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To amend the Federal Power Act to establish electric reliability standards.

IN THE SENATE OF THE UNITED STATES

JANUARY 21, 2004

Ms. CANTWELL (for herself, Mrs. CLINTON, Mr. JEFFORDS, and Mr. FEINGOLD) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To amend the Federal Power Act to establish electric reliability standards.

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 Act
5 of 2004”.

6 **SEC. 2. ELECTRIC RELIABILITY STANDARDS.**

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

9 **“SEC. 215. ELECTRIC RELIABILITY.**

10 **“(a) DEFINITIONS.—**In this section:

1 “(1) BULK-POWER SYSTEM.—The term ‘bulk-
2 power system’ means a network of interconnected
3 transmission facilities and generating facilities.

4 “(2) ELECTRIC RELIABILITY ORGANIZATION.—
5 The term ‘electric reliability organization’ means a
6 self-regulating organization certified by the Commis-
7 sion under subsection (c) the purpose of which is to
8 promote the reliability of a bulk-power system.

9 “(3) RELIABILITY STANDARD.—The term ‘reli-
10 ability standard’ means a requirement to provide for
11 reliable operation of a bulk-power system approved
12 by the Commission under this section.

13 “(b) JURISDICTION AND APPLICABILITY.—

14 “(1) IN GENERAL.—The Commission shall have
15 jurisdiction, within the United States, over each
16 electric reliability organization, regional entity, and
17 user, owner, and operator of a bulk-power system
18 (including an entity described in section 201(f)), for
19 the purpose of approving reliability standards and
20 enforcing compliance with this section.

21 “(2) COMPLIANCE.—Each user, owner, and op-
22 erator of the bulk-power system shall comply with
23 reliability standards that take effect under this sec-
24 tion.

25 “(c) CERTIFICATION.—

1 “(1) FINAL RULE.—Not later than 180 days
2 after the date of enactment of this section, the Com-
3 mission shall promulgate a final rule to implement
4 the requirements of this section.

5 “(2) SUBMISSION OF APPLICATION.—Following
6 the promulgation of a Commission rule under para-
7 graph (1), any person may submit an application to
8 the Commission for certification as an electric reli-
9 ability organization.

10 “(3) REQUIREMENTS FOR CERTIFICATION.—
11 The Commission may certify an applicant if the
12 Commission determines that the applicant—

13 “(A) has the ability to develop, and en-
14 force, reliability standards that provide for an
15 adequate level of reliability of the bulk-power
16 system;

17 “(B) has established rules that—

18 “(i) ensure the independence of the
19 applicant from users, owners, and opera-
20 tors of the bulk-power system, while ensur-
21 ing fair stakeholder representation in the
22 selection of the directors of the applicant
23 and balanced decisionmaking in any com-
24 mittee or subordinate organizational struc-
25 ture;

1 “(ii) allocate equitably dues, fees, and
2 other charges among end users for all ac-
3 tivities conducted under this section;

4 “(iii) provide fair and impartial proce-
5 dures for enforcement of reliability stand-
6 ards through imposition of penalties (in-
7 cluding limitations on activities, functions,
8 or operations, or other appropriate sanc-
9 tions); and

10 “(iv) provide for reasonable notice and
11 opportunity for public comment, due proce-
12 ess, openness, and balance of interests in
13 developing reliability standards and other-
14 wise exercising the duties of the applicant.

15 “(4) MULTIPLE APPLICATIONS.—If the Com-
16 mission receives 2 or more timely applications that
17 satisfy the requirements of this subsection, the Com-
18 mission shall approve only the application that the
19 Commission concludes will best implement this sec-
20 tion.

21 “(d) RELIABILITY STANDARDS.—

22 “(1) FILING.—An electric reliability organiza-
23 tion shall file a proposed reliability standard or
24 modification to a reliability standard with the Com-
25 mission.

1 “(2) APPROVAL.—

2 “(A) IN GENERAL.—The Commission may
3 approve a proposed reliability standard or modi-
4 fication to a reliability standard if the Commis-
5 sion determines that the standard is just, rea-
6 sonable, not unduly discriminatory or pref-
7 erential, and in the public interest.

8 “(B) DEFERRAL TO ELECTRIC RELI-
9 ABILITY ORGANIZATIONS.—The Commission—

10 “(i) shall give due weight to the tech-
11 nical expertise of the electric reliability or-
12 ganization with respect to the content of a
13 proposed standard or modification to a re-
14 liability standard; but

15 “(ii) shall not defer with respect to
16 the effect of the standard or modification
17 on competition.

18 “(3) REBUTTABLE PRESUMPTIONS FOR INTER-
19 CONNECTION-WIDE ORGANIZATIONS.—The electric
20 reliability organization and the Commission shall
21 rebuttably presume that a proposal from a regional
22 entity organized on an interconnection-wide basis for
23 a reliability standard or modification to a reliability
24 standard to be applicable on an interconnection-wide

1 basis is just, reasonable, not unduly discriminatory
2 or preferential, and in the public interest.

3 “(4) DISAPPROVAL.—The Commission shall re-
4 mand to the electric reliability organization for fur-
5 ther consideration a proposed reliability standard or
6 a modification to a reliability standard that the
7 Commission disapproves in whole or in part.

8 “(5) MANDATORY SUBMISSION.—The Commis-
9 sion, on its own motion or on complaint, may order
10 an electric reliability organization to submit to the
11 Commission a proposed reliability standard or a
12 modification to a reliability standard that addresses
13 a specific matter if the Commission considers such
14 a new or modified reliability standard to be appro-
15 priate to carry out this section.

16 “(e) ENFORCEMENT.—

17 “(1) PENALTIES BY ELECTRIC RELIABILITY OR-
18 GANIZATIONS ON USERS, OWNERS, OR OPERA-
19 TORS.—An electric reliability organization may im-
20 pose a penalty on a user, owner, or operator of a
21 bulk-power system if the electric reliability organiza-
22 tion, after notice and an opportunity for a hearing—

23 “(A) finds that the user, owner, or oper-
24 ator of the bulk-power system has violated a re-

1 liability standard approved by the Commission
2 under subsection (d); and

3 “(B) files notice with the Commission,
4 which shall affirm, set aside, or modify the ac-
5 tion.

6 “(2) ORDERS OR PENALTIES BY COMMISSION
7 ON USERS, OWNERS, OR OPERATORS.—On its own
8 motion or on complaint, the Commission may order
9 compliance with a reliability standard, and may im-
10 pose a penalty against a user, owner, or operator of
11 a bulk-power system, if the Commission finds, after
12 notice and opportunity for a hearing, that the user,
13 owner, or operator of the bulk-power system has vio-
14 lated or threatens to violate a reliability standard.

15 “(3) DELEGATION TO REGIONAL ENTITY.—

16 “(A) IN GENERAL.—The Commission shall
17 promulgate regulations authorizing the electric
18 reliability organization to—

19 “(i) enter into an agreement to dele-
20 gate authority to a regional entity for the
21 purpose of proposing and enforcing reli-
22 ability standards (including related activi-
23 ties) if—

1 “(I) the regional entity satisfies
2 the requirements of subparagraphs
3 (A) and (B) of subsection (c)(2); and

4 “(II) the agreement promotes ef-
5 fective and efficient administration of
6 bulk-power system reliability; and

7 “(ii) modify the delegation.

8 “(B) REBUTTABLE PRESUMPTIONS FOR
9 INTERCONNECTION-WIDE ORGANIZATIONS.—

10 The electric reliability organization and the
11 Commission shall rebuttably presume that a
12 proposal for delegation to a regional entity or-
13 ganized on an interconnection-wide basis pro-
14 motes effective and efficient administration of
15 bulk-power system reliability and should be ap-
16 proved.

17 “(C) DIRECT DELEGATION TO REGIONAL
18 ENTITY.—The regulations may provide that the
19 Commission may assign the authority of the
20 electric reliability organization to enforce reli-
21 ability standards directly to a regional entity
22 consistent with this paragraph.

23 “(4) COMPLIANCE.—The Commission may take
24 such action as is necessary or appropriate against
25 the electric reliability organization or a regional enti-

1 ty to ensure compliance with a reliability standard
2 or any Commission order affecting the electric reli-
3 ability organization or regional entity.

4 “(f) CHANGES IN ELECTRICITY RELIABILITY ORGA-
5 NIZATION RULES.—

6 “(1) FILING.—An electric reliability organiza-
7 tion shall file with the Commission for approval any
8 proposed rule or proposed rule change, accompanied
9 by an explanation of the basis and purpose of the
10 rule or change.

11 “(2) COMMISSION INITIATIVE.—The Commis-
12 sion, on its own motion or complaint, may propose
13 a change to the rules of the electric reliability orga-
14 nization.

15 “(3) EFFECTIVE DATE.—A proposed rule or
16 proposed rule change shall take effect on a finding
17 by the Commission, after notice and opportunity for
18 comment, that the change is just, reasonable, not
19 unduly discriminatory or preferential, is in the pub-
20 lic interest, and satisfies the requirements of sub-
21 section (c)(2).

22 “(g) COORDINATION WITH CANADA AND MEXICO.—

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

1 “(2) INTERNATIONAL AGREEMENTS.—The
2 President shall, to the maximum extent practicable,
3 enter into international agreements with the govern-
4 ments of Canada and Mexico to provide for effective
5 compliance with reliability standards and the effec-
6 tiveness of the electric reliability organization in the
7 United States and Canada or Mexico.

8 “(h) RELIABILITY REPORTS.—The electric reliability
9 organization shall conduct periodic assessments of the reli-
10 ability and adequacy of the interconnected bulk-power sys-
11 tem in North America.

12 “(i) SAVINGS PROVISIONS.—

13 “(1) COMPLIANCE.—The electric reliability or-
14 ganization shall have authority to develop and en-
15 force compliance with standards for the reliable op-
16 eration of only the bulk-power system.

17 “(2) ADDITIONAL CAPACITY; ADEQUACY OR
18 SAFETY.—This section does not provide the electric
19 reliability organization or the Commission with the
20 authority—

21 “(A) to order the construction of addi-
22 tional generation or transmission capacity; or

23 “(B) to establish and enforce compliance
24 with standards for adequacy or safety of electric
25 facilities or services.

1 “(3) STATE ACTION.—Nothing in this section
2 preempts any authority of a State to take action to
3 ensure the safety, adequacy, and reliability of elec-
4 tric service within that State, as long as the action
5 is not inconsistent with any reliability standard.

6 “(4) CONSISTENCY WITH RELIABILITY STAND-
7 ARDS.—Not later than 90 days after the filing of the
8 application of the electric reliability organization or
9 other affected party, and after notice and oppor-
10 tunity for comment, the Commission shall issue a
11 final order determining whether a State action is in-
12 consistent with a reliability standard, taking into
13 consideration any recommendation of the electric re-
14 liability organization.

15 “(5) STAYS.—The Commission, after consulta-
16 tion with the electric reliability organization, may
17 stay the effectiveness of any State action, pending
18 the issuance of a final order by the Commission.

19 “(j) APPLICATION OF ANTITRUST LAWS.—

20 “(1) DEFINITION OF ANTITRUST LAWS.—In
21 this subsection:

22 “(A) IN GENERAL.—The term ‘antitrust
23 laws’ has the meaning given the term in sub-
24 section (a) of the first section of the Clayton
25 Act (15 U.S.C. 12(a)).

1 “(B) INCLUSION.—The term ‘antitrust
2 laws’ includes section 5 of the Federal Trade
3 Commission Act (15 U.S.C. 45), to the extent
4 that section applies to unfair methods of com-
5 petition.

6 “(2) APPLICATION.—To the extent undertaken
7 to develop, implement, or enforce a reliability stand-
8 ard, each of the following activities shall not, in any
9 action under the antitrust laws, be deemed illegal
10 per se:

11 “(A) Activities undertaken by an electric
12 reliability organization under this section.

13 “(B) Activities of a user, owner, or oper-
14 ator of the bulk-power system undertaken in
15 good faith under the rules of an electric reli-
16 ability organization.

17 “(3) RULE OF REASON.—In any action under
18 the antitrust laws, an activity described in para-
19 graph (2) shall be judged on the basis of the reason-
20 ableness of the activity, taking into account all rel-
21 evant factors affecting competition and reliability.

22 “(k) REGIONAL ADVISORY BODIES.—

23 “(1) IN GENERAL.—The Commission shall es-
24 tablish a regional advisory body on the petition of at
25 least $\frac{2}{3}$ of the States within a region that have more

1 than 1/2 of their electric loads served within the re-
2 gion.

3 “(2) COMPOSITION.—A regional advisory
4 body—

5 “(A) shall be composed of 1 member from
6 each participating State in the region, ap-
7 pointed by the Governor of the State; and

8 “(B) may include representatives of agen-
9 cies, States, and provinces outside the United
10 States.

11 “(3) ADVICE.—A regional advisory body may
12 provide advice to an electric reliability organization,
13 a regional reliability entity, or the Commission re-
14 garding—

15 “(A) the governance of an existing or pro-
16 posed regional reliability entity within the same
17 region;

18 “(B) whether a standard proposed to apply
19 within the region is just, reasonable, not unduly
20 discriminatory or preferential, and in the public
21 interest;

22 “(C) whether fees proposed to be assessed
23 within the region are just, reasonable, not un-
24 duly discriminatory or preferential, and in the
25 public interest; and

1 “(D) any other responsibilities requested
2 by the Commission.

3 “(4) INTERCONNECTION-WIDE BASIS.—The
4 Commission may give deference to the advice of any
5 such regional advisory body if the regional advisory
6 board is organized on an interconnection-wide basis.

7 “(1) NONAPPLICATION TO ALASKA AND HAWAII.—
8 This section does not apply to Alaska or Hawaii.”.

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