

**BEFORE THE
UNITED STATES SENATE COMMITTEE
ON GOVERNMENTAL AFFAIRS**

Testimony of

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CONSUMER ADVOCATE

OF

PENNSYLVANIA

On Behalf of

THE NATIONAL ASSOCIATION OF UTILITY CONSUMER ADVOCATES (NASUCA)

Regarding

ELECTRIC SYSTEM RELIABILITY

June 28, 2001

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TESTIMONY BEFORE THE UNITED STATES SENATE
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IRWIN A. POPOWSKY, CONSUMER ADVOCATE OF PENNSYLVANIA

My name is Irwin Popowsky. I have served as the Consumer Advocate of Pennsylvania since 1990. I am also the Past President and former Chairman of the Electric Committee of the National Association of State Utility Consumer Advocates (NASUCA). From 1997 to 2001, I served as the first (and last) representative of small utility consumers on the Board of Trustees of the North American Electric Reliability Council (NERC). Since NERC moved to a wholly independent board structure earlier this year, I have served on the newly-established NERC Stakeholders Committee. I am testifying today on behalf of NASUCA.

NASUCA is an organization comprised of offices from 40 states and the District of Columbia, charged by their respective state laws to represent utility consumers before federal and state utility regulatory commissions, before other federal and state agencies and before federal and state courts. Each NASUCA member has extensive experience with regulatory policies governing the electric utility industry and has actively participated in the recent debates concerning restructuring of the industry and proposed federal electricity reliability legislation. NASUCA members' primary interest is the protection of residential and other small utility consumers.

In your letter of invitation to speak here today, you asked NASUCA to address “the challenges to electric system reliability resulting from the restructuring of the electric industry and its increasing reliance on competitive markets.” In my opinion, there is no more important issue facing the electric industry and its consumers today. There remains tremendous disagreement across the Nation regarding the relative benefits and costs of electric restructuring. But there is little disagreement, at least in my view, that if the road to restructuring leads us down the path of severely deteriorated reliability then we will have accomplished little as a Nation and will indeed have set ourselves back both economically and in terms of basic human welfare.

Today, I would like to discuss the role of the states, the NERC, the Federal Energy Regulatory Commission (FERC) and the Regional Transmission Organizations (RTO’s) in ensuring that the American public will continue to receive the reliable electric service that they have grown to expect and which I think they deserve.

In my view, each state must continue to play an important role in ensuring reliability for its consumers. In practice, the largest number of day-to-day outages and reliability problems that affect retail consumers occur on the local distribution system, which has been and remains under state jurisdiction. States have long experience addressing these issues. They are already dedicating resources to this aspect of reliability. Therefore, federal involvement here would be duplicative and less effective than the current state efforts. Indeed, each piece of legislation addressing reliability that is now before Congress contains language which makes it clear that

nothing in the legislation “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 organizational standards established under the Act. It is essential that any actions taken either by FERC, NERC, or Congress continue to recognize the necessary and valuable role played by the states in this issue.

Nevertheless, it is obvious that electric reliability problems can affect more than one state. Indeed, NERC itself was formed in response to the blackout of 1965 that cascaded across the Northeast with no respect for state boundaries. In my opinion, NERC and its member Regional Reliability Councils have done an outstanding job in developing and helping to implement standards and tools to operate an extremely reliable electric network across the United States and Canada. NERC, however, is a voluntary organization and traditionally it has had no ability to enforce its rules through anything more than peer pressure. To its credit, I believe that NERC has done almost everything that it can do, first to open its doors to organizations like NASUCA that are outside of the traditional utility industry, and then to establish a fully independent board of trustees composed of distinguished individuals who do not have a stake in any particular industry segment. NERC and some of its regional councils have also attempted to develop contractual enforcement mechanisms to put more force behind their rules and standards.

But NASUCA agrees with NERC that more is needed, and we fully support the legislation that has been proposed in both the United States Senate and House of Representatives that

would establish a self-regulating industry organization that would continue to develop reliability standards, but whose standards would be fully enforceable and ultimately subject to the review of the FERC. I believe that this proposal is not only a reasonable allocation of responsibility between NERC and FERC, but that it is essential in a world of increased competition, particularly at the wholesale bulk power level. The players in this game can no longer also serve as the referees, and the referees must be able to do more than just issue warnings to the players who violate the rules. We need legislation that will establish a self-regulating organization that is focused on reliability and has the expertise to set standards and rules that are enforceable with real penalties and that have the ultimate backing of federal law through review by the FERC.

What else can FERC do? Now that FERC is back at its full five-member complement, I hope that it will turn its attention as soon as possible to completing the task of establishing a complete set of regional transmission organizations (RTO's) across the United States. These organizations will play a vital role in the operation and planning of the electric network in a reliable and economical fashion. If it were up to me, many of these organizations would look a lot like the PJM Independent System Operator (PJM ISO), which serves both my home in Harrisburg and the people here in the Nation's Capital, and which I think has operated the most successful regional market in the United States. In particular, I would urge the FERC to look at the model of the PJM independent board as an important aspect of developing an effective, reliable system which is not dominated by any individual company or industry segment. But in any case, I believe that the new RTO's must coordinate their activities closely with their respective regional reliability organizations and with any new national reliability organization that

may arise from current legislation. Ultimately, every reliability standard will have effects on the economics of many transactions, and any economic transaction could have an effect on reliability. RTO's and reliability organizations must work together on wholesale bulk power issues, but ultimately they must both answer to a single entity, which I believe for interstate purposes must be FERC.

I would like to close with a personal observation about the recent electric restructuring experiences in California and my own experience in Pennsylvania. Viewing the California situation with the benefit of hindsight from 3,000 miles away, I would have to say that even if wholesale prices had not spiked to absurd levels and even if major utilities had not been thrown into financial disarray, the reliability impacts alone of the recent and current situation in California are totally unacceptable. I honestly never thought I'd see the day when such a large segment of the American public could not be confident that their lights would stay on from one day to the next. A few years ago, some people questioned whether there would be adequate generation supplies at reasonable prices in a restructured electric industry, but they were assured that "the market would provide." Well, the market hasn't provided in California. The question our Nation must face is whether the failure of the California market was a result of a "Perfect Storm" of events, in which everything that could go wrong (including the weather) did go wrong; or whether California is the canary in the mineshaft, giving the rest of the Nation a warning that we should turn back from this path as soon as possible.

In contrast, when I look in Pennsylvania at the current PJM market, either as a result of good fortune (including good weather) or skill, I generally see reliable service, supply keeping up with demand, new plants under construction, transmission planning being conducted on a regional basis, the beginning of the development of demand side response programs, and prices that at least most hours of the year are within the range of what one would expect to see in a competitive market. The PJM market still has several flaws and is far from perfect, particularly in the PJM capacity market, but at least the Staff and Independent Board of PJM, as well as many PJM members, recognize these flaws and are taking steps to try to remedy them.

I am hopeful that our experience in PJM to date will turn out to be closer to the rule and that the recent California experience will prove to be the exception, even for those people who are now suffering through it. But I think that we first need to ensure that entities such as the newly reconstituted North American reliability organization, the FERC and the (hopefully) independent RTO's have the tools to create enforceable reliability rules and market structures where the benefits of competition can be secured for all Americans in a reliable and economic manner.

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