

107TH CONGRESS
1ST SESSION

H. R. 312

To amend the Federal Power Act to provide for the reliability of the electric power transmission system in the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 30, 2001

Mr. WYNN (for himself, Mr. SHADEGG, Ms. ESHOO, and Mr. EHRLICH) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend the Federal Power Act to provide for the reliability of the electric power transmission system in the United States, and for other purposes.

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 “National Electricity
5 Reliability Act”.

6 **SEC. 2. ELECTRIC ENERGY TRANSMISSION RELIABILITY.**

7 (a) ELECTRIC RELIABILITY ORGANIZATION AND
8 OVERSIGHT.—

1 (1) IN GENERAL.—The Federal Power Act is
2 amended by adding the following new section after
3 section 214:

4 **“SEC. 215. ELECTRIC RELIABILITY ORGANIZATION AND**
5 **OVERSIGHT.**

6 “(a) DEFINITIONS.—As used in this section:

7 “(1) AFFILIATED REGIONAL RELIABILITY ENTI-
8 TY.—The term ‘affiliated regional reliability entity’
9 means an entity delegated authority under the provi-
10 sions of subsection (h).

11 “(2) BULK-POWER SYSTEM.—The term ‘bulk-
12 power system’ means all facilities and control sys-
13 tems necessary for operating an interconnected
14 transmission grid (or any portion thereof), including
15 high-voltage transmission lines; substations; control
16 centers; communications; data, and operations plan-
17 ning facilities; and the output of generating units
18 necessary to maintain transmission system reli-
19 ability.

20 “(3) ELECTRIC RELIABILITY ORGANIZATION, OR
21 ORGANIZATION.—The term ‘Electric Reliability Or-
22 ganization’ or ‘Organization’ means the organization
23 approved by the Commission under subsection
24 (d)(4).

1 “(4) ENTITY RULE.—The term ‘entity rule’
2 means a rule adopted by an affiliated regional reli-
3 ability entity for a specific region and designed to
4 implement or enforce one or more Organization
5 Standards. An entity rule shall be approved by the
6 organization and once approved, shall be treated as
7 an Organization Standard.

8 “(5) INDUSTRY SECTOR.—The term ‘industry
9 sector’ means a group of users of the bulk power
10 system with substantially similar commercial inter-
11 ests, as determined by the Board of the Electric Re-
12 liability Organization.

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

21 “(7) ORGANIZATION STANDARD.—The term
22 ‘Organization Standard’ means a policy or standard
23 duly adopted by the Electric Reliability Organization
24 to provide for the reliable operation of a bulk-power
25 system.

1 “(8) PUBLIC INTEREST GROUP.—The term
2 ‘public interest group’ means any nonprofit private
3 or public organization that has an interest in the ac-
4 tivities of the Electric Reliability Organization, in-
5 cluding, but not limited to, ratepayer advocates, en-
6 vironmental groups, and State and local government
7 organizations that regulate market participants and
8 promulgate government policy.

9 “(9) VARIANCE.—The term ‘variance’ means an
10 exception or variance from the requirements of an
11 Organization Standard (including a proposal for an
12 Organization Standard where there is no Organiza-
13 tion Standard) that is adopted by an affiliated re-
14 gional reliability entity and applicable to all or a
15 part of the region for which the affiliated regional
16 reliability entity is responsible. A variance shall be
17 approved by the organization and once approved,
18 shall be treated as an Organization Standard.

19 “(10) SYSTEM OPERATOR.—The term ‘system
20 operator’ means any entity that operates or is re-
21 sponsible for the operation of a bulk-power system,
22 including but not limited to a control area operator,
23 an independent system operator, a regional trans-
24 mission organization, a transmission company, a

1 transmission system operator, or a regional security
2 coordinator.

3 “(11) USER OF THE BULK-POWER SYSTEM.—

4 The term ‘user of the bulk-power system’ means any
5 entity that sells, purchases, or transmits electric
6 power over a bulk-power system, or that owns, oper-
7 ates, or maintains facilities or control systems that
8 are part of a bulk-power system, or that is a system
9 operator.

10 “(b) COMMISSION AUTHORITY.—(1) Within the
11 United States, the Commission shall have jurisdiction over
12 the Electric Reliability Organization, all affiliated regional
13 reliability entities, all system operators, and all users of
14 the bulk-power system, for purposes of approving and en-
15 forcing compliance with the requirements of this section.

16 “(2) The Commission may, by rule, define any other
17 term used in this section, provided such definition is con-
18 sistent with the definitions in, and the purpose and intent
19 of, this Act.

20 “(3) Not later than 90 days after the date of enact-
21 ment of this section, the Commission shall issue a pro-
22 posed rule for implementing the requirements of this sec-
23 tion. The Commission shall provide notice and opportunity
24 for comment on the proposed rule. The Commission shall

1 issue a final rule under this subsection within 180 days
2 after the date of enactment of this section.

3 “(4) Nothing in this section shall be construed as lim-
4 iting or impairing any authority of the Commission under
5 any other provision of this Act, including its exclusive au-
6 thority to determine rates, terms, and conditions of trans-
7 mission services subject to its jurisdiction.

8 “(c) EXISTING RELIABILITY STANDARDS.—Fol-
9 lowing enactment of this section, and prior to the approval
10 of an organization under subsection (d), any entity, in-
11 cluding the North American Electric Reliability Council
12 and its member regional reliability councils, may file any
13 reliability standard, guidance, or practice that such entity
14 would propose to be made mandatory and enforceable. The
15 Commission, after allowing an opportunity to submit com-
16 ments, may approve any such proposed mandatory stand-
17 ard, guidance, or practice, or any amendment thereto, if
18 it finds that the standard, guidance, or practice, or
19 amendment is just, reasonable, not unduly discriminatory
20 or preferential, and in the public interest. The Commission
21 may, without further proceeding or finding, grant its ap-
22 proval to any standard, guidance, or practice for which
23 no substantive objections are filed in the comment period.
24 Filed standards, guidances, or practices, including any
25 amendments thereto, shall be mandatory and applicable

1 according to their terms following approval by the Com-
2 mission and shall remain in effect until (1) withdrawn,
3 disapproved, or superseded by an Organization Standard,
4 issued or approved by the Electric Reliability Organization
5 and made effective by the Commission under subsection
6 (e); or (2) disapproved by the Commission if, upon com-
7 plaint or upon its own motion and after notice and an
8 opportunity for comment, the Commission finds the stand-
9 ard, guidance, or practice unjust, unreasonable, unduly
10 discriminatory, or preferential or not in the public inter-
11 est. Standards, guidances, or practices in effect pursuant
12 to the provisions of this subsection shall be enforceable
13 by the Commission.

14 “(d) ORGANIZATION APPROVAL.—(1) Following the
15 issuance of a final Commission rule under subsection
16 (b)(3), an entity may submit an application to the Com-
17 mission for approval as the Electric Reliability Organiza-
18 tion. The applicant shall specify in its application its gov-
19 ernance and procedures, as well as its funding mechanism
20 and initial funding requirements.

21 “(2) The Commission shall provide public notice of
22 the application and afford interested parties an oppor-
23 tunity to comment.

24 “(3) The Commission shall approve the application
25 if the Commission determines that the applicant—

1 “(A) has the ability to develop, implement, and
2 enforce standards that provide for an adequate level
3 of reliability of the bulk-power system;

4 “(B) permits voluntary membership to any user
5 of the bulk-power system or public interest group;

6 “(C) assures fair representation of its members
7 in the selection of its directors and fair management
8 of its affairs, taking into account the need for effi-
9 ciency and effectiveness in decisionmaking and oper-
10 ations and the requirements for technical com-
11 petency in the development of Organization Stand-
12 ards and the exercise of oversight of bulk-power sys-
13 tem reliability;

14 “(D) assures that no two industry sectors have
15 the ability to control, and no one industry sector has
16 the ability to veto, the Electric Reliability Organiza-
17 tion’s discharge of its responsibilities (including ac-
18 tions by committees recommending standards to the
19 board or other board actions to implement and en-
20 force standards);

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

23 “(F) provides a funding mechanism and re-
24 quirements that are just, reasonable, and not unduly
25 discriminatory or preferential and are in the public

1 interest, and which satisfy the requirements of sub-
2 section (I);

3 “(G) establishes procedures for development of
4 Organization Standards that provide reasonable no-
5 tice and opportunity for public comment, taking into
6 account the need for efficiency and effectiveness in
7 decisionmaking and operations and the requirements
8 for technical competency in the development of Or-
9 ganization Standards, and which standards develop-
10 ment process has the following attributes:

11 “(i) openness,

12 “(ii) balance of interests, and

13 “(iii) due process, except that the proce-
14 dures may include alternative procedures for
15 emergencies;

16 “(H) establishes fair and impartial procedures
17 for implementation and enforcement of Organization
18 Standards, either directly or through delegation to
19 an affiliated regional reliability entity, including the
20 imposition of penalties, limitations on activities,
21 functions, or operations, or other appropriate sanc-
22 tions;

23 “(I) establishes procedures for notice and op-
24 portunity for public observation of all meetings, ex-
25 cept that the procedures for public observation may

1 include alternative procedures for emergencies or for
2 the discussion of information the directors determine
3 should take place in closed session, such as litiga-
4 tion, personnel actions, or commercially sensitive in-
5 formation;

6 “(J) provides for the consideration of rec-
7 ommendations of States and State commissions; and

8 “(K) addresses other matters that the Commis-
9 sion may deem necessary or appropriate to ensure
10 that the procedures, governance, and funding of the
11 Electric Reliability Organization are just, reason-
12 able, not unduly discriminatory or preferential, and
13 are in the public interest.

14 “(4) The Commission shall approve only one Electric
15 Reliability Organization. If the Commission receives two
16 or more timely applications that satisfy the requirements
17 of this subsection, the Commission shall approve only the
18 application it concludes will best implement the provisions
19 of this section.

20 “(e) ESTABLISHMENT OF AND MODIFICATIONS TO
21 ORGANIZATION STANDARDS.—(1) The Electric Reliability
22 Organization shall file with the Commission any new or
23 modified organization standards, including any variances
24 or entity rules, and the Commission shall follow the proce-
25 dures under paragraph (2) for review of that filing.

1 “(2) Submissions under paragraph (1) shall
2 include—

3 “(A) a concise statement of the purpose of the
4 proposal, and

5 “(B) a record of any proceedings conducted
6 with respect to such proposal.

7 The Commission shall provide notice of the filing of such
8 proposal and afford interested entities 30 days to submit
9 comments. The Commission, after taking into consider-
10 ation any submitted comments, shall approve or dis-
11 approve such proposal not later than 60 days after the
12 deadline for the submission of comments, except that the
13 Commission may extend the 60-day period for an addi-
14 tional 90 days for good cause, and except further that if
15 the Commission does not act to approve or disapprove a
16 proposal within the foregoing periods, the proposal shall
17 go into effect subject to its terms, without prejudice to
18 the authority of the Commission thereafter to modify the
19 proposal in accordance with the standards and require-
20 ments of this section. Proposals approved by the Commis-
21 sion shall take effect according to their terms but not ear-
22 lier than 30 days after the effective date of the Commis-
23 sion’s order, except as provided in paragraph (3) of this
24 subsection.

1 “(3)(A) In the exercise of its review responsibilities
2 under this subsection, the Commission shall give due
3 weight to the technical expertise of the Electric Reliability
4 Organization with respect to the content of a new or modi-
5 fied organization standard, but shall not defer to the orga-
6 nization with respect to the effect of the standard on com-
7 petition. The Commission shall approve a proposed new
8 or modified organization standard if it determines the pro-
9 posal to be just, reasonable, not unduly discriminatory or
10 preferential, and in the public interest.

11 “(B) An existing or proposed organization standard
12 which is disapproved in whole or in part by the Commis-
13 sion shall be remanded to the Electric Reliability Organi-
14 zation for further consideration.

15 “(C) The Commission, on its own motion or upon
16 complaint, may direct the Electric Reliability Organization
17 to develop an organization standard, including modifica-
18 tion to an existing organization standard, addressing a
19 specific matter by a date certain if the Commission con-
20 siders such new or modified organization standard nec-
21 essary or appropriate to further the purposes of this sec-
22 tion. The Electric Reliability Organization shall file any
23 such new or modified organization standard in accordance
24 with this subsection.

1 “(D) An affiliated regional reliability entity may pro-
2 pose a variance or entity rule to the Electric Reliability
3 Organization. The affiliated regional reliability entity may
4 request that the Electric Reliability Organization expedite
5 consideration of the proposal, and may file a notice of such
6 request with the Commission, if expedited consideration
7 is necessary to provide for bulk-power system reliability.
8 If the Electric Reliability Organization fails to adopt the
9 variance or entity rule, either in whole or in part, the affli-
10 ated regional reliability entity may request that the Com-
11 mission review such action. If the Commission determines,
12 after its review of such a request, that the action of the
13 Electric Reliability Organization did not conform to the
14 applicable standards and procedures approved by the
15 Commission, or if the Commission determines that the
16 variance or entity rule is just, reasonable, not unduly dis-
17 criminatory or preferential, and in the public interest, and
18 that the Electric Reliability Organization has unreason-
19 ably rejected the proposed variance or entity rule, then
20 the Commission may remand the proposed variance or en-
21 tity rule for further consideration by the Electric Reli-
22 ability Organization or may direct the Electric Reliability
23 Organization or the affiliated regional reliability entity to
24 develop a variance or entity rule consistent with that re-
25 quested by the affiliated regional reliability entity. Any

1 such variance or entity rule proposed by an affiliated re-
2 gional reliability entity shall be submitted to the Electric
3 Reliability Organization for review and filing with the
4 Commission in accordance with the procedures specified
5 in this subsection.

6 “(E) Notwithstanding any other provision of this sub-
7 section, a proposed organization standard or amendment
8 shall take effect according to its terms if the Electric Reli-
9 ability Organization determines that an emergency exists
10 requiring that such proposed organization standard or
11 amendment take effect without notice or comment. The
12 Electric Reliability Organization shall notify the Commis-
13 sion immediately following such determination and shall
14 file such emergency organization standard or amendment
15 with the Commission not later than 5 days following such
16 determination and shall include in such filing an expla-
17 nation of the need for such emergency standard. Subse-
18 quently, the Commission shall provide notice of the organi-
19 zation standard or amendment for comment, and shall fol-
20 low the procedures set out in paragraphs (2) and (3) for
21 review of the new or modified organization standard.

22 “(4) All users of the bulk-power system shall comply
23 with any organization standard that takes effect under
24 this section.

1 “(f) COORDINATION WITH CANADA AND MEXICO.—
2 The Electric Reliability Organization shall take all appro-
3 priate steps to gain recognition in Canada and Mexico.
4 The United States shall use its best efforts to enter into
5 international agreements with the appropriate govern-
6 ments of Canada and Mexico to provide for effective com-
7 pliance with organization standards and to provide for the
8 effectiveness of the Electric Reliability Organization in
9 carrying out its mission and responsibilities. All actions
10 taken by the Electric Reliability Organization, any affili-
11 ated regional reliability entity, and the Commission shall
12 be consistent with the provisions of such international
13 agreements.

14 “(g) CHANGES IN PROCEDURES, GOVERNANCE, OR
15 FUNDING.—(1) The Electric Reliability Organization shall
16 file with the Commission any proposed change in its proce-
17 dures, governance, or funding, or any changes in the affili-
18 ated regional reliability entity’s procedures, governance, or
19 funding relating to delegated functions, and shall include
20 with the filing an explanation of the basis and purpose
21 for the change.

22 “(2) A proposed procedural change may take effect
23 90 days after filing with the Commission if the change
24 constitutes a statement of policy, practice, or interpreta-
25 tion with respect to the meaning or enforcement of an ex-

1 isting procedure. Otherwise, a proposed procedural change
2 shall take effect only upon a finding by the Commission,
3 after notice and opportunity for comments, that the
4 change is just, reasonable, not unduly discriminatory or
5 preferential, is in the public interest, and satisfies the re-
6 quirements of subsection (d)(4).

7 “(3) A change in governance or funding shall not
8 take effect unless the Commission finds that the change
9 is just, reasonable, not unduly discriminatory or pref-
10 erential, in the public interest, and satisfies the require-
11 ments of subsection (d)(4).

12 “(4) The Commission, upon complaint or upon its
13 own motion, may require the Electric Reliability Organiza-
14 tion to amend the procedures, governance, or funding if
15 the Commission determines that the amendment is nec-
16 essary to meet the requirements of this section. The Elec-
17 tric Reliability Organization shall file the amendment in
18 accordance with paragraph (1) of this subsection.

19 “(h) DELEGATIONS OF AUTHORITY.—(1) The Elec-
20 tric Reliability Organization shall, upon request by an en-
21 tity, enter into an agreement with such entity for the dele-
22 gation of authority to implement and enforce compliance
23 with organization standards in a specified geographic area
24 if the organization finds that the entity requesting the del-
25 egation satisfies the requirements of subparagraphs (A),

1 (B), (C), (D), (F), (J), and (K) of subsection (d)(4), and
2 if the delegation promotes the effective and efficient imple-
3 mentation and administration of bulk-power system reli-
4 ability. The Electric Reliability Organization may enter
5 into an agreement to delegate to the entity any other au-
6 thority, except that the Electric Reliability Organization
7 shall reserve the right to set and approve standards for
8 bulk-power system reliability.

9 “(2) The Electric Reliability Organization shall file
10 with the Commission any agreement entered into under
11 this subsection and any information the Commission re-
12 quires with respect to the affiliated regional reliability en-
13 tity to which authority is to be delegated. The Commission
14 shall approve the agreement, following public notice and
15 an opportunity for comment, if it finds that the agreement
16 meets the requirements of paragraph (1), and is just, rea-
17 sonable, not unduly discriminatory or preferential, and is
18 in the public interest. A proposed delegation agreement
19 with an affiliated regional reliability entity organized on
20 an interconnection-wide basis shall be rebuttably pre-
21 sumed by the Commission to promote the effective and
22 efficient implementation and administration of bulk-power
23 system reliability. No delegation by the Electric Reliability
24 Organization shall be valid unless approved by the Com-
25 mission.

1 “(3)(A) A delegation agreement entered into under
2 this subsection shall specify the procedures for an affili-
3 ated regional reliability entity to propose entity rules or
4 variances for review by the Electric Reliability Organiza-
5 tion. With respect to any such proposal that would apply
6 on an interconnection-wide basis, the Electric Reliability
7 Organization shall presume such proposal valid if made
8 by an interconnection-wide affiliated regional reliability
9 entity unless the Electric Reliability Organization makes
10 a written finding that the proposal—

11 “(i) was not developed in a fair and open proc-
12 ess that provided an opportunity for all interested
13 parties to participate;

14 “(ii) has a significant adverse impact on reli-
15 ability or commerce in other interconnections;

16 “(iii) fails to provide a level of reliability of the
17 bulk-power system within the interconnection such
18 that it would constitute a serious and substantial
19 threat to public health, safety, welfare, or national
20 security; or

21 “(iv) creates a serious and substantial burden
22 on competitive markets within the interconnection
23 that is not necessary for reliability.

24 “(B) With respect to any such proposal that would
25 apply only to part of an interconnection, the Electric Reli-

1 ability Organization shall find such proposal valid if the
2 affiliated regional reliability entity or entities making the
3 proposal demonstrate that it—

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

7 “(ii) would not have an adverse impact on com-
8 merce that is not necessary for reliability;

9 “(iii) provides a level of bulk-power system reli-
10 ability adequate to protect public health, safety, wel-
11 fare, and national security, and would not have a
12 significant adverse impact on reliability; and

13 “(iv) in the case of a variance, is based on le-
14 gitimate differences between regions or between sub-
15 regions within the affiliated regional reliability enti-
16 ty’s geographic area.

17 The Electric Reliability Organization shall approve or dis-
18 approve such proposal within 120 days, or the proposal
19 shall be deemed approved. Following approval of any such
20 proposal under this paragraph, the Electric Reliability Or-
21 ganization shall seek Commission approval pursuant to
22 the procedures prescribed under subsection (e)(3). Affili-
23 ated regional reliability entities may not make requests for
24 approval directly to the Commission except pursuant to
25 subsection (e)(3)(D).

1 “(4) If an affiliated regional reliability entity re-
2 quests, consistent with paragraph (1) of this subsection,
3 that the Electric Reliability Organization delegate author-
4 ity to it, but is unable within 180 days to reach agreement
5 with the Electric Reliability Organization with respect to
6 such requested delegation, such entity may seek relief
7 from the Commission. If, following notice and opportunity
8 for comment, the Commission determines that a delega-
9 tion to the entity would meet the requirements of para-
10 graph (1) above, and that the delegation would be just,
11 reasonable, not unduly discriminatory or preferential, and
12 in the public interest, and that the Electric Reliability Or-
13 ganization has unreasonably withheld such delegation, the
14 Commission may, by order, direct the Electric Reliability
15 Organization to make such delegation.

16 “(5)(A) The Commission may, upon its own motion
17 or upon complaint, and with notice to the appropriate af-
18 filiated regional reliability entity or entities, direct the
19 Electric Reliability Organization to propose a modification
20 to an agreement entered into under this subsection if the
21 Commission determines that—

22 “(i) the affiliated regional reliability entity no
23 longer has the capacity to carry out effectively or ef-
24 ficiently its implementation or enforcement respon-
25 sibilities under that agreement, has failed to meet its

1 obligations under that agreement, or has violated
2 any provision of this section;

3 “(ii) the rules, practices, or procedures of the
4 affiliated regional reliability entity no longer provide
5 for fair and impartial discharge of its implementa-
6 tion or enforcement responsibilities under the agree-
7 ment;

8 “(iii) the geographic boundary of a transmission
9 entity approved by the Commission is not wholly
10 within the boundary of an affiliated regional reli-
11 ability entity and such difference is inconsistent with
12 the effective and efficient implementation and ad-
13 ministration of bulk-power system reliability; or

14 “(iv) the agreement is inconsistent with another
15 delegation agreement as a result of actions taken
16 under paragraph (4) of this subsection.

17 “(B) Following an order of the Commission issued
18 under subparagraph (A), the Commission may suspend
19 the affected agreement if the Electric Reliability Organiza-
20 tion or the affiliated regional reliability entity does not
21 propose an appropriate and timely modification. If the
22 agreement is suspended, the Electric Reliability Organiza-
23 tion shall assume the previously delegated responsibilities.
24 The Commission shall allow the Electric Reliability Orga-

1 nization and the affiliated regional reliability entity an op-
2 portunity to appeal the suspension.

3 “(i) ORGANIZATION MEMBERSHIP.—Every system
4 operator shall be required to be a member of the Electric
5 Reliability Organization and shall be required also to be
6 a member of any affiliated regional reliability entity oper-
7 ating under an agreement effective pursuant to subsection
8 (h) applicable to the region in which the system operator
9 operates or is responsible for the operation of bulk-power
10 system facilities.

11 “(j) INJUNCTIONS AND DISCIPLINARY ACTION.—(1)
12 Consistent with the range of actions approved by the Com-
13 mission under subsection (d)(4)(H), the Electric Reli-
14 ability Organization may impose a penalty, limitation of
15 activities, functions, operations, or other disciplinary ac-
16 tion the Electric Reliability Organization finds appropriate
17 against a user of the bulk-power system if the Electric
18 Reliability Organization, after notice and an opportunity
19 for interested parties to be heard, issues a finding in writ-
20 ing that the user of the bulk-power system has violated
21 an organization standard. The Electric Reliability Organi-
22 zation shall immediately notify the Commission of any dis-
23 ciplinary action imposed with respect to an act or failure
24 to act of a user of the bulk-power system that affected
25 or threatened to affect bulk-power system facilities located

1 in the United States, and the sanctioned party shall have
2 the right to seek modification or rescission of such discipli-
3 nary action by the Commission. If the organization finds
4 it necessary to prevent a serious threat to reliability, the
5 organization may seek injunctive relief in a Federal court
6 in the district in which the affected facilities are located.

7 “(2) A disciplinary action taken under paragraph (1)
8 may take effect not earlier than the 30th day after the
9 Electric Reliability Organization files with the Commission
10 its written finding and record of proceedings before the
11 Electric Reliability Organization and the Commission
12 posts its written finding, unless the Commission, on its
13 own motion or upon application by the user of the bulk-
14 power system which is the subject of the action, suspends
15 the action. The action shall remain in effect or remain
16 suspended unless and until the Commission, after notice
17 and opportunity for hearing, affirms, sets aside, modifies,
18 or reinstates the action, but the Commission shall conduct
19 such hearing under procedures established to ensure expe-
20 dited consideration of the action taken.

21 “(3) The Commission, on its own motion or on com-
22 plaint, may order compliance with an organization stand-
23 ard and may impose a penalty, limitation of activities,
24 functions, or operations, or take such other disciplinary
25 action as the Commission finds appropriate, against a user

1 of the bulk-power system with respect to actions affecting
2 or threatening to affect bulk-power system facilities lo-
3 cated in the United States if the Commission finds, after
4 notice and opportunity for a hearing, that the user of the
5 bulk-power system has violated or threatens to violate an
6 organization standard.

7 “(4) The Commission may take such action as is nec-
8 essary against the Electric Reliability Organization or an
9 affiliated regional reliability entity to assure compliance
10 with an organization standard, or any Commission order
11 affecting the Electric Reliability Organization or an affili-
12 ated regional reliability entity.

13 “(k) RELIABILITY REPORTS.—The Electric Reli-
14 ability Organization shall conduct periodic assessments of
15 the reliability and adequacy of the interconnected bulk-
16 power system in North America and shall report annually
17 to the Secretary of Energy and the Commission its find-
18 ings and recommendations for monitoring or improving
19 system reliability and adequacy.

20 “(l) ASSESSMENT AND RECOVERY OF CERTAIN
21 COSTS.—The reasonable costs of the Electric Reliability
22 Organization, and the reasonable costs of each affiliated
23 regional reliability entity that are related to implementa-
24 tion and enforcement of organization standards or other
25 requirements contained in a delegation agreement ap-

1 proved under subsection (h), shall be assessed by the Elec-
2 tric Reliability Organization and each affiliated regional
3 reliability entity, respectively, taking into account the rela-
4 tionship of costs to each region and based on an allocation
5 that reflects an equitable sharing of the costs among all
6 end users. The Commission shall provide by rule for the
7 review of such costs and allocations, pursuant to the
8 standards in this subsection and subsection (d)(4)(F).

9 “(m) SAVINGS PROVISIONS.—(1) The Electric Reli-
10 ability Organization shall have authority to develop, imple-
11 ment and enforce compliance with standards for the reli-
12 able operation of only the Bulk Power System.

13 “(2) This section does not provide the Electric Reli-
14 ability Organization or the Commission with the authority
15 to set and enforce compliance with standards for adequacy
16 or safety of electric facilities or services.

17 “(3) Nothing in this section shall be construed to pre-
18 empt any authority of any State to take action to ensure
19 the safety, adequacy, and reliability of electric service
20 within that State, as long as such action is not incon-
21 sistent with any Organization Standard.

22 “(4) Within 90 days of the application of the Electric
23 Reliability Organization or other affected party, the Com-
24 mission shall issue a final order determining whether a
25 state action is inconsistent with an Organization Stand-

1 ard, after notice and opportunity for comment, taking into
2 consideration any recommendations of the Electric Reli-
3 ability Organization.

4 “(5) The Commission, after consultation with the
5 Electric Reliability Organization, may stay the effective-
6 ness of any state action, pending the Commission’s
7 issuance of a final order.

8 “(n) REGIONAL ADVISORY BODIES.—The Commis-
9 sion shall establish a regional advisory body on the petition
10 of at least two-thirds of the States within a region that
11 have more than one-half of their electric load served within
12 the region. A regional advisory body shall be composed of
13 one member from each participating State in the region,
14 appointed by the Governor of each State, and may include
15 representatives of agencies, States, and provinces outside
16 the United States, upon execution of an international
17 agreement or agreements described in subsection (f). A
18 regional advisory body may provide advice to the electric
19 reliability organization, an affiliated regional reliability en-
20 tity, or the Commission regarding the governance of an
21 existing or proposed affiliated regional reliability entity
22 within the same region, whether an organization standard,
23 entity rule, or variance proposed to apply within the region
24 is just, reasonable, not unduly discriminatory or pref-
25 erential, and in the public interest, and whether fees pro-

1 posed to be assessed within the region are just, reasonable,
2 not unduly discriminatory or preferential, in the public in-
3 terest, and consistent with the requirements of subsection
4 (1). The Commission may give deference to the advice of
5 any such regional advisory body if that body is organized
6 on an interconnection-wide basis.

7 “(o) COORDINATION WITH REGIONAL TRANSMISSION
8 ORGANIZATIONS.—(1) Each regional transmission organi-
9 zation authorized by the Commission shall be responsible
10 for maintaining the short-term reliability of the bulk-
11 power system that it operates, consistent with organiza-
12 tion standards.

13 “(2) Except as provided in paragraph (5), in connec-
14 tion with a proceeding under subsection (e) to consider
15 a proposed organization standard, each regional trans-
16 mission organization authorized by the Commission shall
17 report to the Commission, and notify the electric reliability
18 organization and any applicable affiliated regional reli-
19 ability entity, regarding whether the proposed organiza-
20 tion standard hinders or conflicts with that regional trans-
21 mission organization’s ability to fulfill the requirements of
22 any Commission-accepted, approved, or ordered rule, regu-
23 lation, order, tariff, rate schedule, or agreement. Where
24 such hindrance or conflict is identified, the Commission
25 shall address such hindrance or conflict, and the need for

1 any changes to such Commission-accepted, approved, or
2 ordered rule, order, tariff, rate schedule, or agreement in
3 its order under subsection (e) regarding the proposed
4 standard. Where such hindrance or conflict is identified
5 between a proposed organization standard and a provision
6 of any rule, order, tariff, rate schedule or agreement ac-
7 cepted, approved or ordered by the Commission applicable
8 to a regional transmission organization, nothing in this
9 section shall require a change in the regional transmission
10 organization's obligation to comply with such provision un-
11 less the Commission orders such a change and the change
12 becomes effective. If the Commission finds that the tariff,
13 rate schedule, or agreement needs to be changed, the re-
14 gional transmission organization must expeditiously make
15 a section 205 filing to reflect the change. If the Commis-
16 sion finds that the proposed organization standard needs
17 to be changed, it shall remand the proposed organization
18 standard to the electric reliability organization under sub-
19 section (e)(3)(B).

20 “(3) Except as provided in paragraph (5), to the ex-
21 tent hindrances and conflicts arise after approval of a reli-
22 ability standard under subsection (c) or organization
23 standard under subsection (e), each regional transmission
24 organization authorized by the Commission shall report to
25 the Commission, and notify the electric reliability organi-

1 zation and any applicable affiliated regional reliability en-
2 tity, regarding any reliability standard approved under
3 subsection (c) or organization standard that hinders or
4 conflicts with that regional transmission organization's
5 ability to fulfill the requirements of any Commission-ac-
6 cepted, approved, or ordered rule, regulation, order, tariff,
7 rate schedule, or agreement. The Commission shall seek
8 to assure that such hindrances or conflicts are resolved
9 promptly. Where a hindrance or conflict is identified be-
10 tween a reliability standard or an organization standard
11 and a provision of any rule, order, tariff, rate schedule
12 or agreement accepted, approved or ordered by the Com-
13 mission applicable to a regional transmission organization,
14 nothing in this section shall require a change in the re-
15 gional transmission organization's obligation to comply
16 with such provision unless the Commission orders such a
17 change and the change becomes effective. If the Commis-
18 sion finds that the tariff, rate schedule or agreement needs
19 to be changed, the regional transmission organization
20 must expeditiously make a section 205 filing to reflect the
21 change. If the Commission finds that an organization
22 standard needs to be changed, it shall order the electric
23 reliability organization to develop and submit a modified
24 organization standard under subsection (e)(3)(C).

1 “(4) An affiliated regional reliability entity and a re-
2 gional transmission organization operating in the same ge-
3 ographic area shall cooperate to avoid conflicts between
4 implementation and enforcement of organization stand-
5 ards by the affiliated regional reliability entity and imple-
6 mentation and enforcement of Commission-accepted tar-
7 iffs, rate schedules, and agreements by the regional trans-
8 mission organization. In areas without an affiliated re-
9 gional reliability entity, the electric reliability organization
10 shall act as the affiliated regional reliability entity for pur-
11 poses of this paragraph.

12 “(5) Until 6 months after approval of applicable sub-
13 section (h)(3) procedures, any reliability standard, guid-
14 ance, or practice contained in Commission-accepted tar-
15 iffs, rate schedules, or agreements in effect of any Com-
16 mission-authorized independent system operator or re-
17 gional transmission organization shall continue to apply
18 unless the Commission accepts an amendment thereto by
19 the applicable operator or organization, or upon complaint
20 finds them to be unjust, unreasonable, unduly discrimina-
21 tory or preferential, or not in the public interest. At the
22 conclusion of such transition period, any such reliability
23 standard, guidance, practice, or amendment thereto that
24 the Commission determines is inconsistent with organiza-
25 tion standards shall no longer apply.”.

1 (2) ENFORCEMENT.—Sections 316 and 316A of
2 the Federal Power Act are each amended by striking
3 “or 214” each place it appears and inserting “214,
4 or 215”.

5 (b) APPLICATION OF ANTITRUST LAWS.—Notwith-
6 standing any other provision of law, each of the following
7 activities are rebuttably presumed to be in compliance with
8 the antitrust laws of the United States:

9 (1) Activities undertaken by the Electric Reli-
10 ability Organization under section 215 of the Fed-
11 eral Power Act or affiliated regional reliability entity
12 operating under an agreement in effect under sec-
13 tion 215(h) of such Act.

14 (2) Activities of a member of the Electric Reli-
15 ability Organization or affiliated regional reliability
16 entity in pursuit of organization objectives under
17 section 215 of the Federal Power Act undertaken in
18 good faith under the rules of the organization.

19 Primary jurisdiction, and immunities and other affirma-
20 tive defenses, shall be available to the extent otherwise ap-
21 plicable.

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