

106TH CONGRESS  
2D SESSION

# H. R. 4881

To benefit electricity consumers by promoting the reliability of the bulk-power system.

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IN THE HOUSE OF REPRESENTATIVES

JULY 18, 2000

Mr. SMITH of Washington introduced the following bill; which was referred to the Committee on Commerce

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## A BILL

To benefit electricity consumers by promoting the reliability of the bulk-power system.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Electric Reliability  
5 2000 Act”.

6 **SEC. 2. ELECTRIC RELIABILITY ORGANIZATION.**

7 (a) IN GENERAL.—Part II of the Federal Power Act  
8 (16 U.S.C. 824 et seq.) is amended by adding at the end  
9 the following:

1 **“SEC. 215. ELECTRIC RELIABILITY ORGANIZATION.**

2 “(a) DEFINITIONS.—In this section:

3 “(1) AFFILIATED REGIONAL RELIABILITY ENTI-  
4 TY.—The term ‘affiliated regional reliability entity’  
5 means an entity delegated authority under sub-  
6 section (h).

7 “(2) BULK-POWER SYSTEM.—

8 “(A) IN GENERAL.—The term ‘bulk-power  
9 system’ means all facilities and control systems  
10 necessary for operating an interconnected elec-  
11 tric power transmission grid or any portion of  
12 an interconnected transmission grid.

13 “(B) INCLUSIONS.—The term ‘bulk-power  
14 system’ includes—

15 “(i) high voltage transmission lines,  
16 substations, control centers, communica-  
17 tions, data, and operations planning facili-  
18 ties necessary for the operation of all or  
19 any part of the interconnected trans-  
20 mission grid; and

21 “(ii) the output of generating units  
22 necessary to maintain the reliability of the  
23 transmission grid.

24 “(3) BULK-POWER SYSTEM USER.—The term  
25 ‘bulk-power system user’ means an entity that—

1           “(A) sells, purchases, or transmits electric  
2 energy over a bulk-power system; or

3           “(B) owns, operates, or maintains facilities  
4 or control systems that are part of a bulk-power  
5 system; or

6           “(C) is a system operator.

7           “(4) ELECTRIC RELIABILITY ORGANIZATION.—  
8 The term ‘electric reliability organization’ means the  
9 organization designated by the Commission under  
10 subsection (d).

11           “(5) ENTITY RULE.—The term ‘entity rule’  
12 means a rule adopted by an affiliated regional reli-  
13 ability entity for a specific region and designed to  
14 implement or enforce 1 or more organization stand-  
15 ards.

16           “(6) INDEPENDENT DIRECTOR.—The term  
17 ‘independent director’ means a person that—

18           “(A) is not an officer or employee of an  
19 entity that would reasonably be perceived as  
20 having a direct financial interest in the outcome  
21 of a decision by the board of directors of the  
22 electric reliability organization; and

23           “(B) does not have a relationship that  
24 would interfere with the exercise of independent

1 judgment in carrying out the responsibilities of  
2 a director of the electric reliability organization.

3 “(7) INDUSTRY SECTOR.—The term ‘industry  
4 sector’ means a group of bulk-power system users  
5 with substantially similar commercial interests, as  
6 determined by the board of directors of the electric  
7 reliability organization.

8 “(8) INTERCONNECTION.—The term ‘inter-  
9 connection’ means a geographic area in which the  
10 operation of bulk-power system components is syn-  
11 chronized so that the failure of 1 or more of the  
12 components may adversely affect the ability of the  
13 operators of other components within the inter-  
14 connection to maintain safe and reliable operation of  
15 the facilities within their control.

16 “(9) ORGANIZATION STANDARD.—

17 “(A) IN GENERAL.—The term ‘organiza-  
18 tion standard’ means a policy or standard  
19 adopted by the electric reliability organization  
20 to provide for the reliable operation of a bulk-  
21 power system.

22 “(B) INCLUSIONS.—The term ‘organiza-  
23 tion standard’ includes—

24 “(i) an entity rule approved by the  
25 electric reliability organization; and

1                   “(ii) a variance approved by the elec-  
2                   tric reliability organization.

3                   “(10) PUBLIC INTEREST GROUP.—

4                   “(A) IN GENERAL.—The term ‘public in-  
5                   terest group’ means a nonprofit private or pub-  
6                   lic organization that has an interest in the ac-  
7                   tivities of the electric reliability organization.

8                   “(B) INCLUSIONS.—The term ‘public in-  
9                   terest group’ includes—

10                   “(i) a ratepayer advocate;

11                   “(ii) an environmental group; and

12                   “(iii) a State or local government or-  
13                   ganization that regulates participants in,  
14                   and promulgates government policy with  
15                   respect to, the market for electric energy.

16                   “(11) SYSTEM OPERATOR.—

17                   “(A) IN GENERAL.—The term ‘system op-  
18                   erator’ means an entity that operates or is re-  
19                   sponsible for the operation of a bulk-power sys-  
20                   tem.

21                   “(B) INCLUSIONS.—The term ‘bulk-power  
22                   system’ includes—

23                   “(i) high voltage transmission lines,  
24                   substations, control centers, communica-  
25                   tions, data, and operations planning facili-

1                   ties necessary for the operation of all or  
2                   any part of the interconnected trans-  
3                   mission grid; and

4                   “(ii) the output of generating units  
5                   necessary to maintain the reliability of the  
6                   transmission grid.

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8                   ‘bulk-power system user’ means an entity that—

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10                  energy over a bulk-power system; or

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12                  or control systems that are part of a bulk-power  
13                  system; or

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17                  organization designated by the Commission under  
18                  subsection (d).

19                  “(5) ENTITY RULE.—The term ‘entity rule’  
20                  means a rule adopted by an affiliated regional reli-  
21                  ability entity for a specific region and designed to  
22                  implement or enforce 1 or more organization stand-  
23                  ards.

24                  “(6) INDEPENDENT DIRECTOR.—The term  
25                  ‘independent director’ means a person that—

1           “(A) is not an officer or employee of an  
2           entity that would reasonably be perceived as  
3           having a direct financial interest in the outcome  
4           of a decision by the board of directors of the  
5           electric reliability organization; and

6           “(B) does not have a relationship that  
7           would interfere with the exercise of independent  
8           judgment in carrying out the responsibilities of  
9           a director of the electric reliability organization.

10          “(7) INDUSTRY SECTOR.—The term ‘industry  
11          sector’ means a group of bulk-power system users  
12          with substantially similar commercial interests, as  
13          determined by the board of directors of the electric  
14          reliability organization.

15          “(8) INTERCONNECTION.—The term ‘inter-  
16          connection’ means a geographic area in which the  
17          operation of bulk-power system components is syn-  
18          chronized so that the failure of 1 or more of the  
19          components may adversely affect the ability of the  
20          operators of other components within the inter-  
21          connection to maintain safe and reliable operation of  
22          the facilities within their control.

23          “(9) ORGANIZATION STANDARD.—

24                 “(A) IN GENERAL.—The term ‘organiza-  
25                 tion standard’ means a policy or standard

1           adopted by the electric reliability organization  
2           to provide for the reliable operation of a bulk-  
3           power system.

4           “(B) INCLUSIONS.—The term ‘organiza-  
5           tion standard’ includes—

6                   “(i) an entity rule approved by the  
7                   electric reliability organization; and

8                   “(ii) a variance approved by the elec-  
9                   tric reliability organization.

10          “(10) PUBLIC INTEREST GROUP.—

11                   “(A) IN GENERAL.—The term ‘public in-  
12                   terest group’ means a nonprofit private or pub-  
13                   lic organization that has an interest in the ac-  
14                   tivities of the electric reliability organization.

15                   “(B) INCLUSIONS.—The term ‘public in-  
16                   terest group’ includes—

17                           “(i) a ratepayer advocate;

18                           “(ii) an environmental group; and

19                           “(iii) a State or local government or-  
20                           ganization that regulates participants in,  
21                           and promulgates government policy with  
22                           respect to, the market for electric energy.

23          “(11) SYSTEM OPERATOR.—

24                   “(A) IN GENERAL.—The term ‘system op-  
25                   erator’ means an entity that operates or is re-

1           sponsible for the operation of a bulk-power sys-  
2           tem.

3           “(B) INCLUSIONS.—The term ‘system op-  
4           erator’ includes—

5                     “(i) a control area operator;

6                     “(ii) an independent system operator;

7                     “(iii) a transmission company;

8                     “(iv) a transmission system operator;

9                     and

10                    “(v) a regional security coordinator.

11           “(12) VARIANCE.—The term ‘variance’ means  
12           an exception from the requirements of an organiza-  
13           tion standard (including a proposal for an organiza-  
14           tion standard in a case in which there is no organi-  
15           zation standard) that is adopted by an affiliated re-  
16           gional reliability entity and is applicable to all or a  
17           part of the region for which the affiliated regional  
18           reliability entity is responsible.

19           “(b) COMMISSION AUTHORITY.—

20                    “(1) JURISDICTION.—Notwithstanding section  
21           201(f), within the United States, the Commission  
22           shall have jurisdiction over the electric reliability or-  
23           ganization, all affiliated regional reliability entities,  
24           all system operators, and all bulk-power system  
25           users, including entities described in section 201(f),

1 for purposes of approving organization standards  
2 and enforcing compliance with this section.

3 “(2) DEFINITION OF TERMS.—The Commission  
4 may by regulation define any term used in this sec-  
5 tion consistent with the definitions in subsection (a)  
6 and the purpose and intent of this Act.

7 “(c) EXISTING RELIABILITY STANDARDS.—

8 “(1) SUBMISSION TO THE COMMISSION.—Be-  
9 fore designation of an electric reliability organization  
10 under subsection (d), any person, including the  
11 North American Electric Reliability Council and its  
12 member Regional Reliability Councils, may submit  
13 to the Commission any reliability standard, guid-  
14 ance, practice, or amendment to a reliability stand-  
15 ard, guidance, or practice that the person proposes  
16 to be made mandatory and enforceable.

17 “(2) REVIEW BY THE COMMISSION.—The Com-  
18 mission, after allowing interested persons an oppor-  
19 tunity to submit comments, may approve a proposed  
20 mandatory standard, guidance, practice, or amend-  
21 ment submitted under paragraph (1) if the Commis-  
22 sion finds that the standard, guidance, or practice is  
23 just, reasonable, not unduly discriminatory or pref-  
24 erential, and in the public interest.

1           “(3) EFFECT OF APPROVAL.—A standard, guid-  
2           ance, or practice shall be mandatory and applicable  
3           according to its terms following approval by the  
4           Commission and shall remain in effect until it is—

5                   “(A) withdrawn, disapproved, or super-  
6                   seded by an organization standard that is  
7                   issued or approved by the electric reliability or-  
8                   ganization and made effective by the Commis-  
9                   sion under section (e); or

10                   “(B) disapproved by the Commission if, on  
11                   complaint or upon motion by the Commission  
12                   and after notice and an opportunity for com-  
13                   ment, the Commission finds the standard, guid-  
14                   ance, or practice to be unjust, unreasonable,  
15                   unduly discriminatory or preferential, or not in  
16                   the public interest.

17           “(4) ENFORCEABILITY.—A standard, guidance,  
18           or practice in effect under this subsection shall be  
19           enforceable by the Commission.

20           “(d) DESIGNATION OF ELECTRIC RELIABILITY OR-  
21           GANIZATION.—

22                   “(1) REGULATIONS.—

23                           “(A) PROPOSED REGULATIONS.—Not later  
24                           than 90 days after the date of enactment of  
25                           this section, the Commission shall propose regu-

1           lations specifying procedures and requirements  
2           for an entity to apply for designation as the  
3           electric reliability organization.

4           “(B) NOTICE AND COMMENT.—The Com-  
5           mission shall provide notice and opportunity for  
6           comment on the proposed regulations.

7           “(C) FINAL REGULATION.—Not later than  
8           180 days after the date of enactment of this  
9           section, the Commission shall promulgate final  
10          regulations under this subsection.

11          “(2) APPLICATION.—

12           “(A) SUBMISSION.—Following the promul-  
13           gation of final regulations under paragraph (1),  
14           an entity may submit an application to the  
15           Commission for designation as the electric reli-  
16           ability organization.

17           “(B) CONTENTS.—The applicant shall de-  
18           scribe in the application—

19                   “(i) the governance and procedures of  
20                   the applicant; and

21                   “(ii) the funding mechanism and ini-  
22                   tial funding requirements of the applicant.

23          “(3) NOTICE AND COMMENT.—The Commission  
24          shall—

1           “(A) provide public notice of the applica-  
2           tion; and

3           “(B) afford interested parties an oppor-  
4           tunity to comment.

5           “(4) DESIGNATION OF ELECTRIC RELIABILITY  
6           ORGANIZATION.—The Commission shall designate  
7           the applicant as the electric reliability organization  
8           if the Commission determines that the applicant—

9           “(A) has the ability to develop, implement,  
10           and enforce standards that provide for an ade-  
11           quate level of reliability of bulk-power systems;

12           “(B) permits voluntary membership to any  
13           bulk-power system user or public interest  
14           group;

15           “(C) ensures fair representation of its  
16           members in the selection of its directors and  
17           fair management of its affairs, taking into ac-  
18           count the need for efficiency and effectiveness  
19           in decisionmaking and operations and the re-  
20           quirements for technical competency in the de-  
21           velopment of organization standards and the ex-  
22           ercise of oversight of bulk-power system reli-  
23           ability;

24           “(D) ensures that no 2 industry sectors  
25           have the ability to control, and no 1 industry

1 sector has the ability to veto, the applicant's  
2 discharge of its responsibilities as the electric  
3 reliability organization (including actions by  
4 committees recommending standards for ap-  
5 proval by the board or other board actions to  
6 implement and enforce standards);

7 “(E) provides for governance by a board  
8 wholly comprised of independent directors;

9 “(F) provides a funding mechanism and  
10 requirements that—

11 “(i) are just, reasonable, not unduly  
12 discriminatory or preferential and in the  
13 public interest; and

14 “(ii) satisfy the requirements of sub-  
15 section (l);

16 “(G) has established procedures for devel-  
17 opment of organization standards that—

18 “(i) provide reasonable notice and op-  
19 portunity for public comment, taking into  
20 account the need for efficiency and effec-  
21 tiveness in decisionmaking and operations  
22 and the requirements for technical com-  
23 petency in the development of organization  
24 standards;

1                   “(ii) ensure openness, a balancing of  
2                   interests, and due process; and

3                   “(iii) includes alternative procedures  
4                   to be followed in emergencies;

5                   “(H) has established fair and impartial  
6                   procedures for implementation and enforcement  
7                   of organization standards, either directly or  
8                   through delegation to an affiliated regional reli-  
9                   ability entity, including the imposition of pen-  
10                  alties, limitations on activities, functions, or op-  
11                  erations, or other appropriate sanctions;

12                  “(I) has established procedures for notice  
13                  and opportunity for public observation of all  
14                  meetings, except that the procedures for public  
15                  observation may include alternative procedures  
16                  for emergencies or for the discussion of infor-  
17                  mation that the directors reasonably determine  
18                  should take place in closed session, such as liti-  
19                  gation, personnel actions, or commercially sen-  
20                  sitive information;

21                  “(J) provides for the consideration of rec-  
22                  ommendations of States and State commissions;  
23                  and

24                  “(K) addresses other matters that the  
25                  Commission considers appropriate to ensure

1 that the procedures, governance, and funding of  
2 the electric reliability organization are just, rea-  
3 sonable, not unduly discriminatory or pref-  
4 erential, and in the public interest.

5 “(5) EXCLUSIVE DESIGNATION.—

6 “(A) IN GENERAL.—The Commission shall  
7 designate only 1 electric reliability organization.

8 “(B) MULTIPLE APPLICATIONS.—If the  
9 Commission receives 2 or more timely applica-  
10 tions that satisfy the requirements of this sub-  
11 section, the Commission shall approve only the  
12 application that the Commission determines will  
13 best implement this section.

14 “(e) ORGANIZATION STANDARDS.—

15 “(1) SUBMISSION OF PROPOSALS TO COMMIS-  
16 SION.—

17 “(A) IN GENERAL.—The electric reliability  
18 organization shall submit to the Commission  
19 proposals for any new or modified organization  
20 standards.

21 “(B) CONTENTS.—A proposal submitted  
22 under subparagraph (A) shall include—

23 “(i) a concise statement of the pur-  
24 pose of the proposal; and

1           “(ii) a record of any proceedings con-  
2           ducted with respect to the proposal.

3           “(2) REVIEW BY THE COMMISSION.—

4           “(A) NOTICE AND COMMENT.—The Com-  
5           mission shall—

6           “(i) provide notice of a proposal under  
7           paragraph (1); and

8           “(ii) allow interested persons 30 days  
9           to submit comments on the proposal.

10          “(B) ACTION BY THE COMMISSION.—

11          “(i) IN GENERAL.—After taking into  
12          consideration any submitted comments, the  
13          Commission shall approve or disapprove a  
14          proposed organization standard not later  
15          than the end of the 60-day period begin-  
16          ning on the date of the deadline for the  
17          submission of comments, except that the  
18          Commission may extend the 60-day period  
19          for an additional 90 days for good cause.

20          “(ii) FAILURE TO ACT.—If the Com-  
21          mission does not approve or disapprove a  
22          proposal within the period specified in  
23          clause (i), the proposed organization stand-  
24          ard shall go into effect subject to its terms,  
25          without prejudice to the authority of the

1 Commission to modify the organization  
2 standard in accordance with the standards  
3 and requirements of this section.

4 “(C) EFFECTIVE DATE.—An organization  
5 standard approved by the Commission shall  
6 take effect not earlier than 30 days after the  
7 date of the Commission’s order of approval.

8 “(D) STANDARDS FOR APPROVAL.—

9 “(i) IN GENERAL.—The Commission  
10 shall approve a proposed new or modified  
11 organization standard if the Commission  
12 determines the organization standard to be  
13 just, reasonable, not unduly discriminatory  
14 or preferential, and in the public interest.

15 “(ii) CONSIDERATIONS.—In the exer-  
16 cise of its review responsibilities under this  
17 subsection, the Commission—

18 “(I) shall give due weight to the  
19 technical expertise of the electric reli-  
20 ability organization with respect to  
21 the content of a new or modified orga-  
22 nization standard; but

23 “(II) shall not defer to the elec-  
24 tric reliability organization with re-

1                   spect to the effect of the organization  
2                   standard on competition.

3                   “(E) REMAND.—A proposed organization  
4                   standard that is disapproved in whole or in part  
5                   by the Commission shall be remanded to the  
6                   electric reliability organization for further con-  
7                   sideration.

8                   “(3) ORDERS TO DEVELOP OR MODIFY ORGANI-  
9                   ZATION STANDARDS.—The Commission, on com-  
10                  plaint or on motion of the Commission, may order  
11                  the electric reliability organization to develop and  
12                  submit to the Commission, by a date specified in the  
13                  order, an organization standard or modification to  
14                  an existing organization standard to address a spe-  
15                  cific matter if the Commission considers a new or  
16                  modified organization standard appropriate to carry  
17                  out this section, and the electric reliability organiza-  
18                  tion shall develop and submit the organization  
19                  standard or modification to the Commission in ac-  
20                  cordance with this subsection.

21                  “(4) VARIANCES AND ENTITY RULES.—

22                  “(A) PROPOSAL.—An affiliated regional  
23                  reliability entity may propose a variance or enti-  
24                  ty rule to the electric reliability organization.

1           “(B) EXPEDITED CONSIDERATION.—If ex-  
2 pedited consideration is necessary to provide for  
3 bulk-power system reliability, the affiliated re-  
4 gional reliability entity may—

5           “(i) request that the electric reliability  
6 organization expedite consideration of the  
7 proposal; and

8           “(ii) file a notice of the request with  
9 the Commission.

10          “(C) FAILURE TO ACT.—

11          “(i) IN GENERAL.—If the electric reli-  
12 ability organization fails to adopt the vari-  
13 ance or entity rule, in whole or in part, the  
14 affiliated regional reliability entity may re-  
15 quest that the Commission review the pro-  
16 posal.

17          “(ii) ACTION BY THE COMMISSION.—  
18 If the Commission determines, after a re-  
19 view of the request, that the action of the  
20 electric reliability organization did not con-  
21 form to the applicable standards and pro-  
22 cedures approved by the Commission, or if  
23 the Commission determines that the vari-  
24 ance or entity rule is just, reasonable, not  
25 unduly discriminatory or preferential, and

1 in the public interest and that the electric  
2 reliability organization has unreasonably  
3 rejected or failed to act on the proposal,  
4 the Commission may—

5 “(I) remand the proposal for fur-  
6 ther consideration by the electric reli-  
7 ability organization; or

8 “(II) order the electric reliability  
9 organization or the affiliated regional  
10 reliability entity to develop a variance  
11 or entity rule consistent with that re-  
12 quested by the affiliated regional reli-  
13 ability entity.

14 “(D) PROCEDURE.—A variance or entity  
15 rule proposed by an affiliated regional reliability  
16 entity shall be submitted to the electric reli-  
17 ability organization for review and submission  
18 to the Commission in accordance with the pro-  
19 cedures specified in paragraph (2).

20 “(5) IMMEDIATE EFFECTIVENESS.—

21 “(A) IN GENERAL.—Notwithstanding any  
22 other provision of this subsection, a new or  
23 modified organization standard shall take effect  
24 immediately on submission to the Commission

1 without notice or comment if the electric reli-  
2 ability organization—

3 “(i) determines that an emergency ex-  
4 ists requiring that the new or modified or-  
5 ganization standard take effect imme-  
6 diately without notice or comment;

7 “(ii) notifies the Commission as soon  
8 as practicable after making the determina-  
9 tion;

10 “(iii) submits the new or modified or-  
11 ganization standard to the Commission not  
12 later than 5 days after making the deter-  
13 mination; and

14 “(iv) includes in the submission an ex-  
15 planation of the need for immediate effec-  
16 tiveness.

17 “(B) NOTICE AND COMMENT.—The Com-  
18 mission shall—

19 “(i) provide notice of the new or modi-  
20 fied organization standard or amendment  
21 for comment; and

22 “(ii) follow the procedures set out in  
23 paragraphs (2) and (3) for review of the  
24 new or modified organization standard.

1           “(6) COMPLIANCE.—Each bulk power system  
2 user shall comply with an organization standard that  
3 takes effect under this section.

4           “(f) COORDINATION WITH CANADA AND MEXICO.—

5           “(1) RECOGNITION.—The electric reliability or-  
6 ganization shall take all appropriate steps to gain  
7 recognition in Canada and Mexico.

8           “(2) INTERNATIONAL AGREEMENTS.—

9           “(A) IN GENERAL.—The President shall  
10 use best efforts to enter into international  
11 agreements with the appropriate governments  
12 of Canada and Mexico to provide for—

13                   “(i) effective compliance with organi-  
14 zation standards; and

15                   “(ii) the effectiveness of the electric  
16 reliability organization in carrying out its  
17 mission and responsibilities.

18           “(B) COMPLIANCE.—All actions taken by  
19 the electric reliability organization, an affiliated  
20 regional reliability entity, and the Commission  
21 shall be consistent with any international agree-  
22 ment under subparagraph (A).

23           “(g) CHANGES IN PROCEDURE, GOVERNANCE, OR  
24 FUNDING.—

1           “(1) SUBMISSION TO THE COMMISSION.—The  
2 electric reliability organization shall submit to the  
3 Commission—

4           “(A) any proposed change in a procedure,  
5 governance, or funding provision; or

6           “(B) any change in an affiliated regional  
7 reliability entity’s procedure, governance, or  
8 funding provision relating to delegated func-  
9 tions.

10          “(2) CONTENTS.—A submission under para-  
11 graph (1) shall include an explanation of the basis  
12 and purpose for the change.

13          “(3) EFFECTIVENESS.—

14           “(A) CHANGES IN PROCEDURE.—

15           “(i) CHANGES CONSTITUTING A  
16 STATEMENT OF POLICY, PRACTICE, OR IN-  
17 TERPRETATION.—A proposed change in  
18 procedure shall take effect 90 days after  
19 submission to the Commission if the  
20 change constitutes a statement of policy,  
21 practice, or interpretation with respect to  
22 the meaning or enforcement of the proce-  
23 dure.

24           “(ii) OTHER CHANGES.—A proposed  
25 change in procedure other than a change

1 described in clause (i) shall take effect on  
2 a finding by the Commission, after notice  
3 and opportunity for comment, that the  
4 change—

5 “(I) is just, reasonable, not un-  
6 duly discriminatory or preferential,  
7 and in the public interest; and

8 “(II) satisfies the requirements  
9 of subsection (d)(4).

10 “(B) CHANGES IN GOVERNANCE OR FUND-  
11 ING.—A proposed change in governance or  
12 funding shall not take effect unless the Com-  
13 mission finds that the change—

14 “(i) is just, reasonable, not unduly  
15 discriminatory or preferential, and in the  
16 public interest; and

17 “(ii) satisfies the requirements of sub-  
18 section (d)(4).

19 “(4) ORDER TO AMEND.—

20 “(A) IN GENERAL.—The Commission, on  
21 complaint or on the motion of the Commission,  
22 may require the electric reliability organization  
23 to amend a procedural, governance, or funding  
24 provision if the Commission determines that the

1 amendment is necessary to meet the require-  
2 ments of this section.

3 “(B) FILING.—The electric reliability or-  
4 ganization shall submit the amendment in ac-  
5 cordance with paragraph (1).

6 “(h) DELEGATIONS OF AUTHORITY.—

7 “(1) IN GENERAL.—

8 “(A) IMPLEMENTATION AND ENFORCE-  
9 MENT OF COMPLIANCE.—At the request of an  
10 entity, the electric reliability organization shall  
11 enter into an agreement with the entity for the  
12 delegation of authority to implement and en-  
13 force compliance with organization standards in  
14 a specified geographic area if the electric reli-  
15 ability organization finds that—

16 “(i) the entity satisfies the require-  
17 ments of subparagraphs (A), (B), (C), (D),  
18 (F), (J), and (K) of subsection (d)(4); and

19 “(ii) the delegation would promote the  
20 effective and efficient implementation and  
21 administration of bulk-power system reli-  
22 ability.

23 “(B) OTHER AUTHORITY.—The electric re-  
24 liability organization may enter into an agree-  
25 ment to delegate to an entity any other author-

1           ity, except that the electric reliability organiza-  
2           tion shall reserve the right to set and approve  
3           standards for bulk-power system reliability.

4           “(2) APPROVAL BY THE COMMISSION.—

5                 “(A) SUBMISSION TO THE COMMISSION.—

6           The electric reliability organization shall submit  
7           to the Commission—

8                 “(i) any agreement entered into under  
9                 this subsection; and

10                “(ii) any information the Commission  
11                requires with respect to the affiliated re-  
12                gional reliability entity to which authority  
13                is delegated.

14           “(B) STANDARDS FOR APPROVAL.—The  
15           Commission shall approve the agreement, fol-  
16           lowing public notice and an opportunity for  
17           comment, if the Commission finds that the  
18           agreement—

19                 “(i) meets the requirements of para-  
20                 graph (1); and

21                 “(ii) is just, reasonable, not unduly  
22                 discriminatory or preferential, and in the  
23                 public interest.

24           “(C) REBUTTABLE PRESUMPTION.—A pro-  
25           posed delegation agreement with an affiliated

1 regional reliability entity organized on an inter-  
2 connection-wide basis shall be rebuttably pre-  
3 sumed by the Commission to promote the effec-  
4 tive and efficient implementation and adminis-  
5 tration of the reliability of the bulk-power sys-  
6 tem.

7 “(D) INVALIDITY ABSENT APPROVAL.—No  
8 delegation by the electric reliability organization  
9 shall be valid unless the delegation is approved  
10 by the Commission.

11 “(3) PROCEDURES FOR ENTITY RULES AND  
12 VARIANCES.—

13 “(A) IN GENERAL.—A delegation agree-  
14 ment under this subsection shall specify the  
15 procedures by which the affiliated regional reli-  
16 ability entity may propose entity rules or  
17 variances for review by the electric reliability  
18 organization.

19 “(B) INTERCONNECTION-WIDE ENTITY  
20 RULES AND VARIANCES.— In the case of a pro-  
21 posal for an entity rule or variance that would  
22 apply on an interconnection-wide basis, the elec-  
23 tric reliability organization shall approve the en-  
24 tity rule or variance unless the electric reli-

1 ability organization makes a written finding  
2 that the entity rule or variance—

3 “(i) was not developed in a fair and  
4 open process that provided an opportunity  
5 for all interested parties to participate;

6 “(ii) would have a significant adverse  
7 impact on reliability or commerce in other  
8 interconnections;

9 “(iii) fails to provide a level of reli-  
10 ability of the bulk-power system within the  
11 interconnection such that the entity rule or  
12 variance would be likely to cause a serious  
13 and substantial threat to public health,  
14 safety, welfare, or national security; or

15 “(iv) would create a serious and sub-  
16 stantial burden on competitive markets  
17 within the interconnection that is not nec-  
18 essary for reliability.

19 “(C) NONINTERCONNECTION-WIDE ENTITY  
20 RULES AND VARIANCES.—In the case of a pro-  
21 posal for an entity rule or variance that would  
22 apply only to part of an interconnection, the  
23 electric reliability organization shall approve the  
24 entity rule or variance if the affiliated regional

1 reliability entity demonstrates that the  
2 proposal—

3 “(i) was developed in a fair and open  
4 process that provided an opportunity for  
5 all interested parties to participate;

6 “(ii) would not have an adverse im-  
7 pact on commerce that is not necessary for  
8 reliability;

9 “(iii) provides a level of bulk-power  
10 system reliability that is adequate to pro-  
11 tect public health, safety, welfare, and na-  
12 tional security and would not have a sig-  
13 nificant adverse impact on reliability; and

14 “(iv) in the case of a variance, is  
15 based on a justifiable difference between  
16 regions or subregions within the affiliated  
17 regional reliability entity’s geographic area.

18 “(D) ACTION BY THE ELECTRIC RELI-  
19 ABILITY ORGANIZATION.—

20 “(i) IN GENERAL.—The electric reli-  
21 ability organization shall approve or dis-  
22 approve a proposal under subparagraph  
23 (A) within 120 days after the proposal is  
24 submitted.

1           “(ii) FAILURE TO ACT.—If the electric  
2           reliability organization fails to act within  
3           the time specified in clause (i), the pro-  
4           posal shall be deemed to have been ap-  
5           proved.

6           “(iii) SUBMISSION TO THE COMMIS-  
7           SION.—After approving a proposal under  
8           subparagraph (A), the electric reliability  
9           organization shall submit the proposal to  
10          the Commission for approval under the  
11          procedures prescribed under subsection (e).

12          “(E) DIRECT SUBMISSIONS.—An affiliated  
13          regional reliability entity may not submit a pro-  
14          posal for approval directly to the Commission  
15          except as provided in subsection (e)(4).

16          “(4) FAILURE TO REACH DELEGATION AGREE-  
17          MENT.—

18                 “(A) IN GENERAL.—If an affiliated re-  
19                 gional reliability entity requests, consistent with  
20                 paragraph (1), that the electric reliability orga-  
21                 nization delegate authority to it, but is unable  
22                 within 180 days to reach agreement with the  
23                 electric reliability organization with respect to  
24                 the requested delegation, the entity may seek  
25                 relief from the Commission.

1           “(B) REVIEW BY THE COMMISSION.—The  
2 Commission shall order the electric reliability  
3 organization to enter into a delegation agree-  
4 ment under terms specified by the Commission  
5 if, after notice and opportunity for comment,  
6 the Commission determines that—

7                   “(i) a delegation to the affiliated re-  
8 gional reliability entity would—

9                           “(I) meet the requirements of  
10 paragraph (1); and

11                           “(II) would be just, reasonable,  
12 not unduly discriminatory or pref-  
13 erential, and in the public interest;  
14 and

15                   “(ii) the electric reliability organiza-  
16 tion unreasonably withheld the delegation.

17           “(5) ORDERS TO MODIFY DELEGATION AGREE-  
18 MENTS.—

19           “(A) IN GENERAL.—On complaint, or on  
20 motion of the Commission, after notice to the  
21 appropriate affiliated regional reliability entity,  
22 the Commission may order the electric reli-  
23 ability organization to propose a modification to  
24 a delegation agreement under this subsection if  
25 the Commission determines that—

1           “(i) the affiliated regional reliability  
2 entity—

3                   “(I) no longer has the capacity to  
4 carry out effectively or efficiently the  
5 implementation or enforcement re-  
6 sponsibilities under the delegation  
7 agreement;

8                   “(II) has failed to meet its obli-  
9 gations under the delegation agree-  
10 ment; or

11                   “(III) has violated this section;

12           “(ii) the rules, practices, or proce-  
13 dures of the affiliated regional reliability  
14 entity no longer provide for fair and im-  
15 partial discharge of the implementation or  
16 enforcement responsibilities under the dele-  
17 gation agreement;

18           “(iii) the geographic boundary of a  
19 transmission entity approved by the Com-  
20 mission is not wholly within the boundary  
21 of an affiliated regional reliability entity,  
22 and the difference in boundaries is incon-  
23 sistent with the effective and efficient im-  
24 plementation and administration of bulk-  
25 power system reliability; or

1           “(iv) the agreement is inconsistent  
2           with a delegation ordered by the Commis-  
3           sion under paragraph (4).

4           “(B) SUSPENSION.—

5           “(i) IN GENERAL.—Following an  
6           order to modify a delegation agreement  
7           under subparagraph (A), the Commission  
8           may suspend the delegation agreement if  
9           the electric reliability organization or the  
10          affiliated regional reliability entity does not  
11          propose an appropriate and timely modi-  
12          fication.

13          “(ii) ASSUMPTION OF RESPONSIBIL-  
14          ITIES.—If a delegation agreement is sus-  
15          pended, the electric reliability organization  
16          shall assume the responsibilities delegated  
17          under the delegation agreement.

18          “(i) ORGANIZATION MEMBERSHIP.—Each system op-  
19          erator shall be a member of—

20                 “(1) the electric reliability organization; and

21                 “(2) any affiliated regional reliability entity op-  
22          erating under an agreement effective under sub-  
23          section (h) applicable to the region in which the sys-  
24          tem operator operates, or is responsible for the oper-  
25          ation of, a transmission facility.

1 “(j) ENFORCEMENT.—

2 “(1) DISCIPLINARY ACTIONS.—

3 “(A) IN GENERAL.—Consistent with proce-  
4 dures approved by the Commission under sub-  
5 section (d)(4)(H), the electric reliability organi-  
6 zation may impose a penalty, limitation on ac-  
7 tivities, functions, or operations, or other dis-  
8 ciplinary action that the electric reliability orga-  
9 nization finds appropriate against a bulk-power  
10 system user if the electric reliability organiza-  
11 tion, after notice and an opportunity for inter-  
12 ested parties to be heard, issues a finding in  
13 writing that the bulk-power system user has  
14 violated an organization standard.

15 “(B) NOTIFICATION.—The electric reli-  
16 ability organization shall immediately notify the  
17 Commission of any disciplinary action imposed  
18 with respect to an act or failure to act of a  
19 bulk-power system user that affected or threat-  
20 ened to affect bulk-power system facilities lo-  
21 cated in the United States.

22 “(C) RIGHT TO PETITION.—A bulk-power  
23 system user that is the subject of disciplinary  
24 action under paragraph (1) shall have the right

1 to petition the Commission for a modification  
2 or rescission of the disciplinary action.

3 “(D) INJUNCTIONS.—If the electric reli-  
4 ability organization finds it necessary to prevent  
5 a serious threat to reliability, the electric reli-  
6 ability organization may seek injunctive relief in  
7 the United States district court for the district  
8 in which the affected facilities are located.

9 “(E) EFFECTIVE DATE.—

10 “(i) IN GENERAL.—Unless the Com-  
11 mission, on motion of the Commission or  
12 on application by the bulk-power system  
13 user that is the subject of the disciplinary  
14 action, suspends the effectiveness of a dis-  
15 ciplinary action, the disciplinary action  
16 shall take effect on the 30th day after the  
17 date on which—

18 “(I) the electric reliability organi-  
19 zation submits to the Commission—

20 “(aa) a written finding that  
21 the bulk-power system user vio-  
22 lated an organization standard;  
23 and

1                   “(bb) the record of pro-  
2                   ceedings before the electric reli-  
3                   ability organization; and

4                   “(II) the Commission posts the  
5                   written finding on the Internet.

6                   “(ii) DURATION.—A disciplinary ac-  
7                   tion shall remain in effect or remain sus-  
8                   pended unless the Commission, after notice  
9                   and opportunity for hearing, affirms, sets  
10                  aside, modifies, or reinstates the discipli-  
11                  nary action.

12                  “(iii) EXPEDITED CONSIDERATION.—  
13                  The Commission shall conduct the hearing  
14                  under procedures established to ensure ex-  
15                  pedited consideration of the action taken.

16                  “(2) COMPLIANCE ORDERS.— The Commission,  
17                  on complaint by any person or on motion of the  
18                  Commission, may order compliance with an organi-  
19                  zation standard and may impose a penalty, limita-  
20                  tion on activities, functions, or operations, or take  
21                  such other disciplinary action as the Commission  
22                  finds appropriate, against a bulk-power system user  
23                  with respect to actions affecting or threatening to  
24                  affect bulk-power system facilities located in the  
25                  United States if the Commission finds, after notice

1 and opportunity for a hearing, that the bulk-power  
2 system user has violated or threatens to violate an  
3 organization standard.

4 “(3) OTHER ACTIONS.—The Commission may  
5 take such action as is necessary against the electric  
6 reliability organization or an affiliated regional reli-  
7 ability entity to ensure compliance with an organiza-  
8 tion standard, or any Commission order affecting  
9 electric reliability organization or affiliated regional  
10 reliability entity.

11 “(k) RELIABILITY REPORTS.—The electric reliability  
12 organization shall—

13 “(1) conduct periodic assessments of the reli-  
14 ability and adequacy of the interconnected bulk-  
15 power system in North America; and

16 “(2) report annually to the Secretary of Energy  
17 and the Commission its findings and recommenda-  
18 tions for monitoring or improving system reliability  
19 and adequacy.

20 “(l) ASSESSMENT AND RECOVERY OF CERTAIN  
21 COSTS.—

22 “(1) IN GENERAL.—The reasonable costs of the  
23 electric reliability organization, and the reasonable  
24 costs of each affiliated regional reliability entity that  
25 are related to implementation or enforcement of or-

1 organization standards or other requirements con-  
2 tained in a delegation agreement approved under  
3 subsection (h), shall be assessed by the electric reli-  
4 ability organization and each affiliated regional reli-  
5 ability entity, respectively, taking into account the  
6 relationship of costs to each region and based on an  
7 allocation that reflects an equitable sharing of the  
8 costs among all electric energy consumers.

9 “(2) RULES.—The Commission shall provide by  
10 rule for the review of costs and allocations under  
11 paragraph (1) in accordance with the standards in  
12 this subsection and subsection (d)(4)(F).

13 “(m) APPLICATION OF ANTITRUST LAWS.—

14 “(1) IN GENERAL.—Notwithstanding any other  
15 provision of law, the following activities are  
16 rebuttably presumed to be in compliance with the  
17 antitrust laws of the United States:

18 “(A) Activities undertaken by the electric  
19 reliability organization under this section or af-  
20 filiated regional reliability entity operating  
21 under a delegation agreement under subsection  
22 (h).

23 “(B) Activities of a member of the electric  
24 reliability organization or affiliated regional re-  
25 liability entity in pursuit of the objectives of the

1 electric reliability organization or affiliated re-  
2 gional reliability entity under this section un-  
3 dertaken in good faith under the rules of the  
4 organization of the electric reliability organiza-  
5 tion or affiliated regional reliability entity.

6 “(2) AVAILABILITY OF DEFENSES.—In a civil  
7 action brought by any person or entity against the  
8 electric reliability organization or an affiliated re-  
9 gional reliability entity alleging a violation of an  
10 antitrust law based on an activity under this Act,  
11 the defenses of primary jurisdiction and immunity  
12 from suit and other affirmative defenses shall be  
13 available to the extent applicable.

14 “(n) REGIONAL ADVISORY ROLE.—

15 “(1) ESTABLISHMENT OF REGIONAL ADVISORY  
16 BODY.—The Commission shall establish a regional  
17 advisory body on the petition of the Governors of at  
18 least two-thirds of the States within a region that  
19 have more than one-half of their electrical loads  
20 served within the region.

21 “(2) MEMBERSHIP.—A regional advisory  
22 body—

23 “(A) shall be composed of 1 member from  
24 each State in the region, appointed by the Gov-  
25 ernor of the State; and

1           “(B) may include representatives of agen-  
2           cies, States, and Provinces outside the United  
3           States, on execution of an appropriate inter-  
4           national agreement described in subsection (f).

5           “(3) FUNCTIONS.—A regional advisory body  
6           may provide advice to the electric reliability organi-  
7           zation, an affiliated regional reliability entity, or the  
8           Commission regarding—

9           “(A) the governance of an affiliated re-  
10          gional reliability entity existing or proposed  
11          within a region;

12          “(B) whether a standard proposed to apply  
13          within the region is just, reasonable, not unduly  
14          discriminatory or preferential, and in the public  
15          interest; and

16          “(C) whether fees proposed to be assessed  
17          within the region are—

18                  “(i) just, reasonable, not unduly dis-  
19                  criminatory or preferential, and in the pub-  
20                  lic interest; and

21                  “(ii) consistent with the requirements  
22                  of subsection (l).

23          “(4) DEFERENCE.—In a case in which a re-  
24          gional advisory body encompasses an entire inter-  
25          connection, the Commission may give deference to

1 advice provided by the regional advisory body under  
2 paragraph (3).

3 “(o) APPLICABILITY OF SECTION.—This section does  
4 not apply outside the 48 contiguous States.

5 “(p) REHEARINGS; COURT REVIEW OF ORDERS.—  
6 Section 313 applies to an order of the Commission issued  
7 under this section.”.

8 (b) ENFORCEMENT.—

9 (1) GENERAL PENALTIES.—Section 316(c) of  
10 the Federal Power Act (16 U.S.C. 825o(c)) is  
11 amended—

12 (A) by striking “subsection” and inserting  
13 “section”; and

14 (B) by striking “or 214” and inserting  
15 “214 or 215”.

16 (2) CERTAIN PROVISIONS.—Section 316A of the  
17 Federal Power Act (16 U.S.C. 825o–1) is amended  
18 by striking “or 214” each place it appears and in-  
19 serting “214, or 215”.

20 (c) SAVINGS CLAUSE.—**[RESERVED]**

○