Comments of Public Service Enterprise Group
To Electric Wholesale Proposals
February 1, 2002

Public Service Enterprise Group ("PSEG") hereby submits its comments with respect to the formation of an electric wholesale standards development organization. The PSEG companies enjoy a unique perspective as owner of transmission facilities in PJM, as owner/operator of generation facilities in the Northeast and Midwest, and as a power marketer actively involved in the competitive sale of wholesale electricity throughout the Northeast, Midwest and, to a lesser extent, the Southeast.

As a general comment, whatever organization and process is ultimately adopted, it *must* meet the requirements of Congress for voluntary consensus standards as set forth in the National Technology Transfer and Advancement Act of 1995, which has been implemented by OMB Circular A-119.

PSEG favors an integrated model detailed above whereby the development of all electricity standards takes place in the ANSI-accredited NAESB structure, with NERC continuing to fulfill its vital role of monitoring the grids for the purposes of reliability and being a participant on an equal footing with all other participants in standards development.

The standards development organization should have as its sole purpose the development of new or modified standards at the request of any entity, by the means set forth in an appropriate ANSI accredited standards development process.

Upon approval of a standard or practice in that process, the proposal should be filed with FERC, Canada and Mexico and at each regulator's sole discretion FERC, Canada or Mexico may choose to accept it as mandatory or voluntary, as submitted or with changes made by FERC, Canada or Mexico, or it may remand it to the organization with a request for modifications to be developed. This is similar to the long-standing practice followed by FERC and GISB in the natural gas wholesale industry.

Implementation and minor matter enforcement of the standards and practices would be through the RTOs, with FERC, Canada and Mexico as the backstop and trier of major infractions and appeals, since the RTOs have the

required data and are already charged with reliability and market facilitation responsibility by FERC and are in the best position to balance market and reliability needs.

PSEG Position on Items Listed on the Cover Page of the Wholesale Electric Quadrant Matrix dated 1/29/02:

- **Governance**
  - **Organization** – The Board of the Electric Wholesale Quadrant should fit within the NAESB guidelines and should be purely administrative in function without a direct role in standards development or approval. Otherwise the Board will be able to overturn the consensus reached by the stakeholders and call into question ANSI accreditation. The Board should be a balanced segment stakeholder board, with each voting segment of the Quadrant electing an equal number of directors.
    - The NAESB executive committee process and structure should be adopted for the Electric Wholesale Quadrant.
    - Membership and participation on all committees should never be by appointment by a higher-level committee or board, but must be open to all interested stakeholders. Participation by appointment is exclusive, not inclusive. Likewise, all voting must be open to all member stakeholders and conducted by segment. At the low level committees, eligibility to vote should not be limited to members, but open to all so long as they have declared a segment.
    - All standards upon ratification by the general membership should be filed with FERC and the appropriate Canadian and Mexican regulators.
  - **Voting methodology for standards adoption** should follow the NAESB process of super majority sector voting, with a minimum of two-thirds affirmative vote of all executive committee members and 40 percent of each segment voting in the affirmative to approve, with ratification by two-thirds of the general voting membership. The ability of a single segment to block a proposal and thus send it back to committee for further consideration is critical to prevent a sector from being "rolled."

An example might be unreasonably onerous testing proposed to be required of generators, which would constitute an unreasonable burden on that single segment imposed by the other segments, and *should* be remanded to reach a true consensus. Subcommittee votes should be by sector, and open to all meeting attendees to vote without regard to membership status. Neither the Board, nor NERC nor any similar non-regulatory body should be empowered to negate, modify, delay or otherwise frustrate the intent of the stakeholders or Executive Committee that has voted to adopt or ratify a standard.

- While the NAESB Executive Committee voting by segment model for standards approval is acceptable, PSEG believes that the NERC WESM pure weighted segment voting is superior as it eliminates the granularity of having each vote of an Executive Committee member count as 20 percent of that segment, and avoids any issues of representatives voting out of sync with the wishes of their constituents. Utilizing electronic means of voting would eliminate any complexities.
- PSEG is concerned that the WESM Standards Drafting Teams will not have a fully open, weighted segment voting mechanism. The "power of the pen" is critical to balance and fairness, and it is essential that participation on and voting in the Standards Drafting Teams subprocess is open to all, and that voting is by weighted sector. Anything less compromises openness, balance, fairness and inclusivity. NERC's proposal that the Standards Authorization Committee appoint members of the Standards Drafting Team should be discarded, as stakeholders will naturally populate the drafting teams in their enlightened self-interest.

- **Voting Membership for Standards Adoption** should permit only paid members voting in their respective sectors as specified in the NAESB process.
- **Role of the NERC Board -** NERC should now discontinue any role in the development or enforcement of standards and practices, except that it may if it so chooses be an active participant in the development activities under NAESB auspices. NERC should concentrate its efforts on its traditional reporting and data-gathering role, including the preparation of

periodic adequacy and reliability assessments and identification of areas where adequacy or reliability may be deteriorating and in need of attention. Neither NERC nor its Board should have any authority to review or approve any standard beyond that of any other participant. To do otherwise compromises the integrity, balance and fairness of the process, and calls into question the ANSI certification. A few parties have commented that NERC's expertise must not be lost in the process of transition. Any such fears should be allayed by the realization of the fact that NERC's expertise is not resident in the handful of NERC professional staff, but rather is found in the hundreds of volunteer stakeholders that participate in the NERC committee process. Those same stakeholders will populate the NAESB Electric Wholesale Quadrant development committees so that necessary expertise will not be lost.

    - Allowing the NERC or the NERC Board to filter standards under development or review and modify or reject standards after they are voted upon by the stakeholders is discriminatory and affords NERC two bites at the apple. If NERC didn't get its way by influencing the drafting, the NERC Board could impose its will during/after the approval stage under this misguided suggestion. Allowing NERC review would also jeopardize ANSI accreditation and fairness would be compromised. Likewise, appeals to the Electric Wholesale Quadrant Board should be limited to allegations that the development and voting process was not properly followed.

- **Segments -** The segment voting methodology is appropriate, and the number and composition of the segments must be balanced and fair. The segments should be the minimum number to reflect the function and general characteristics of the interests in the electric power market. Similar interests must all be in the same segment, not smaller segments that may have the affect of affording any given interest a disproportionate influence in the process
- . These broad interest segments can be described as follows:
    (1) Load Serving Entities (including TDUs, distribution companies, Co-ops, municipal systems and so forth),

(2) End Users (ultimate consumers of electric regardless of size as well as consumer advocates),
(3) Transmission owners, ITCs, Transcos.
(4) Generators,
(5) Marketers and brokers, and
(6) RTOs (It would be expected that as RTOs become operational the NERC Regions will merge into and become part of the RTOs.) RTOs are neutral organizations that bring a different perspective than all other entities in that by FERC mandate, RTOs are market facilitators, are responsible for short-term reliability, must treat transmission, generation and demand side or other options equally without favoritism, and are responsible for long-term reliability through regional planning and interregional coordination.

- National Grid urges that a separate segment for ITCs is required. There is no basis for distinguishing the interests of ITCs from other owners of transmission. The interests are essentially identical; business plans may differ, but that is no reason to create yet another segment. Similarly, public power, municipals, rural cooperatives, investor owned utilities, federal power marketing agencies, etc. should not have a separate segment, but should participate in the segment or segments in which they have legitimate business interests. A distribution company has virtually identical functions without regard to it specific ownership or entity structure. Likewise with other functions. The basic functions are what counts when it comes to segments, and proliferation of segments is to be avoided as it adds unnecessary complexity and serves to make true balance much more difficult to achieve.
- Service providers can participate at the meetings but should not have their own segment or vote. Service providers' interests are in advocating their own product and influencing standards to accommodate their product, if possible, exclusively. Service providers' interest is not directly tied to reliability/commercial, as are the interests of the other stakeholders.

- **Multi-segment representation -** Each entity would annually self-select the segment or segments in which it has a bona fide business interest and in which it desires to vote. A review and appeals process to handle any disputes as to qualification to vote in any given segment will be needed. Each entity having significant investment or operations in a segment, without regard to its legal or corporate form, should be entitled to vote at all levels in that segment. Anything less results in an exclusionary and not inclusive process. The only exception should be that for multiple similar entities (e.g., generators each of which is organized as a separate corporation under a common parent) only one vote in the generator segment for the entire group should be permitted.

- **Relationship between Business Practices and Reliability Standards**
  - **Convergence -** Reliability and commercial practices are inseparable. The provisions of each impacts the other. There are also efficiencies in resources, especially both organizationally and for process participants, by having a single place to shop for all rules. Where market rules and business practices have not been developed to support and enhance reliability, the System Operators have had to restrict access to the markets. Where the rules are aligned with the needs of the System Operator, the synergies allow markets and business to be the basis for assuring and enhancing reliability, with complete flexibility for the market participants' use of the grid. A few parties have used the phrase "core reliability issues" that implies that there are certain issues that impact reliability only and not the market. There are no such "pure" reliability issues, and any attempt to categorize any issues as such is misplaced. Every reliability standard has a cost/dollar impact associated with satisfying it and that cost affects the market. Bifurcation will simply not work. All issues should be treated as having both reliability and market impacts and the identification of impacts and selection of priorities for development left to the stakeholders. NAESB should be designated as the single place to shop for development of electric and natural gas wholesale and retail reliability and business practice standards. Widely recognized is the fact that commercial and reliability standards

cannot be separated, and that there are interrelationships among electric and natural gas markets, retail and wholesale. All standards contain elements of both commercial and reliability, and with the best model employed to develop the standards operating in conjunction with the best reliability information and advice, we would seem to have the best of both worlds.

- A party has suggested that all that matters is coordination. Coordination would be at best, complex, and implies that a clean division between reliability and commercial can be made. Even with the best of coordination of two entities or committees, standards would tend to ping pong between the two groups. TAPs also suggested that there should be separate boards for commercial and reliability. That would also beg the question of clearly defining which standard was which and create an untenable situation of dueling boards.

- **Compliance and Enforcement -** The standards and practices development – enforcement – and penalty assessment functions should be performed to the extent possible by different entities, to provide maximum fairness.
  - By way of analogy, to implement FERC policy:
    - (1) NAESB would develop the standards that would become mandatory upon acceptance by FERC (and Canadian and Mexican regulators) in its quasi-legislative role and included directly or by reference in tariffs (just as a state/provincial legislative process establishes vehicular speed limits),
    - (2) The detection and enforcement of violations would be done by the RTOs (just like police departments patrol roadways to enforce speed limits), with perhaps the RTOs empowered to assess fines for minor infractions (the equivalent of pleading guilty to a speeding violation and mailing in the fine), and
    - (3) Appeals or major enforcement actions conducted directly by FERC (or Canadian or Mexican regulators) in its quasi-judicial role (just as the motorist has recourse to the courts). What

must be avoided is the police setting the standards, enforcing the standards, and levying the fines.

- FERC has sufficient jurisdiction over reliability to accomplish the above. In the past, FERC has seen little need to exercise its reliability jurisdiction as the integrated utility industry functioned well thru voluntary compliance with NERC guidelines and principles. However, with restructuring FERC has in recent times begun to exercise its reliability jurisdiction, most notably with Orders relating to TLRs, E-Tag requirements, and concern with independence of security coordinators. The inseparability of reliability and commercial practices is widely recognized, and FERC's established commercial jurisdiction therefore independently supports concurrent jurisdiction over reliability. Since the two concepts are inescapably intertwined, the well-settled series of legal decisions up through the US Supreme Court that even a slight degree of intermixing of electricity flowing in interstate commerce over facilities largely intrastate in nature none-the-less affords FERC jurisdiction over the whole, is a close analogy. Given that FERC has undisputed jurisdiction over commercial aspects of wholesale electricity, and that reliability is affected by, affects and is inseparable from, those commercial aspects, FERC of necessity on that basis of 'commingling' of affects alone must have jurisdiction over wholesale reliability.

- **Regional Variances –** Regional variances should be permitted where demonstrated to be in the public interest. However, such variances must be developed as one or more options in the regular standards development process, and regions able to choose and observe the option it deems appropriate to its region. This is same approach followed in the NAESB Natural Gas Wholesale Quadrant. It ensures that specific regional needs are met, while the consensus process by all stakeholders in developing the standards prevents impediments to an efficient market or reliability concerns arising from any variances. No variance should constitute an unreasonable barrier to entry to a market or region.

- **Relationship with Entities**

- **Relationship with FERC/Canada –** The NAESB process is designed and intended to foster participation by all interested parties, and it is anticipated that Canadian and Mexican stakeholders will participate actively to have their needs met through consensus. The consensus process will ensure that few, if any, standards will not be acceptable to all three nations. Once a standard is developed and approved, it should be filed with FERC and the appropriate Canadian and Mexican regulators.
    - TAPs suggests that FERC revisit filed standards *de novo* and not give deference to the Standards Development Organization. Such a position is contrary to the direction of Congress in the National Technology Transfer and Advancement Act of 1995, which has been implemented by OMB Circular A-119 which disfavors federal agencies routinely reinventing the wheel when adopting standards developed in a proper voluntary consensus process. Upon receipt of the filing of standards FERC would be expected to issue a Notice of Proposed Rulemaking affording interested parties including TAPs an opportunity to comment. Also, if FERC determines to modify them, under OMB Circular A-119 it may do so, and need only send a report to Congress explaining its reasoning. These due process protections at FERC should be sufficient to allay any concerns of TAPs or other stakeholders.
    - FERC and its Canadian and Mexican counterparts should be the exclusive formulators of policy. The Standards Development Organization should limit itself to developing standards that implement that policy, and not take any advocacy position. Otherwise, a less than cooperative attitude will develop in the standards organization and the process will be burdened with excessive advocacy on policy rather than concentrating of standards development. Policy advocacy should be done by stakeholders in the regulatory forum.
- **Role of the State Commissions -** State regulators should be encouraged to participate in the process in a separate, non-voting advisory segment. (A number of commissions believe that taking a voting position on matters over which they may be

required to consider in their state regulatory role is improper and may even be illegal under their respective state laws.) The ability of some regulators to vote and others not may result in a lopsided segment bias favoring particular regions or regulatory philosophy, not because all interested stakeholders in a regulator segment have voted that way, but as a result of an exclusive subset that believes that it is legally appropriate for it to vote under there respective state laws.

    - State Consumer Advocates, should they elect to participate and vote, would be able to do so in the end user/customer segment.

- **Relationship with RTOs -** RTOs are neutral organizations that bring a different perspective than all other entities in that by FERC mandate, RTOs are market facilitators, are responsible for short-term reliability, must treat transmission, generation and demand side or other options equally without favoritism, and are responsible for long-term reliability through regional planning and interregional coordination. It is expected that as RTOs become operational the NERC Regions will merge into and become part of the RTOs. RTOs under FERC Order 2000 must implement the standards. The RTO role in enforcement and compliance is detailed above under that subheading.

• Standards Development Process

- **A day in the life of a standard –** PSEG believes that the standards development entity for the electric wholesale industry should be the North American Energy Standards Board ("NAESB," the successor to GISB) Electric Wholesale Quadrant under the NAESB Board and completely independent of NERC, beyond NERC participation on the same basis as any other stakeholder. The proposal from the NAESB is superior to any other model. NAESB has a proven, ANSI certified process for standards development, is viewed favorably by FERC, and provides the dynamic latitude for stakeholders to address development with whatever sub-groups seem appropriate.

  The process for how a proposal moves from the concept stage to an approved standard is detailed in the NAESB documents.

- **Coordination of Standards Development Between Quadrants –** Not all, but some, standards will affect multiple quadrants. This is yet another reason that a single entity should

be the one place to shop for all standards. The NAESB four-quadrant model admirably represents the ongoing convergence of the gas and electric businesses, and implicitly ensures standards will receive the input of all industry segments when appropriate.

- **Treatment of Existing NERC Standards –** There will be a period of time before all standards can be reviewed by the new standards development entity. During that time the status quo for observing NERC standards should maintained to avoid a reliability rule hiatus. It is anticipated that most of the existing standards will not engender controversy and will simply be continued on a voluntary basis until standards are processed through the standards development organization and filed with FERC and the Canadian and Mexican regulators. Those few that some stakeholder may find objectionable can be flagged by those stakeholder by means of a request that those standards be priority items for the new standards development entity to address.
- **Staff Support in Standards Development Process –** PSEG favors the existing NAESB Natural Gas Wholesale Segment approach wherein the NAESB staff is administrative, providing support to the committees and subcommittees as they develop standards. Stakeholders, exercising their own enlightened self-interest, should do the drafting. The diverse expertise of the stakeholders is beyond that which any staff could be expected to provide, and stakeholder drafting avoids the extra step of having to send drafts back and forth between stakeholders and a staff. Moreover, by keeping the standards development organization overhead to a minimum, the fees to join and vote will be kept to a level affordable to all interested stakeholders. For those very small stakeholders that may not be able to participate directly, they may group together to designate a proxy for the drafting with the cost of the proxy spread over their group to ensure they are well represented at a modest individual stakeholder cost.
- **ANSI Accreditation –** It is essential that all aspects of the standards development process be ANSI certified. ANSI certification is the generally accepted and time proven means of achieving the goals of a fair, open and inclusive process. NAESB has already been informed by ANSI that the NAESB

process is acceptable. Moreover, ANSI accreditation is the best, and perhaps only expeditious, way to meet the FERC Order issued December 19, 2001 in Electric Market Design and Structure Docket No. RM01-12-000 which cites in Footnote 1 (mimeo at page 1) OMB Circular No. A-119 for the form that the organization must take to achieve true industry consensus. The Circular lists the requirements set forth in OMB Circular No. A-119 – (i) Openness, (ii) Balance of interest, and (iii) Due process, (vi) An appeals process, and (v) Consensus, which is defined as general agreement, but not necessarily unanimity, and includes a process for attempting to resolve objections by interested parties, as long as all comments have been fairly considered, each objector is advised of the disposition of his or her objection(s) and the reasons why, and the consensus body members are given an opportunity to change their votes after reviewing the comments.

- **Funding –** As described above under "Staff Support", the overhead of the standards development organization should be kept to a minimum to make participation affordable for all interested stakeholders. PSEG favors the NAESB approach of no charge to participate in the standards drafting committees, and a nominal $5,000 to be a voting member (for electing representatives on the Executive Committee and for standard ratification) of any segment in which the stakeholder has a bona fide interest. $5,000 annually is not unreasonable for any entity to join what is a single standards development organization covering all of North America. Costs of participation should be borne by stakeholders which will chose to participate in their enlightened self-interests. Small entities can choose to participate directly or to pool their resources and delegate one or more individuals to participate on their behalf at a reasonable cost to each.
    - Simply stated, tiered dues are pure subsidization of a class of entities by others. One of the thorniest problems we have faced in restructuring the electric industry is identifying and eliminating subsidies so that all participants compete on a level playing field. PSEG strongly questions the wisdom of creating yet another subsidy as we are proceeding down the road of deregulation.

- **Scope -** PSEG believes that the organization should be limited to standards development, to develop necessary standards for fostering a seamless, efficient, coordinated market for reliable electric supply implementing FERC, Canadian and Mexican established policy and standard market design, with appropriate consideration of regional, Canadian or Mexican variances. Since reliability and commercial rules are inextricably intertwined, the scope of the organization should be described simply as "standards development."

Public Service Enterprise Group
80 Park Plaza
Newark, New Jersey 07102