

106TH CONGRESS
2D SESSION

H. R. 4941

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

JULY 24, 2000

Mr. WYNN (for himself, Mr. SHADEGG, Mr. PALLONE, Mr. BILBRAY, and Ms. ESHOO) introduced the following bill; which was referred to the Committee on 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 Electric Reli-
5 ability 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. Any
22 such organization standard that has gone into effect shall
23 remain in effect unless and until suspended or disapproved
24 by the Commission. If the Commission determines at any
25 time that the emergency organization standard or amend-

1 ment is not necessary, the Commission may suspend such
2 emergency organization standard or amendment.

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

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

19 “(g) CHANGES IN PROCEDURES, GOVERNANCE, OR
20 FUNDING.—(1) The Electric Reliability Organization shall
21 file with the Commission any proposed change in its proce-
22 dures, governance, or funding, or any changes in the affili-
23 ated regional reliability entity’s procedures, governance, or
24 funding relating to delegated functions, and shall include

1 with the filing an explanation of the basis and purpose
2 for the change.

3 “(2) A proposed procedural change may take effect
4 90 days after filing with the Commission if the change
5 constitutes a statement of policy, practice, or interpreta-
6 tion with respect to the meaning or enforcement of an ex-
7 isting procedure. Otherwise, a proposed procedural change
8 shall take effect only upon a finding by the Commission,
9 after notice and opportunity for comments, that the
10 change is just, reasonable, not unduly discriminatory or
11 preferential, is in the public interest, and satisfies the re-
12 quirements of subsection (d)(4).

13 “(3) A change in governance or funding shall not
14 take effect unless the Commission finds that the change
15 is just, reasonable, not unduly discriminatory or pref-
16 erential, in the public interest, and satisfies the require-
17 ments of subsection (d)(4).

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

1 “(h) DELEGATIONS OF AUTHORITY.—(1) The Elec-
2 tric Reliability Organization shall, upon request by an en-
3 tity, enter into an agreement with such entity for the dele-
4 gation of authority to implement and enforce compliance
5 with organization standards in a specified geographic area
6 if the organization finds that the entity requesting the del-
7 egation satisfies the requirements of subparagraphs (A),
8 (B), (C), (D), (F), (J), and (K) of subsection (d)(4), and
9 if the delegation promotes the effective and efficient imple-
10 mentation and administration of bulk-power system reli-
11 ability. The Electric Reliability Organization may enter
12 into an agreement to delegate to the entity any other au-
13 thority, except that the Electric Reliability Organization
14 shall reserve the right to set and approve standards for
15 bulk-power system reliability.

16 “(2) The Electric Reliability Organization shall file
17 with the Commission any agreement entered into under
18 this subsection and any information the Commission re-
19 quires with respect to the affiliated regional reliability en-
20 tity to which authority is to be delegated. The Commission
21 shall approve the agreement, following public notice and
22 an opportunity for comment, if it finds that the agreement
23 meets the requirements of paragraph (1), and is just, rea-
24 sonable, not unduly discriminatory or preferential, and is
25 in the public interest. A proposed delegation agreement

1 with an affiliated regional reliability entity organized on
2 an interconnection-wide basis shall be rebuttably pre-
3 sumed by the Commission to promote the effective and
4 efficient implementation and administration of bulk-power
5 system reliability. No delegation by the Electric Reliability
6 Organization shall be valid unless approved by the Com-
7 mission.

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

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

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

23 “(iii) fails to provide a level of reliability of the
24 bulk-power system within the interconnection such
25 that it would constitute a serious and substantial

1 threat to public health, safety, welfare, or national
2 security; or

3 “(iv) creates a serious and substantial burden
4 on competitive markets within the interconnection
5 that is not necessary for reliability.

6 “(B) With respect to any such proposal that would
7 apply only to part of an interconnection, the Electric Reli-
8 ability Organization shall find such proposal valid if the
9 affiliated regional reliability entity or entities making the
10 proposal demonstrate that it—

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

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

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

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

24 The Electric Reliability Organization shall approve or dis-
25 approve such proposal within 120 days, or the proposal

1 shall be deemed approved. Following approval of any such
2 proposal under this paragraph, the Electric Reliability Or-
3 ganization shall seek Commission approval pursuant to
4 the procedures prescribed under subsection (e)(3). Affili-
5 ated regional reliability entities may not make requests for
6 approval directly to the Commission except pursuant to
7 subsection (e)(3)(D).

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

23 “(5)(A) The Commission may, upon its own motion
24 or upon complaint, and with notice to the appropriate af-
25 filiated regional reliability entity or entities, direct the

1 Electric Reliability Organization to propose a modification
2 to an agreement entered into under this subsection if the
3 Commission determines that—

4 “(i) the affiliated regional reliability entity no
5 longer has the capacity to carry out effectively or ef-
6 ficiently its implementation or enforcement respon-
7 sibilities under that agreement, has failed to meet its
8 obligations under that agreement, or has violated
9 any provision of this section;

10 “(ii) the rules, practices, or procedures of the
11 affiliated regional reliability entity no longer provide
12 for fair and impartial discharge of its implementa-
13 tion or enforcement responsibilities under the agree-
14 ment;

15 “(iii) the geographic boundary of a transmission
16 entity approved by the Commission is not wholly
17 within the boundary of an affiliated regional reli-
18 ability entity and such difference is inconsistent with
19 the effective and efficient implementation and ad-
20 ministration of bulk-power system reliability; or

21 “(iv) the agreement is inconsistent with another
22 delegation agreement as a result of actions taken
23 under paragraph (4) of this subsection.

24 “(B) Following an order of the Commission issued
25 under subparagraph (A), the Commission may suspend

1 the affected agreement if the Electric Reliability Organiza-
2 tion or the affiliated regional reliability entity does not
3 propose an appropriate and timely modification. If the
4 agreement is suspended, the Electric Reliability Organiza-
5 tion shall assume the previously delegated responsibilities.
6 The Commission shall allow the Electric Reliability Orga-
7 nization and the affiliated regional reliability entity an op-
8 portunity to appeal the suspension.

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

17 “(j) INJUNCTIONS AND DISCIPLINARY ACTION.—(1)
18 Consistent with the range of actions approved by the Com-
19 mission under subsection (d)(4)(H), the Electric Reli-
20 ability Organization may impose a penalty, limitation of
21 activities, functions, operations, or other disciplinary ac-
22 tion the Electric Reliability Organization finds appropriate
23 against a user of the bulk-power system if the Electric
24 Reliability Organization, after notice and an opportunity
25 for interested parties to be heard, issues a finding in writ-

1 ing that the user of the bulk-power system has violated
2 an organization standard. The Electric Reliability Organi-
3 zation shall immediately notify the Commission of any dis-
4 ciplinary action imposed with respect to an act or failure
5 to act of a user of the bulk-power system that affected
6 or threatened to affect bulk-power system facilities located
7 in the United States, and the sanctioned party shall have
8 the right to seek modification or rescission of such discipli-
9 nary action by the Commission. If the organization finds
10 it necessary to prevent a serious threat to reliability, the
11 organization may seek injunctive relief in a Federal court
12 in the district in which the affected facilities are located.

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

1 such hearing under procedures established to ensure expe-
2 dited consideration of the action taken.

3 “(3) The Commission, on its own motion or on com-
4 plaint, may order compliance with an organization stand-
5 ard and may impose a penalty, limitation of activities,
6 functions, or operations, or take such other disciplinary
7 action as the Commission finds appropriate, against a user
8 of the bulk-power system with respect to actions affecting
9 or threatening to affect bulk-power system facilities lo-
10 cated in the United States if the Commission finds, after
11 notice and opportunity for a hearing, that the user of the
12 bulk-power system has violated or threatens to violate an
13 organization standard.

14 “(4) The Commission may take such action as is nec-
15 essary against the Electric Reliability Organization or an
16 affiliated regional reliability entity to assure compliance
17 with an organization standard, or any Commission order
18 affecting the Electric Reliability Organization or an affli-
19 ated regional reliability entity.

20 “(k) RELIABILITY REPORTS.—The Electric Reli-
21 ability Organization shall conduct periodic assessments of
22 the reliability and adequacy of the interconnected bulk-
23 power system in North America and shall report annually
24 to the Secretary of Energy and the Commission its find-

1 ings and recommendations for monitoring or improving
2 system reliability and adequacy.

3 “(l) ASSESSMENT AND RECOVERY OF CERTAIN
4 COSTS.—The reasonable costs of the Electric Reliability
5 Organization, and the reasonable costs of each affiliated
6 regional reliability entity that are related to implementa-
7 tion and enforcement of organization standards or other
8 requirements contained in a delegation agreement ap-
9 proved under subsection (h), shall be assessed by the Elec-
10 tric Reliability Organization and each affiliated regional
11 reliability entity, respectively, taking into account the rela-
12 tionship of costs to each region and based on an allocation
13 that reflects an equitable sharing of the costs among all
14 end users. The Commission shall provide by rule for the
15 review of such costs and allocations, pursuant to the
16 standards in this subsection and subsection (d)(4)(F).

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

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

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

6 “(4) Within 90 days of the application of the Electric
7 Reliability Organization or other affected party, the Com-
8 mission shall issue a final order determining whether a
9 state action is inconsistent with an Organization Stand-
10 ard, after notice and opportunity for comment, taking into
11 consideration any recommendations of the Electric Reli-
12 ability Organization.

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

17 “(n) REGIONAL ADVISORY BODIES.—The Commis-
18 sion shall establish a regional advisory body on the petition
19 of at least two-thirds of the States within a region that
20 have more than one-half of their electric load served within
21 the region. A regional advisory body shall be composed of
22 one member from each participating State in the region,
23 appointed by the Governor of each State, and may include
24 representatives of agencies, States, and provinces outside
25 the United States, upon execution of an international

1 agreement or agreements described in subsection (f). A
2 regional advisory body may provide advice to the electric
3 reliability organization, an affiliated regional reliability en-
4 tity, or the Commission regarding the governance of an
5 existing or proposed affiliated regional reliability entity
6 within the same region, whether an organization standard,
7 entity rule, or variance proposed to apply within the region
8 is just, reasonable, not unduly discriminatory or pref-
9 erential, and in the public interest, and whether fees pro-
10 posed to be assessed within the region are just, reasonable,
11 not unduly discriminatory or preferential, in the public in-
12 terest, and consistent with the requirements of subsection
13 (l). The Commission may give deference to the advice of
14 any such regional advisory body if that body is organized
15 on an interconnection-wide basis.

16 “(o) COORDINATION WITH REGIONAL TRANSMISSION
17 ORGANIZATIONS.—(1) Each regional transmission organi-
18 zation authorized by the Commission shall be responsible
19 for maintaining the short-term reliability of the bulk-
20 power system that it operates, consistent with organiza-
21 tion standards.

22 “(2) Except as provided in paragraph (5), in connec-
23 tion with a proceeding under subsection (e) to consider
24 a proposed organization standard, each regional trans-
25 mission organization authorized by the Commission shall

1 report to the Commission, and notify the electric reliability
2 organization and any applicable affiliated regional reli-
3 ability entity, regarding whether the proposed organiza-
4 tion standard hinders or conflicts with that regional trans-
5 mission organization's ability to fulfill the requirements of
6 any Commission-accepted, approved, or ordered rule, regu-
7 lation, order, tariff, rate schedule, or agreement. Where
8 such hindrance or conflict is identified, the Commission
9 shall address such hindrance or conflict, and the need for
10 any changes to such Commission-accepted, approved, or
11 ordered rule, order, tariff, rate schedule, or agreement in
12 its order under subsection (e) regarding the proposed
13 standard. Where such hindrance or conflict is identified
14 between a proposed organization standard and a provision
15 of any rule, order, tariff, rate schedule or agreement ac-
16 cepted, approved or ordered by the Commission applicable
17 to a regional transmission organization, nothing in this
18 section shall require a change in the regional transmission
19 organization's obligation to comply with such provision un-
20 less the Commission orders such a change and the change
21 becomes effective. If the Commission finds that the tariff,
22 rate schedule, or agreement needs to be changed, the re-
23 gional transmission organization must expeditiously make
24 a section 205 filing to reflect the change. If the Commis-
25 sion finds that the proposed organization standard needs

1 to be changed, it shall remand the proposed organization
2 standard to the electric reliability organization under sub-
3 section (e)(3)(B).

4 “(3) Except as provided in paragraph (5), to the ex-
5 tent hindrances and conflicts arise after approval of a reli-
6 ability standard under subsection (c) or organization
7 standard under subsection (e), each regional transmission
8 organization authorized by the Commission shall report to
9 the Commission, and notify the electric reliability organi-
10 zation and any applicable affiliated regional reliability en-
11 tity, regarding any reliability standard approved under
12 subsection (c) or organization standard that hinders or
13 conflicts with that regional transmission organization’s
14 ability to fulfill the requirements of any Commission-ac-
15 cepted, approved, or ordered rule, regulation, order, tariff,
16 rate schedule, or agreement. The Commission shall seek
17 to assure that such hindrances or conflicts are resolved
18 promptly. Where a hindrance or conflict is identified be-
19 tween a reliability standard or an organization standard
20 and a provision of any rule, order, tariff, rate schedule
21 or agreement accepted, approved or ordered by the Com-
22 mission applicable to a regional reliability organization,
23 nothing in this section shall require a change in the re-
24 gional transmission organization’s obligation to comply
25 with such provision unless the Commission orders such a

1 change and the change becomes effective. If the Commis-
2 sion finds that the tariff, rate schedule or agreement needs
3 to be changed, the regional transmission organization
4 must expeditiously make a section 205 filing to reflect the
5 change. If the Commission finds that an organization
6 standard needs to be changed, it shall order the electric
7 reliability organization to develop and submit a modified
8 organization standard under subsection (e)(3)(C).

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

20 “(5) Until 6 months after approval of applicable sub-
21 section (h)(3) procedures, any reliability standard, guid-
22 ance, or practice contained in Commission-accepted tar-
23 iffs, rate schedules, or agreements in effect of any Com-
24 mission-authorized independent system operator or re-
25 gional transmission organization shall continue to apply

1 unless the Commission accepts an amendment thereto by
2 the applicable operator or organization, or upon complaint
3 finds them to be unjust, unreasonable, unduly discrimina-
4 tory or preferential, or not in the public interest. At the
5 conclusion of such transition period, any such reliability
6 standard, guidance, practice, or amendment thereto that
7 the Commission determines is inconsistent with organiza-
8 tion standards shall no longer apply.”.

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

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

17 (1) Activities undertaken by the Electric Reli-
18 ability Organization under section 215 of the Fed-
19 eral Power Act or affiliated regional reliability entity
20 operating under an agreement in effect under sec-
21 tion 215(h) of such Act.

22 (2) Activities of a member of the Electric Reli-
23 ability Organization or affiliated regional reliability
24 entity in pursuit of organization objectives under

1 section 215 of the Federal Power Act undertaken in
2 good faith under the rules of the organization.
3 Primary jurisdiction, and immunities and other affirma-
4 tive defenses, shall be available to the extent otherwise ap-
5 plicable.

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