

114TH CONGRESS
1ST SESSION

H. R. 2271

To amend the Federal Power Act with respect to critical electric infrastructure security, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 12, 2015

Mr. LATTA (for himself, Mr. MCNERNEY, and Mrs. ELLMERS of North Carolina) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend the Federal Power Act with respect to critical electric infrastructure security, 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 “Critical Electric Infra-
5 structure Protection Act”.

6 **SEC. 2. CRITICAL ELECTRIC INFRASTRUCTURE SECURITY.**

7 (a) CRITICAL ELECTRIC INFRASTRUCTURE SECU-
8 RITY.—Part II of the Federal Power Act (16 U.S.C. 824
9 et seq.) is amended by adding after section 215 the fol-
10 lowing new section:

1 **“SEC. 215A. CRITICAL ELECTRIC INFRASTRUCTURE SECUR-**
2 **RITY.**

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

4 “(1) BULK-POWER SYSTEM; ELECTRIC RELI-
5 ABILITY ORGANIZATION; REGIONAL ENTITY.—The
6 terms ‘bulk-power system’, ‘Electric Reliability Or-
7 ganization’, and ‘regional entity’ have the meanings
8 given such terms in paragraphs (1), (2), and (7) of
9 section 215(a), respectively.

10 “(2) CRITICAL ELECTRIC INFRASTRUCTURE.—
11 The term ‘critical electric infrastructure’ means a
12 system or asset, whether physical or virtual, used for
13 the generation, transmission, or distribution of elec-
14 tric energy affecting interstate commerce, the inca-
15 pacity or destruction of which would negatively af-
16 fect national security, economic security, public
17 health or safety, or any combination of such mat-
18 ters.

19 “(3) CRITICAL ELECTRIC INFRASTRUCTURE IN-
20 FORMATION.—The term ‘critical electric infrastruc-
21 ture information’ means information related to crit-
22 ical electric infrastructure, or proposed critical elec-
23 trical infrastructure, generated by or provided to the
24 Commission, other than classified national security
25 information, that is designated as critical electric in-

1 frastructure information by the Commission under
2 subsection (d)(2).

3 “(4) DEFENSE CRITICAL ELECTRIC INFRA-
4 STRUCTURE.—The term ‘defense critical electric in-
5 frastructure’ means any infrastructure located in the
6 United States (including the territories) used for the
7 generation, transmission, or distribution of electric
8 energy that—

9 “(A) is not part of the bulk-power system;
10 and

11 “(B) serves a facility designated by the
12 Secretary pursuant to subsection (c), but is not
13 owned or operated by the owner or operator of
14 such facility.

15 “(5) ELECTROMAGNETIC PULSE.—The term
16 ‘electromagnetic pulse’ means 1 or more pulses of
17 electromagnetic energy emitted by a device capable
18 of disabling or disrupting operation of, or destroy-
19 ing, electronic devices or communications networks,
20 including hardware, software, and data, by means of
21 such a pulse.

22 “(6) GEOMAGNETIC STORM.—The term ‘geo-
23 magnetic storm’ means a temporary disturbance of
24 the Earth’s magnetic field resulting from solar activ-
25 ity.

1 “(7) GRID SECURITY EMERGENCY.—The term
2 ‘grid security emergency’ means the imminent dan-
3 ger of—

4 “(A)(i) a malicious act using electronic
5 communication or an electromagnetic pulse, or
6 a geomagnetic storm event, that could disrupt
7 the operation of those electronic devices or com-
8 munications networks, including hardware, soft-
9 ware, and data, that are essential to the reli-
10 ability of the bulk-power system or of defense
11 critical electric infrastructure; and

12 “(ii) disruption of the operation of such
13 devices or networks, with significant adverse ef-
14 fects on the reliability of the bulk-power system
15 or of defense critical electric infrastructure, as
16 a result of such act or event; or

17 “(B)(i) a direct physical attack on the
18 bulk-power system or on defense critical electric
19 infrastructure; and

20 “(ii) significant adverse effects on the reli-
21 ability of the bulk-power system or of defense
22 critical electric infrastructure as a result of
23 such physical attack.

24 “(8) SECRETARY.—The term ‘Secretary’ means
25 the Secretary of Energy.

1 “(b) AUTHORITY TO ADDRESS GRID SECURITY
2 EMERGENCY.—

3 “(1) AUTHORITY.—Whenever the President
4 issues and provides to the Secretary a written direc-
5 tive or determination identifying a grid security
6 emergency, the Secretary may, with or without no-
7 tice, hearing, or report, issue such orders for emer-
8 gency measures as are necessary in the judgment of
9 the Secretary to protect the reliability of the bulk-
10 power system or of defense critical electric infra-
11 structure during such emergency. As soon as prac-
12 ticable but not later than 180 days after the date of
13 enactment of this section, the Secretary shall, after
14 notice and opportunity for comment, establish rules
15 of procedure that ensure that such authority can be
16 exercised expeditiously.

17 “(2) NOTIFICATION OF CONGRESS.—Whenever
18 the President issues and provides to the Secretary a
19 written directive or determination under paragraph
20 (1), the President shall promptly notify congres-
21 sional committees of relevant jurisdiction, including
22 the Committee on Energy and Commerce of the
23 House of Representatives and the Committee on En-
24 ergy and Natural Resources of the Senate, of the

1 contents of, and justification for, such directive or
2 determination.

3 “(3) CONSULTATION.—Before issuing an order
4 for emergency measures under paragraph (1), the
5 Secretary shall, to the extent practicable in light of
6 the nature of the grid security emergency and the
7 urgency of the need for action, consult with appro-
8 priate governmental authorities in Canada and Mex-
9 ico, entities described in paragraph (4), the Commis-
10 sion, and other appropriate Federal agencies regard-
11 ing implementation of such emergency measures.

12 “(4) APPLICATION.—An order for emergency
13 measures under this subsection may apply to—

14 “(A) the Electric Reliability Organization;

15 “(B) a regional entity; or

16 “(C) any owner, user, or operator of the
17 bulk-power system or of defense critical electric
18 infrastructure within the United States.

19 “(5) EXPIRATION AND REISSUANCE.—

20 “(A) IN GENERAL.—Except as provided in
21 subparagraph (B), an order for emergency
22 measures issued under paragraph (1) shall ex-
23 pire no later than 30 days after its issuance.

24 “(B) EXTENSIONS.—The Secretary may
25 reissue an order for emergency measures issued

1 under paragraph (1) for subsequent periods,
2 not to exceed 30 days for each such period, pro-
3 vided that the President, for each such period,
4 issues and provides to the Secretary a written
5 directive or determination that the grid security
6 emergency identified under paragraph (1) con-
7 tinues to exist or that the emergency measure
8 continues to be required.

9 “(6) COST RECOVERY.—

10 “(A) BULK-POWER SYSTEM.—If the Com-
11 mission determines that owners, operators, or
12 users of the bulk-power system have incurred
13 substantial costs to comply with an order for
14 emergency measures issued under this sub-
15 section and that such costs were prudently in-
16 curred and cannot reasonably be recovered
17 through regulated rates or market prices for
18 the electric energy or services sold by such own-
19 ers, operators, or users, the Commission shall,
20 after notice and an opportunity for comment,
21 establish a mechanism that permits such own-
22 ers, operators, or users to recover such costs.

23 “(B) DEFENSE CRITICAL ELECTRIC INFRA-
24 STRUCTURE.—To the extent the owner or oper-
25 ator of defense critical electric infrastructure is

1 required to take emergency measures pursuant
2 to an order issued under this subsection, the
3 owners or operators of a facility or facilities
4 designated by the Secretary pursuant to sub-
5 section (c) that rely upon such infrastructure
6 shall bear the full incremental costs of the
7 measures.

8 “(7) TEMPORARY ACCESS TO CLASSIFIED IN-
9 FORMATION.—The Secretary, and other appropriate
10 Federal agencies, shall, to the extent practicable and
11 consistent with their obligations to protect classified
12 information, provide temporary access to classified
13 information related to a grid security emergency for
14 which emergency measures are issued under para-
15 graph (1) to key personnel of any entity subject to
16 such emergency measures to enable optimum com-
17 munication between the entity and the Secretary and
18 other appropriate Federal agencies regarding the
19 grid security emergency.

20 “(c) DESIGNATION OF CRITICAL DEFENSE FACILI-
21 TIES.—Not later than 180 days after the date of enact-
22 ment of this section, the Secretary, in consultation with
23 other appropriate Federal agencies and appropriate own-
24 ers, users, or operators of infrastructure that may be de-
25 fense critical electric infrastructure, shall identify and des-

1 designate facilities located in the United States (including the
2 territories) that are—

3 “(1) critical to the defense of the United States;

4 and

5 “(2) vulnerable to a disruption of the supply of
6 electric energy provided to such facility by an exter-
7 nal provider.

8 The Secretary may, in consultation with appropriate Fed-
9 eral agencies and appropriate owners, users, or operators
10 of defense critical electric infrastructure, periodically re-
11 vise the list of designated facilities as necessary.

12 “(d) PROTECTION AND SHARING OF CRITICAL ELEC-
13 TRIC INFRASTRUCTURE INFORMATION.—

14 “(1) PROTECTION OF CRITICAL ELECTRIC IN-
15 FRASTRUCTURE INFORMATION.—Critical electric in-
16 frastructure information—

17 “(A) shall be exempt from disclosure under
18 section 552(b)(3) of title 5, United States Code;

19 and

20 “(B) shall not be made available by any
21 State, local, or tribal authority pursuant to any
22 State, local, or tribal law requiring disclosure of
23 information or records.

24 “(2) DESIGNATION AND SHARING OF CRITICAL
25 ELECTRIC INFRASTRUCTURE INFORMATION.—The

1 Commission shall promulgate such regulations and
2 issue such orders as necessary to—

3 “(A) designate information as critical elec-
4 tric infrastructure information;

5 “(B) prohibit the unauthorized disclosure
6 of critical electric infrastructure information;

7 “(C) ensure there are appropriate sanc-
8 tions in place for commissioners, officers, em-
9 ployees, or agents of the Commission who
10 knowingly and willfully disclose critical electric
11 infrastructure information in a manner that is
12 not authorized under this section; and

13 “(D) provide standards for and authorize
14 the appropriate voluntary sharing of critical
15 electric infrastructure information with, be-
16 tween, and by—

17 “(i) Federal, State, local, and tribal
18 authorities;

19 “(ii) the Electric Reliability Organiza-
20 tion;

21 “(iii) regional entities;

22 “(iv) Information Sharing and Anal-
23 ysis Centers established pursuant to Presi-
24 dential Decision Directive 63;

1 “(v) owners, operators, and users of
2 the bulk-power system in the United
3 States; and

4 “(vi) other entities determined appro-
5 priate by the Commission.

6 “(3) CONSIDERATIONS.—In promulgating regu-
7 lations and issuing orders under paragraph (2), the
8 Commission shall take into consideration the role of
9 State commissions in reviewing the prudence and
10 cost of investments, determining the rates and terms
11 of conditions for electric services, and ensuring the
12 safety and reliability of the bulk-power system and
13 distribution facilities within their respective jurisdic-
14 tions.

15 “(4) PROTOCOLS.—The Commission shall, in
16 consultation with Canadian and Mexican authorities,
17 develop protocols for the voluntary sharing of critical
18 electric infrastructure information with, between,
19 and by Canadian and Mexican authorities and own-
20 ers, operators, and users of the bulk-power system
21 outside the United States.

22 “(5) NO REQUIRED SHARING OF INFORMA-
23 TION.—Nothing in this section shall require a person
24 or entity in possession of critical electric infrastruc-
25 ture information to share such information with

1 Federal, State, local, or tribal authorities, or any
2 other person or entity.

3 “(6) DISCLOSURE OF NON-CRITICAL ELECTRIC
4 INFRASTRUCTURE INFORMATION.—In implementing
5 this section, the Commission shall segregate critical
6 electric infrastructure information within documents
7 and electronic communications, wherever feasible, to
8 facilitate disclosure of information that is not des-
9 ignated as critical electric infrastructure informa-
10 tion.

11 “(e) SECURITY CLEARANCES.—The Secretary shall
12 facilitate and, to the extent practicable, expedite the acqui-
13 sition of adequate security clearances by key personnel of
14 any entity subject to the requirements of this section, to
15 enable optimum communication with Federal agencies re-
16 garding threats to the security of the critical electric infra-
17 structure. The Secretary, the Commission, and other ap-
18 propriate Federal agencies shall, to the extent practicable
19 and consistent with their obligations to protect classified
20 and critical electric infrastructure information, share time-
21 ly actionable information regarding grid security with ap-
22 propriate key personnel of owners, operators, and users
23 of the critical electric infrastructure.

24 “(f) CLARIFICATIONS OF LIABILITY.—

1 “(1) COMPLIANCE WITH OR VIOLATION OF THIS
2 ACT.—Except as provided in paragraph (4), to the
3 extent any action or omission taken by an entity
4 that is necessary to comply with an order for emer-
5 gency measures issued under subsection (b)(1), in-
6 cluding any action or omission taken to voluntarily
7 comply with such order, results in noncompliance
8 with, or causes such entity not to comply with any
9 rule, order, regulation, or provision of this Act, in-
10 cluding any reliability standard approved by the
11 Commission pursuant to section 215, such action or
12 omission shall not be considered a violation of such
13 rule, order, regulation, or provision.

14 “(2) RELATION TO SECTION 202(c).—Except as
15 provided in paragraph (4), an action or omission
16 taken by an owner, operator, or user of the bulk-
17 power system or of defense critical electric infra-
18 structure to comply with an order for emergency
19 measures issued under subsection (b)(1) shall be
20 treated as an action or omission taken to comply
21 with an order issued under section 202(c) for pur-
22 poses of such section.

23 “(3) SHARING OR RECEIPT OF INFORMATION.—
24 No cause of action shall lie or be maintained in any
25 Federal or State court for the sharing or receipt of

1 information under, and that is conducted in accord-
2 ance with, subsection (d).

3 “(4) RULE OF CONSTRUCTION.—Nothing in
4 this subsection shall be construed to require dis-
5 missal of a cause of action against an entity that,
6 in the course of complying with an order for emer-
7 gency measures issued under subsection (b)(1) by
8 taking an action or omission for which they would
9 be liable but for paragraph (1) or (2), takes such ac-
10 tion or omission in a grossly negligent manner.”.

11 (b) CONFORMING AMENDMENTS.—

12 (1) JURISDICTION.—Section 201(b)(2) of the
13 Federal Power Act (16 U.S.C. 824(b)(2)) is amend-
14 ed by inserting “215A,” after “215,” each place it
15 appears.

16 (2) PUBLIC UTILITY.—Section 201(e) of the
17 Federal Power Act (16 U.S.C. 824(e)) is amended
18 by inserting “215A,” after “215,”.

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