

March 13, 2002

Dear Colleague:

The Energy Policy Act of 2002 , S. 517, contains provisions that are intended to create a system to ensure that the grid for delivery of electricity is reliable. Sec 207. of S. 517 gives the responsibility for setting up and overseeing a reliability system to FERC. The system must apply to all users of the system, the rules must be mandatory and there must be penalties for failure to comply with the rules.

No one disagrees that this is an urgent issue and must be dealt with in legislation. No one disagrees that these are the appropriate goals or that FERC should have oversight of such a system. There are differences, however, over how these principles should be implemented. S. 517 takes the simplest approach possible. It gives FERC the responsibility and gives great flexibility to defer to expert organizations, regional entities and states to implement this obligation.

The Western Governors Association has proposed an amendment that may be offered that would take a far more cumbersome and complicated approach to accomplishing these goals. This proposal would create a tangle of procedural red tape that could tie up attempts to make certain that the grid is reliable.

The amendment would require FERC to create a reliability structure that:

- \$ Creates a national electric reliability organization (ERO) to be approved by FERC ;
- \$ Allows creation of regional reliability entities and creates a rebuttable presumption that any regional entity on an interconnection-wide basis should be accepted@,
- \$ Creates a rebuttable presumption that standards offered by an interconnection-wide entity are just and reasonable and not unduly discriminatory;
- \$ Allows FERC only to remand rules that are not just and reasonable to the ERO or regional entity;
- \$ Creates a complaint process that is so cumbersome that it could take months or years to finally reach a compliance order.
- \$ Only in one part of the Country is there any likelihood that an interconnection-wide entity can be created, the West beyond the Rocky Mountains.

This structure is so complex as to render it unworkable. If someone is acting in a way that the national reliability experts think endangers the stability of the delivery system, those experts should not have to go through a cumbersome process in order to remedy the problem.

FERC currently is engaged in a discussion of reliability issues that embodies the kind of consultation and cooperation that should take place between expert organizations, states and Federal officials. Concerns have developed about the relationship between commercial practice standards and reliability standards. This process is to develop an understand of the overlap between the two, and to design organizational structures to deal adequately with them. The discussion has been conducted in close consultation with the North American Electric Reliability Council, the Gas Industry Standards Board, states, regional reliability councils, the Edison Electric Institute and other market participants. It would be ironic for the industry to come to a consensus on how to deal with these important reliability issues just as the Congress passes a bill that requires a different structure.

The reliability structure should be simple and dependable. We should require the FERC to implement a system, give them guidelines, and give them flexibility to defer to expert and regional bodies and the states. That is what S. 517 does. We should not create a system too complicated to ensure the reliability of electric service.

I urge you to support the reliability provisions of S. 517.

Sincerely,

Jeff Bingaman