

109TH CONGRESS  
1ST SESSION

# S. 1031

To enhance the reliability of the electric system.

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IN THE SENATE OF THE UNITED STATES

MAY 12, 2005

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

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## 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 title may be cited as the “Electric Reliability  
5       Act of 2005”.

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

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

10       **“SEC. 215. ELECTRIC RELIABILITY.**

11       “(a) DEFINITIONS.—In this section:

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

2 “(i) facilities and control systems necessary  
3 for operating an interconnected electric energy  
4 transmission network (or any portion thereof);  
5 and

6 “(ii) electric energy from generation facili-  
7 ties needed to maintain transmission system re-  
8 liability.

9 “(B) The term ‘bulk-power system’ does not in-  
10 clude facilities used in the local distribution of elec-  
11 tric energy.

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

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

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

4           “(5)(A) The term ‘reliability standard’ means a  
5           requirement, approved by the Commission under this  
6           section, to provide for reliable operation of the bulk-  
7           power system.

8           “(B) The term ‘reliability standard’ includes re-  
9           quirements for the operation of existing bulk-power  
10          system facilities and the design of planned additions  
11          or modifications to those facilities to the extent nec-  
12          essary to provide for reliable operation of the bulk-  
13          power system.

14          “(C) The term ‘reliability standard’ does not in-  
15          clude any requirement to enlarge a facility described  
16          in subparagraph (B) or to construct new trans-  
17          mission capacity or generation capacity.

18          “(6) The term ‘reliable operation’ means oper-  
19          ating the elements of the bulk-power system within  
20          equipment and electric system thermal, voltage, and  
21          stability limits so that instability, uncontrolled sepa-  
22          ration, or cascading failures of such system will not  
23          occur as a result of a sudden disturbance or unan-  
24          ticipated failure of system elements.

1           “(7) The term ‘transmission organization’  
2       means a regional transmission organization, inde-  
3       pendent system operator, independent transmission  
4       provider, or other transmission organization finally  
5       approved by the Commission for the operation of  
6       transmission facilities.

7       “(b) JURISDICTION AND APPLICABILITY.—(1)(A)  
8       The Commission shall have jurisdiction, within the United  
9       States, over the ERO certified by the Commission under  
10      subsection (c), any regional entities, and all users, owners  
11      and operators of the bulk-power system, including the en-  
12      tities described in section 201(f), for purposes of approv-  
13      ing reliability standards established under this section and  
14      enforcing compliance with this section.

15      “(B) All users, owners, and operators of the bulk-  
16      power system shall comply with reliability standards that  
17      take effect under this section.

18      “(2) Not later than 180 days after the date of enact-  
19      ment of this section, the Commission shall issue a final  
20      rule to implement this section.

21      “(c) CERTIFICATION.—(1) Following the issuance of  
22      a Commission rule under subsection (b)(2), any person  
23      may submit an application to the Commission for certifi-  
24      cation as the Electric Reliability Organization.

1       “(2) The Commission may certify an ERO described  
2 in paragraph (1) if the Commission determines that the  
3 ERO—

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

8               “(B) has established rules that—

9                       “(i) ensure the independence of the ERO  
10 from the users and owners and operators of the  
11 bulk-power system, while ensuring fair stake-  
12 holder representation in the selection of direc-  
13 tors of the ERO and balanced decisionmaking  
14 in any ERO committee or subordinate organiza-  
15 tional structure;

16                      “(ii) allocate equitably reasonable dues,  
17 fees, and other charges among end users for all  
18 activities under this section;

19                      “(iii) provide fair and impartial procedures  
20 for enforcement of reliability standards through  
21 the imposition of penalties in accordance with  
22 subsection (e) (including limitations on activi-  
23 ties, functions, or operations, or other appro-  
24 priate sanctions);

1           “(iv) provide for reasonable notice and op-  
 2           portunity for public comment, due process,  
 3           openness, and balance of interests in developing  
 4           reliability standards and otherwise exercising  
 5           the duties of the ERO; and

6           “(v) provide for taking, after certification,  
 7           appropriate steps to gain recognition in Canada  
 8           and Mexico.

9           “(d) RELIABILITY STANDARDS.—(1) The Electric  
 10          Reliability Organization shall file each reliability standard  
 11          or modification to a reliability standard that the Electric  
 12          Reliability Organization proposes to be made effective  
 13          under this section with the Commission.

14          “(2)(A) The Commission may approve, by rule or  
 15          order, a proposed reliability standard or modification to  
 16          a reliability standard if the Commission determines that  
 17          the standard is just, reasonable, not unduly discriminatory  
 18          or preferential, and in the public interest.

19          “(B) The Commission—

20                 “(i) shall give due weight to the technical exper-  
 21          tise of the Electric Reliability Organization with re-  
 22          spect to the content of a proposed standard or modi-  
 23          fication to a reliability standard and to the technical  
 24          expertise of a regional entity organized on an inter-  
 25          connection-wide basis with respect to a reliability

1 standard to be applicable within that interconnec-  
2 tion; but

3 “(ii) shall not defer with respect to the effect of  
4 a standard on competition.

5 “(C) A proposed standard or modification shall take  
6 effect upon approval by the Commission.

7 “(3) The Electric Reliability Organization shall  
8 rebuttably presume that a proposal from a regional entity  
9 organized on an interconnection-wide basis for a reliability  
10 standard or modification to a reliability standard to be ap-  
11 plicable on an interconnection-wide basis is just, reason-  
12 able, and not unduly discriminatory or preferential, and  
13 in the public interest.

14 “(4) The Commission shall remand to the Electric  
15 Reliability Organization for further consideration a pro-  
16 posed reliability standard or a modification to a reliability  
17 standard that the Commission disapproves in whole or in  
18 part.

19 “(5) The Commission, upon a motion of the Commis-  
20 sion or upon complaint, may order the Electric Reliability  
21 Organization to submit to the Commission a proposed reli-  
22 ability standard or a modification to a reliability standard  
23 that addresses a specific matter if the Commission con-  
24 siders such a new or modified reliability standard appro-  
25 priate to carry out this section.

1       “(6)(A) The final rule adopted under subsection  
2 (b)(2) shall include fair processes for the identification  
3 and timely resolution of any conflict between a reliability  
4 standard and any function, rule, order, tariff, rate sched-  
5 ule, or agreement accepted, approved, or ordered by the  
6 Commission applicable to a transmission organization.

7       “(B) The transmission organization shall continue to  
8 comply with such function, rule, order, tariff, rate sched-  
9 ule, or agreement as is accepted, approved, or ordered by  
10 the Commission until—

11           “(i) the Commission finds a conflict exists be-  
12 tween a reliability standard and any such provision;

13           “(ii) the Commission orders a change to the  
14 provision pursuant to section 206; and

15           “(iii) the ordered change becomes effective  
16 under this part.

17       “(C) If the Commission determines that a reliability  
18 standard needs to be changed as a result of such a con-  
19 flict, the Commission shall order the ERO to develop and  
20 file with the Commission a modified reliability standard  
21 under paragraph (4) or (5).

22       “(e) ENFORCEMENT.—(1) Subject to paragraph (2),  
23 the ERO may impose a penalty on a user or owner or  
24 operator of the bulk-power system for a violation of a reli-  
25 ability standard approved by the Commission under sub-



1 section (d) if the ERO, after notice and an opportunity  
2 for a hearing—

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

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

8 “(2)(A) A penalty imposed under paragraph (1) may  
9 take effect not earlier than the 31st day after the date  
10 on which the ERO files with the Commission notice of the  
11 penalty and the record of proceedings.

12 “(B) The penalty shall be subject to review by the  
13 Commission upon—

14 “(i) a motion by the Commission; or

15 “(ii) application by the user, owner, or operator  
16 that is the subject of the penalty filed not later than  
17 30 days after the date on which the notice is filed  
18 with the Commission.

19 “(C) Application to the Commission for review, or the  
20 initiation of review by the Commission upon a motion of  
21 the Commission, shall not operate as a stay of the penalty  
22 unless the Commission orders otherwise upon a motion of  
23 the Commission or upon application by the user, owner,  
24 or operator that is the subject of the penalty.

1       “(D) In any proceeding to review a penalty imposed  
2 under paragraph (1), the Commission, after notice and op-  
3 portunity for hearing (which hearing may consist solely  
4 of the record before the ERO and opportunity for the  
5 presentation of supporting reasons to affirm, modify, or  
6 set aside the penalty), shall by order affirm, set aside, re-  
7 instate, or modify the penalty, and, if appropriate, remand  
8 to the ERO for further proceedings.

9       “(E) The Commission shall implement expedited pro-  
10 cedures for hearings described in subparagraph (D).

11       “(3) Upon a motion of the Commission or upon com-  
12 plaint, the Commission may order compliance with a reli-  
13 ability standard and may impose a penalty against a user  
14 or owner or operator of the bulk-power system if the Com-  
15 mission finds, after notice and opportunity for a hearing,  
16 that the user or owner or operator of the bulk-power sys-  
17 tem has engaged or is about to engage in any act or prac-  
18 tice that constitutes or will constitute a violation of a reli-  
19 ability standard.

20       “(4)(A) The Commission shall issue regulations au-  
21 thorizing the ERO to enter into an agreement to delegate  
22 authority to a regional entity for the purpose of proposing  
23 reliability standards to the ERO and enforcing reliability  
24 standards under paragraph (1) if—

1           “(i) the regional entity is governed by an inde-  
2           pendent board, a balanced stakeholder board, or a  
3           combination of an independent and balanced stake-  
4           holder board;

5           “(ii) the regional entity otherwise meets the re-  
6           quirements of paragraphs (1) and (2) of subsection  
7           (c); and

8           “(iii) the agreement promotes effective and effi-  
9           cient administration of bulk-power system reliability.

10          “(B) The Commission may modify a delegation under  
11 this paragraph.

12          “(C) The ERO and the Commission shall rebuttably  
13 presume that a proposal for delegation to a regional entity  
14 organized on an interconnection-wide basis promotes effec-  
15 tive and efficient administration of bulk-power system reli-  
16 ability and should be approved.

17          “(D) The regulations issued under this paragraph  
18 may provide that the Commission may assign the author-  
19 ity of the ERO to enforce reliability standards under para-  
20 graph (1) directly to a regional entity in accordance with  
21 this paragraph.

22          “(5) The Commission may take such action as the  
23 Commission determines to be appropriate against the  
24 ERO or a regional entity to ensure compliance with a reli-

1 ability standard or any Commission order affecting the  
2 ERO or a regional entity.

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

8 “(f) CHANGES IN ELECTRIC RELIABILITY ORGANIZA-  
9 TION RULES.—(1) The Electric Reliability Organization  
10 shall file with the Commission for approval any proposed  
11 rule or proposed rule change, accompanied by an expla-  
12 nation of the basis and purpose of the rule and proposed  
13 rule change.

14 “(2) The Commission, upon a motion of the Commis-  
15 sion or upon complaint, may propose a change to the rules  
16 of the ERO.

17 “(3) A proposed rule or proposed rule change shall  
18 take effect upon a finding by the Commission, after notice  
19 and opportunity for comment, that the change is just, rea-  
20 sonable, not unduly discriminatory or preferential, is in  
21 the public interest, and meets the requirements of sub-  
22 section (c).

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

1       “(h) COORDINATION WITH CANADA AND MEXICO.—

2   The President is urged to negotiate international agree-  
3   ments with the governments of Canada and Mexico to pro-  
4   vide for effective compliance with reliability standards and  
5   the effectiveness of the ERO in the United States and  
6   Canada or Mexico.

7       “(i) SAVINGS PROVISIONS.—(1) The ERO may de-  
8   velop and enforce compliance with reliability standards for  
9   only the bulk-power system.

10       “(2) Nothing in this section authorizes the ERO or  
11   the Commission to order the construction of additional  
12   generation or transmission capacity or to set and enforce  
13   compliance with standards for adequacy or safety of elec-  
14   tric facilities or services.

15       “(3) Nothing in this section preempts any authority  
16   of any State to take action to ensure the safety, adequacy,  
17   and reliability of electric service within that State, as long  
18   as such action is not inconsistent with any reliability  
19   standard.

20       “(4) Not later than 90 days after the date of applica-  
21   tion of the Electric Reliability Organization or other af-  
22   fected party, and after notice and opportunity for com-  
23   ment, the Commission shall issue a final order deter-  
24   mining whether a State action is inconsistent with a reli-

1 ability standard, taking into consideration any rec-  
 2 ommendation of the ERO.

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

7 “(j) REGIONAL ADVISORY BODIES.—(1) The Com-  
 8 mission shall establish a regional advisory body on the pe-  
 9 titution of at least  $\frac{2}{3}$  of the States within a region that have  
 10 more than  $\frac{1}{2}$  of the electric load of the States served with-  
 11 in the region.

12 “(2) A regional advisory body—

13 “(A) shall be composed of 1 member from each  
 14 participating State in the region, appointed by the  
 15 Governor of the State; and

16 “(B) may include representatives of agencies,  
 17 States, and provinces outside the United States.

18 “(3) A regional advisory body may provide advice to  
 19 the Electric Reliability Organization, a regional entity, or  
 20 the Commission regarding—

21 “(A) the governance of an existing or proposed  
 22 regional entity within the same region;

23 “(B) whether a standard proposed to apply  
 24 within the region is just, reasonable, not unduly dis-

1       criminatory or preferential, and in the public inter-  
2       est;

3           “(C) whether fees proposed to be assessed with-  
4       in the region are just, reasonable, not unduly dis-  
5       criminatory or preferential, and in the public inter-  
6       est; and

7           “(D) any other responsibilities requested by the  
8       Commission.

9       “(4) The Commission may give deference to the ad-  
10   vice of a regional advisory body if that body is organized  
11   on an interconnection-wide basis.

12       “(k) ALASKA AND HAWAII.—This section does not  
13   apply to Alaska or Hawaii.”.

14       (b) STATUS OF ERO.—The Electric Reliability Orga-  
15   nization certified by the Federal Energy Regulatory Com-  
16   mission under section 215(c) of the Federal Power Act  
17   (as added by subsection (a)) and any regional entity dele-  
18   gated enforcement authority pursuant to section 215(e)(4)  
19   of that Act (as so added) are not departments, agencies,  
20   or instrumentalities of the United States Government.

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