

Calendar No. 465

108TH CONGRESS
2D SESSION**S. 2236**

To enhance the reliability of the electric system.

IN THE SENATE OF THE UNITED STATES

MARCH 25, 2004

Ms. CANTWELL (for herself, Mr. BINGAMAN, Mrs. CLINTON, Mr. JEFFORDS, Mr. SCHUMER, Mr. REID, and Mr. DASCHLE) introduced the following bill; which was read the first time

MARCH 26, 2004

Read the second time and placed on the calendar

A BILL

To enhance the reliability of the electric system.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Electric Reliability Act
5 of 2004”.

1 **SEC. 2. ELECTRIC RELIABILITY STANDARDS.**

2 (a) IN GENERAL.—Part II of the Federal Power Act
3 (16 U.S.C. 824 et seq.) is amended by adding at the end
4 the following:

5 **“SEC. 215. ELECTRIC RELIABILITY.**

6 “(a) DEFINITIONS.—For purposes of this section:

7 “(1) The term ‘bulk-power system’ means—

8 “(A) facilities and control systems nec-
9 essary for operating an interconnected electric
10 energy transmission network (or any portion
11 thereof); and

12 “(B) electric energy from generation facili-
13 ties needed to maintain transmission system re-
14 liability.

15 The term does not include facilities used in the local
16 distribution of electric energy.

17 “(2) The terms ‘Electric Reliability Organiza-
18 tion’ and ‘ERO’ mean the organization certified by
19 the Commission under subsection (c) the purpose of
20 which is to establish and enforce reliability stand-
21 ards for the bulk-power system, subject to Commis-
22 sion review.

23 “(3) The term ‘reliability standard’ means a re-
24 quirement, approved by the Commission under this
25 section, to provide for reliable operation of the bulk-
26 power system. The term includes requirements for

1 the operation of existing bulk-power system facilities
2 and the design of planned additions or modifications
3 to such facilities to the extent necessary to provide
4 for reliable operation of the bulk-power system, but
5 the term does not include any requirement to en-
6 large such facilities or to construct new transmission
7 capacity or generation capacity.

8 “(4) The term ‘reliable operation’ means oper-
9 ating the elements of the bulk-power system within
10 equipment and electric system thermal, voltage, and
11 stability limits so that instability, uncontrolled sepa-
12 ration, or cascading failures of such system will not
13 occur as a result of a sudden disturbance or unan-
14 ticipated failure of system elements.

15 “(5) The term ‘Interconnection’ means a geo-
16 graphic area in which the operation of bulk-power
17 system components is synchronized such that the
18 failure of 1 or more of such components may ad-
19 versely affect the ability of the operators of other
20 components within the system to maintain reliable
21 operation of the facilities within their control.

22 “(6) The term ‘transmission organization’
23 means a Regional Transmission Organization, Inde-
24 pendent System Operator, independent transmission
25 provider, or other transmission organization finally

1 approved by the Commission for the operation of
2 transmission facilities.

3 “(7) The term ‘regional entity’ means an entity
4 having enforcement authority pursuant to subsection
5 (e)(4).

6 “(b) JURISDICTION AND APPLICABILITY.—(1) The
7 Commission shall have jurisdiction, within the United
8 States, over the ERO certified by the Commission under
9 subsection (c), any regional entities, and all users, owners
10 and operators of the bulk-power system, including but not
11 limited to the entities described in section 201(f), for pur-
12 poses of approving reliability standards established under
13 this section and enforcing compliance with this section. All
14 users, owners and operators of the bulk-power system
15 shall comply with reliability standards that take effect
16 under this section.

17 “(2) The Commission shall issue a final rule to imple-
18 ment the requirements of this section not later than 180
19 days after the date of enactment of this section.

20 “(c) CERTIFICATION.—Following the issuance of a
21 Commission rule under subsection (b)(2), any person may
22 submit an application to the Commission for certification
23 as the Electric Reliability Organization. The Commission
24 may certify 1 such ERO if the Commission determines
25 that such ERO—

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

5 “(2) has established rules that—

6 “(A) assure its independence of the users
7 and owners and operators of the bulk-power
8 system, while assuring fair stakeholder rep-
9 resentation in the selection of its directors and
10 balanced decisionmaking in any ERO com-
11 mittee or subordinate organizational structure;

12 “(B) allocate equitably reasonable dues,
13 fees, and other charges among end users for all
14 activities under this section;

15 “(C) provide fair and impartial procedures
16 for enforcement of reliability standards through
17 the imposition of penalties in accordance with
18 subsection (e) (including limitations on activi-
19 ties, functions, or operations, or other appro-
20 priate sanctions);

21 “(D) provide for reasonable notice and op-
22 portunity for public comment, due process,
23 openness, and balance of interests in developing
24 reliability standards and otherwise exercising its
25 duties; and

1 “(E) provide for taking, after certification,
2 appropriate steps to gain recognition in Canada
3 and Mexico.

4 “(d) RELIABILITY STANDARDS.—(1) The Electric
5 Reliability Organization shall file each reliability standard
6 or modification to a reliability standard that it proposes
7 to be made effective under this section with the Commis-
8 sion.

9 “(2) The Commission may approve, by rule or order,
10 a proposed reliability standard or modification to a reli-
11 ability standard if it determines that the standard is just,
12 reasonable, not unduly discriminatory or preferential, and
13 in the public interest. The Commission shall give due
14 weight to the technical expertise of the Electric Reliability
15 Organization with respect to the content of a proposed
16 standard or modification to a reliability standard and to
17 the technical expertise of a regional entity organized on
18 an Interconnection-wide basis with respect to a reliability
19 standard to be applicable within that Interconnection, but
20 shall not defer with respect to the effect of a standard
21 on competition. A proposed standard or modification shall
22 take effect upon approval by the Commission.

23 “(3) The Electric Reliability Organization shall
24 rebuttably presume that a proposal from a regional entity
25 organized on an Interconnection-wide basis for a reliability

1 standard or modification to a reliability standard to be ap-
2 plicable on an Interconnection-wide basis is just, reason-
3 able, and not unduly discriminatory or preferential, and
4 in the public interest.

5 “(4) The Commission shall remand to the Electric
6 Reliability Organization for further consideration a pro-
7 posed reliability standard or a modification to a reliability
8 standard that the Commission disapproves in whole or in
9 part.

10 “(5) The Commission, upon its own motion or upon
11 complaint, may order the Electric Reliability Organization
12 to submit to the Commission a proposed reliability stand-
13 ard or a modification to a reliability standard that ad-
14 dresses a specific matter if the Commission considers such
15 a new or modified reliability standard appropriate to carry
16 out this section.

17 “(6) The final rule adopted under subsection (b)(2)
18 shall include fair processes for the identification and time-
19 ly resolution of any conflict between a reliability standard
20 and any function, rule, order, tariff, rate schedule, or
21 agreement accepted, approved, or ordered by the Commis-
22 sion applicable to a transmission organization. Such trans-
23 mission organization shall continue to comply with such
24 function, rule, order, tariff, rate schedule or agreement ac-
25 cepted approved, or ordered by the Commission until—

1 “(A) the Commission finds a conflict exists be-
2 tween a reliability standard and any such provision;

3 “(B) the Commission orders a change to such
4 provision pursuant to section 206 of this part; and

5 “(C) the ordered change becomes effective
6 under this part.

7 If the Commission determines that a reliability standard
8 needs to be changed as a result of such a conflict, it shall
9 order the ERO to develop and file with the Commission
10 a modified reliability standard under paragraph (4) or (5)
11 of this subsection.

12 “(e) ENFORCEMENT.—(1) The ERO may impose,
13 subject to paragraph (2), a penalty on a user or owner
14 or operator of the bulk-power system for a violation of a
15 reliability standard approved by the Commission under
16 subsection (d) if the ERO, after notice and an opportunity
17 for a hearing—

18 “(A) finds that the user or owner or operator
19 has violated a reliability standard approved by the
20 Commission under subsection (d); and

21 “(B) files notice and the record of the pro-
22 ceeding with the Commission.

23 “(2) A penalty imposed under paragraph (1) may
24 take effect not earlier than the 31st day after the ERO
25 files with the Commission notice of the penalty and the

1 record of proceedings. Such penalty shall be subject to re-
2 view by the Commission, on its own motion or upon appli-
3 cation by the user, owner or operator that is the subject
4 of the penalty filed within 30 days after the date such
5 notice is filed with the Commission. Application to the
6 Commission for review, or the initiation of review by the
7 Commission on its own motion, shall not operate as a stay
8 of such penalty unless the Commission otherwise orders
9 upon its own motion or upon application by the user,
10 owner or operator that is the subject of such penalty. In
11 any proceeding to review a penalty imposed under para-
12 graph (1), the Commission, after notice and opportunity
13 for hearing (which hearing may consist solely of the record
14 before the ERO and opportunity for the presentation of
15 supporting reasons to affirm, modify, or set aside the pen-
16 alty), shall by order affirm, set aside, reinstate, or modify
17 the penalty, and, if appropriate, remand to the ERO for
18 further proceedings. The Commission shall implement ex-
19 pedited procedures for such hearings.

20 “(3) On its own motion or upon complaint, the Com-
21 mission may order compliance with a reliability standard
22 and may impose a penalty against a user or owner or oper-
23 ator of the bulk-power system if the Commission finds,
24 after notice and opportunity for a hearing, that the user
25 or owner or operator of the bulk-power system has en-

1 gaged or is about to engage in any acts or practices that
2 constitute or will constitute a violation of a reliability
3 standard.

4 “(4) The Commission shall issue regulations author-
5 izing the ERO to enter into an agreement to delegate au-
6 thority to a regional entity for the purpose of proposing
7 reliability standards to the ERO and enforcing reliability
8 standards under paragraph (1) if—

9 “(A) the regional entity is governed by—

10 “(i) an independent board;

11 “(ii) a balanced stakeholder board; or

12 “(iii) a combination independent and bal-
13 anced stakeholder board.

14 “(B) the regional entity otherwise satisfies the
15 provisions of subsection (c)(1) and (2); and

16 “(C) the agreement promotes effective and effi-
17 cient administration of bulk-power system reliability.

18 The Commission may modify such delegation. The ERO
19 and the Commission shall rebuttably presume that a pro-
20 posal for delegation to a regional entity organized on an
21 Interconnection-wide basis promotes effective and efficient
22 administration of bulk-power system reliability and should
23 be approved. Such regulation may provide that the Com-
24 mission may assign the ERO’s authority to enforce reli-
25 ability standards under paragraph (1) directly to a re-

1 gional entity consistent with the requirements of this para-
2 graph.

3 “(5) The Commission may take such action as is nec-
4 essary or appropriate against the ERO or a regional entity
5 to ensure compliance with a reliability standard or any
6 Commission order affecting the ERO or a regional entity.

7 “(6) Any penalty imposed under this section shall
8 bear a reasonable relation to the seriousness of the viola-
9 tion and shall take into consideration the efforts of such
10 user, owner, or operator to remedy the violation in a time-
11 ly manner.

12 “(f) CHANGES IN ELECTRIC RELIABILITY ORGANIZA-
13 TION RULES.—The Electric Reliability Organization shall
14 file with the Commission for approval any proposed rule
15 or proposed rule change, accompanied by an explanation
16 of its basis and purpose. The Commission, upon its own
17 motion or complaint, may proposed a change to the rules
18 of the ERO. A proposed rule or proposed rule change shall
19 take effect upon a finding by the Commission, after notice
20 and opportunity for comment, that the change is just, rea-
21 sonable, not unduly discriminatory or preferential, is in
22 the public interest, and satisfies the requirements of sub-
23 section (c).

1 “(g) RELIABILITY REPORTS.—The ERO shall con-
2 duct periodic assessments of the reliability and adequacy
3 of the bulk-power system in North America.

4 “(h) COORDINATION WITH CANADA AND MEXICO.—
5 The President is urged to negotiate international agree-
6 ments with the governments of Canada and Mexico to pro-
7 vide for effective compliance with reliability standards and
8 the effectiveness of the ERO in the United States and
9 Canada or Mexico.

10 “(i) SAVINGS PROVISIONS.—(1) The ERO shall have
11 authority to develop and enforce compliance with reli-
12 ability standards for only the bulk-power system.

13 “(2) This section does not authorize the ERO or the
14 Commission to order the construction of additional gen-
15 eration or transmission capacity or to set and enforce com-
16 pliance with standards for adequacy or safety of electric
17 facilities or services.

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

23 “(4) Within 90 days of the application of the Electric
24 Reliability Organization or other affected party, and after
25 notice and opportunity for comment, the Commission shall

1 issue a final order determining whether a State action is
2 inconsistent with a reliability standard, taking into consid-
3 eration any recommendation of the ERO.

4 “(5) The Commission, after consultation with the
5 ERO and the State taking action, may stay the effective-
6 ness of any State action, pending the Commission’s
7 issuance of a final order.

8 “(j) REGIONAL ADVISORY BODIES.—The Commis-
9 sion shall establish a regional advisory body on the petition
10 of at least $\frac{2}{3}$ of the States within a region that have more
11 than $\frac{1}{2}$ of their electric load served within the region. A
12 regional advisory body shall be composed of 1 member
13 from each participating State in the region, appointed by
14 the Governor of each State, and may include representa-
15 tives of agencies, States, and provinces outside the United
16 States. A regional advisory body may provide advice to the
17 Electric Reliability Organization, a regional entity, or the
18 Commission regarding the governance of an existing or
19 proposed regional entity within the same region, whether
20 a standard proposed to apply within the region is just,
21 reasonable, not unduly discriminatory or preferential, and
22 in the public interest, whether fees proposed to be assessed
23 within the region are just, reasonable, not unduly discrimi-
24 natory or preferential, and in the public interest and any
25 other responsibilities request by the Commission. The

1 Commission may give deference to the advice of any such
2 regional advisory body if that body is organized on an
3 Interconnection-wide basis.

4 “(k) ALASKA AND HAWAII.—The provisions of this
5 section do not apply to Alaska or Hawaii.”

6 (b) STATUS OF ERO.—The Electric Reliability Orga-
7 nization certified by the Federal Energy Regulatory Com-
8 mission under section 215(c) of the Federal Power Act
9 and any regional entity delegated enforcement authority
10 pursuant to section 215(e)(4) of that Act are not depart-
11 ments, agencies, or instrumentalities of the United States
12 Government.

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