NERC. The States have two representatives on NERC's Standards Authorization Committee, which develops reliability standards. States have two representatives on NERC's Compliance and Certification Committee, which is the enforcement arm of NERC. The States also have representatives on such NERC standing committees as the Planning Committee and the Operating Committee. State regulators and staff also participate in regular NERC briefings that are held via web-cast. Recent briefings have focused on proposed changes to NERC reliability standards and industry compliance with existing NERC standards. Finally, the States have representatives on the NERC Stakeholder Committee. Obviously, NARUC and the States actively participate in NERC's activities and intend to continue to do so.

In addition, NARUC participates in the activities of the North American Electric Standards Board (NAESB). Within NAESB, NARUC attempts to ensure that the standard business practices developed by that organization do not undermine reliability bulk power system operations.

Finally, NARUC reported in April, 2005 that many States act to ensure reliability at the distribution level. In this regard, Commissioner Garvin referenced a 2004 survey conducted by the National Regulatory Research Institute (NRRI) by summarizing its findings. Since this NRRI survey is still relevant, the findings are summarized today in the attached Appendix.

This concludes my prepared statement. Thank you for the opportunity to inform the Commission of the States' efforts to ensure reliability. I will be happy to attempt to answer any questions you may have.

Appendix

The following Appendix highlights some of the findings of the NRRI survey for the purpose of giving the Commission a deeper understanding of the States' involvement in addressing reliability issues:

NRRI conducted the 2004 NRRI survey between April and October 2004. This survey was a follow-up to an almost identical survey conducted in 2001. In the 2004 survey, forty-one (41) States responded, one more than in 2001.

In response to the 2004 NRRI survey, some States reported new proceedings regarding reliability. Some of this activity was likely the result of the major blackout that affected the Northeastern United States and Canada Aug. 14, 2003. In addition, hurricanes caused widespread outages in 2003 and 2004, possibly leading to state proceedings. As examples of these State reliability proceedings, Oklahoma conducted a reliability rulemaking proceeding in 2004 and Delaware set interim reliability standards through 2005.

According to the NRRI survey, several States have formal standards on reliability and service quality. Twenty-four (24) States require reporting and monitor reliability and service quality. Twenty-one (21) States have performance standards. Fifteen (15) States have established penalties for failing to meet standards and/or rewards for meeting standards. The survey found that most States' performance benchmarks are utility-specific, although Illinois and New Mexico reported uniform, statewide benchmarks. In response to the survey, Kansas stated that there is insufficient conforming data to establish meaningful standards. In addition, Iowa responded that, while it has no benchmarks now, it plans to gather five (5) years of data and then review standards. Typically, States that have performance benchmarks use historical data to set those benchmarks.

Many States have specific requirements for tree trimming. Most States responding to the NRRI survey cited their adoption of the National Electric Safety Code (NESC) with respect to tree trimming.

The States also have different power outage reporting requirements. For example, twenty-five (25) States require utilities to report the cause or causes of outages. Twenty-three (23) States require reports on the number of customers affected by an outage. Twenty-six (26) require reporting on outage duration. Also, three (3) States require media coverage of power outages.

Thirteen (13) States reported that they have specific power quality standards. Seven (7) States reported that they account for service quality in performance-based or incentive ratemaking mechanisms, which was two more States than made a similar report in 2001.

In summary, the 2004 NRRI survey found an increase in State activity regarding reliability over 2001 levels. More States are using performance standards to ensure and improve reliability and service quality. In particular, more States, although still a minority of the total, use targeted financial penalties and/or rewards to ensure reliable service.

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