

GUARANTEEING RELIABLE INFRASTRUCTURE
DEVELOPMENT ACT

MARCH 19, 2024.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mrs. RODGERS of Washington, from the Committee on Energy and
Commerce, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 6185]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 6185) to require coordination among Federal agencies on regulatory actions that affect the reliable operation of the bulk-power system, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

CONTENTS

	Page
Purpose and Summary	2
Background and Need for Legislation	2
Committee Action	4
Committee Votes	5
Oversight Findings and Recommendations	8
New Budget Authority, Entitlement Authority, and Tax Expenditures	8
Congressional Budget Office Estimate	8
Federal Mandates Statement	9
Statement of General Performance Goals and Objectives	9
Duplication of Federal Programs	9
Related Committee and Subcommittee Hearings	9
Committee Cost Estimate	11
Earmark, Limited Tax Benefits, and Limited Tariff Benefits	11
Advisory Committee Statement	11
Applicability to Legislative Branch	11
Section-by-Section Analysis of the Legislation	11
Changes in Existing Law Made by the Bill, as Reported	12

PURPOSE AND SUMMARY

H.R. 6185, the “Guaranteeing Reliable Infrastructure Development (GRID) Act” was introduced by Representative Duncan (R-SC) on November 2, 2023. This legislation would require coordination among Federal agencies on regulatory actions that affect the reliable operation of the bulk-power system.

BACKGROUND AND NEED FOR LEGISLATION

This legislation amends the Federal Power Act (FPA) to require coordination between the Federal Energy Regulatory Commission (FERC) and any Federal agency that promulgates a regulation that could have a significant negative impact on the reliable operation of the bulk power system. This legislation ensures that electric reliability authorities under the FPA are given adequate input in the regulatory process when proposed regulations pose a threat to grid reliability.

FERC is the agency that oversees and regulates the interstate transmission of natural gas, oil, and electricity through its authority under the Natural Gas Act and FPA. Under the FPA, the North American Electric Reliability Corporation (NERC) is the Electric Reliability Organization (ERO) certified to establish and enforce reliability standards, subject to FERC review and approval.¹ NERC has stated that “[e]nvironmental regulations and energy policies that are overly rigid and lack provisions for electric grid reliability have the potential to influence generators to seek deactivation despite a projected resource adequacy or operating reliability risk; this can potentially jeopardize the orderly transition of the resource mix.”² Additionally, NERC has repeatedly warned in its reliability assessments that a majority of North America is at risk of energy shortfalls during periods of high demand and/or periods when intermittent resources like wind and solar do not produce electricity.

Electric system reliability is a pillar of economic and national security. The accelerated retirement of generation resources like coal, natural gas, and nuclear that produced 77.5 percent of all electricity in 2022 threatens reliability.³ These retirements are occurring because of regulations limiting production from fossil fuel resources and from increasing environmental compliance costs on fossil fuel resources. Other policies that support intermittent resources like wind and solar make it more difficult for reliable resources to recover costs in markets. The consequences of these retirements are magnified by the fact that the wind and solar that replace retiring resources do not have the same attributes or provide the same level of reliability as retiring coal, natural gas, and nuclear resources. The Committee has held multiple hearings on electric reliability and, through these hearings and testimony, the Committee has heard from utilities, states, grid operators, and

¹ <https://www.law.cornell.edu/uscode/text/16/824o>.

² Available at: https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_LTRA_2023.pdf.

³ <https://www.eia.gov/energyexplained/electricity/electricity-in-the-us.php>.

FERC Commissioners that there is an increasing threat to grid reliability that could lead to extensive, system-wide outages.

The Environmental Protection Agency (EPA) has finalized or proposed multiple rules impacting fossil fuel generators.⁴ Most recently in May 2023, EPA proposed “New Source Performance Standards for Greenhouse Gas Emissions from New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units: Emission Guidelines for Greenhouse Gas Emissions from Existing Fossil Fuel-Fired Electric Generating Units” (the Clean Power Plan 2.0) that would set limits for new gas-fired combustion turbines, certain existing gas-fired combustion turbines, and existing coal, oil, and gas-fired steam generating units.⁵ The Clean Power Plan 2.0, effectively requires coal and natural gas generation resources to commit to retire, limit operation to a percentage of their capacity, co-fire with hydrogen, and/or install costly infrastructure to capture carbon emissions.

While compliance strategies face technical hurdles and many questions remain regarding the legality of the Clean Power Plan 2.0. EPA proposing the rule impacts the retirement decisions of existing resources and the financial outlook potential new resources that would remain in operation absent EPA’s proposal. In addition, there are serious unanswered questions about the ability of resources acting in good faith to comply with the Clean Power Plan 2.0’s timelines.

A major theme of the Committee’s hearing with FERC in June 2023 was the concerning trend of premature retirements of dispatchable electric generation, particularly nuclear, coal, and natural gas.⁶ Republican Commissioners Danly and Christie repeatedly noted concerns from grid operators and reliability entities while Democrat Commissioner Clements noted it as a concern if the trend continues at its current pace. At the September 28, 2023 hearing, many grid operators expressed serious concern about the premature retirement of their dispatchable generators because of policies and regulations.

In August 2023, the grid operators ERCOT, MISO, PJM, and SPP jointly filed comments on EPA’s proposed Clean Power Plan 2.0. In their comments, the grid operators stated that their systems will need to rely even more on generation able to provide critical reliability attributes, like coal and natural gas, as more intermittent resources come onto the system.⁷ The grid operators also noted that the Clean Power Plan 2.0 could result in material, adverse impacts to reliability if significant technological advances in carbon capture and storage and hydrogen supply and transport do not occur at the pace or scale anticipated by the EPA.⁸ In December 2023, the same grid operators filed comments to EPA’s Supplemental Notice in its Clean Power Plan 2.0 proposal that stated:

[T]he proposed Rule and associated implementation timelines would accelerate the retirement of generators

⁴ Those rules include the Interstate Transport Rule, Regional Haze, Risk and Technology Review for the Mercury Air Toxics Rule, effluent limitations, and a legacy coal combustion residue rule.

⁵ <https://www.regulations.gov/docket/EPA-HQ-OAR-2023-0072>.

⁶ “Oversight of FERC: Adhering to a Mission of Affordable and Reliable Energy for America” | Committee Repository | U.S. House of Representatives.

⁷ <https://www.regulations.gov/comment/EPA-HQ-OAR-2023-0072-0673>.

⁸ *Id.*

with the attributes needed to support grid reliability. . . . Without waiving our previously stated concerns with the Rule, the Joint ISO/RTOs propose herein several ‘reliability safety valve’ options that could arise during Rule implementation. The Joint ISOs/RTOs certainly hope that none of these reliability assurance mechanisms will need to be utilized. However, in our view, it would be imprudent to adopt a rule that does not contain measures to ensure reliability.”⁹

In November 2023, FERC held its annual technical conference on reliability and received testimony from EPA, grid operators, utilities, states, and trade groups. There was overwhelming consensus that the EPA’s Clean Power Plan 2.0 would have disastrous effects on electric reliability. Multiple stakeholders requested that FERC formally study the Clean Power Plan 2.0’s impact on reliability. To date, FERC has not committed to studying the Clean Power Plan 2.0’s impact on reliability despite its statutory authority under the FPA to ensure reliability.

COMMITTEE ACTION

On June 6, 2023, the Subcommittee on Environment, Manufacturing, and Critical Minerals held a hearing entitled “Clean Power Plan 2.0: EPA’s Latest Attack on Electric Reliability.” The Subcommittee received testimony from:

- Patrick O’Loughlin, President and CEO, Buckeye Power Inc. and Ohio Rural Electric Cooperatives;
- Todd Snitchler, President and CEO, Electric Power Supply Association (EPSA);
- Michael J. Nasi, Partner, Jackson Walker; and
- Jay Duffy, Litigation Director, Clean Air Task Force.

On June 13, 2023, the Subcommittee on Energy, Climate, and Grid Security held a hearing entitled “Oversight of FERC: Adhering To A Mission Of Affordable And Reliable Energy For America.” The Subcommittee received testimony from:

- The Honorable Willie Phillips, Chairman, FERC (Democrat);
- The Honorable James Danly, Commissioner, FERC (Republican);
- The Honorable Mark Christie, Commissioner, FERC (Republican); and
- The Honorable Allison Clements, Commissioner, FERC (Democrat).

On September 13, 2023, the Subcommittee on Energy, Climate, and Grid Security held a hearing on H.R. 6185. The title of the hearing was “Keeping the Lights On: Enhancing Reliability and Efficiency to Power American Homes.” The Subcommittee received testimony from:

- Gene Rodrigues, Assistant Secretary for Electricity, Office of Electricity, U.S. Department of Energy;
- David Ortiz, Director, Office of Electric Reliability, Federal Energy Regulatory Commission;

⁹ <https://www.regulations.gov/comment/EPA-HQ-OAR-2023-0072-8207>.

- Kevin Messner, Executive Vice President and Chief Policy Officer, Association of Home Appliance Manufacturers;
- B. Robert “Bob” Paulling, President and CEO, Mid-Carolina Electric Cooperative, on behalf of the National Rural Electric Cooperatives Association;
- Ben Lieberman, Senior Fellow, Competitive Enterprise Institute; and
- Andrew deLaski, Executive Director, Appliance Standards Awareness Project.

On September 28, 2023, the Subcommittee on Energy, Climate, and Grid Security held a hearing entitled “Powering America’s Economy, Security, and our Way of Life: Examining the State of Grid Reliability.” The Subcommittee received testimony from:

- Gordon van Welie, President & Chief Executive Officer, ISO New England;
- Paul Suskie, Executive Vice President, Regulatory Policy & General Counsel, Southwest Power Pool;
- Richard J. Dewey, President & Chief Executive Officer, New York ISO;
- Todd Ramey, Senior Vice President, Markets and Digital Strategy, Midcontinent ISO;
- Woody Rickerson, Senior Vice President & Chief Operating Officer, ERCOT;
- Neil Millar, Vice President for Infrastructure and Operations Planning, California ISO; and
- Frederick S. Bresler III, Senior Vice President—Market Services, PJM Interconnection, LLC.

On November 14, 2023, the Subcommittee on Environment, Manufacturing, and Critical Minerals held a hearing entitled “Clean Power Plan 2.0: EPA’s Effort to Jeopardize Reliable and Affordable Energy for States.” The Subcommittee received testimony from:

- L. David Glatt, Director, North Dakota Department of Environmental Quality;
- Chris Parker, Director, Utah Department of Commerce Division of Public Utilities;
- Michelle Walker Owenby, Director, Division of Air Pollution Control, Tennessee Department of Environment and Conservation; and
- Serena McIlwain, Secretary of the Environment, State of Maryland.

On October 24 and 25, 2023, the Subcommittee on Energy, Climate, and Grid Security met in open markup session and forwarded H.R. 6185, without amendment, to the full Committee by a record vote of 15 yeas and 12 nays.

On December 5 and 6, 2023, the full Committee on Energy and Commerce met in open markup session and ordered H.R. 6185, without amendment, favorably reported to the House by a record vote of 24 yeas and 21 nays.

COMMITTEE VOTES

Clause 3(b) of rule XIII requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The following reflects the record votes taken during the Committee consideration:

**COMMITTEE ON ENERGY AND COMMERCE
118TH CONGRESS
ROLL CALL VOTE # 9**

BILL: H.R. 6185, Guaranteeing Reliable Infrastructure Development Act

AMENDMENT: An amendment offered by Rep. DeGette, No. 1, to condition the effective date of the Act upon the Federal Energy Regulatory Commission certifying that it has sufficient capacity to analyze all proposed covered agency actions under subsection (h) of section 215 of the Federal Power Act (16 U.S.C. 824o), as added by this Act.

DISPOSITION: FAILED, by a roll call vote of 21 yeas to 24 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Rep. Rodgers		X		Rep. Pallone	X		
Rep. Burgess		X		Rep. Eshoo	X		
Rep. Latta		X		Rep. DeGette	X		
Rep. Guthrie		X		Rep. Schakowsky	X		
Rep. Griffith		X		Rep. Matsui	X		
Rep. Bilirakis		X		Rep. Castor	X		
Rep. Johnson		X		Rep. Sarbanes	X		
Rep. Bucshon		X		Rep. Tonko	X		
Rep. Hudson				Rep. Clarke	X		
Rep. Walberg		X		Rep. Cárdenas	X		
Rep. Carter				Rep. Ruiz	X		
Rep. Duncan		X		Rep. Peters	X		
Rep. Palmer		X		Rep. Dingell	X		
Rep. Dunn				Rep. Veasey	X		
Rep. Curtis				Rep. Kuster			
Rep. Lesko		X		Rep. Kelly	X		
Rep. Pence		X		Rep. Barragán	X		
Rep. Crenshaw		X		Rep. Blunt Rochester	X		
Rep. Joyce		X		Rep. Soto	X		
Rep. Armstrong		X		Rep. Craig	X		
Rep. Weber		X		Rep. Schrier	X		
Rep. Allen		X		Rep. Trahan	X		
Rep. Balderson		X		Rep. Fletcher			
Rep. Fulcher		X					
Rep. Pfluger		X					
Rep. Harshbarger		X					
Rep. Miller-Meeks							
Rep. Cammack		X					
Rep. Obernolte		X					

12/05/2023

**COMMITTEE ON ENERGY AND COMMERCE
118TH CONGRESS
ROLL CALL VOTE # 10**

BILL: H.R. 6185, Guaranteeing Reliable Infrastructure Development Act

AMENDMENT: A motion by Chair Rodgers to order H.R. 6185 favorably reported to the House, without amendment (Final Passage).

DISPOSITION: AGREED TO, by a roll call vote of 24 yeas to 21 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Rep. Rodgers	X			Rep. Pallone		X	
Rep. Burgess	X			Rep. Eshoo		X	
Rep. Latta	X			Rep. DeGette		X	
Rep. Guthrie	X			Rep. Schakowsky		X	
Rep. Griffith	X			Rep. Matsui		X	
Rep. Bilirakis	X			Rep. Castor		X	
Rep. Johnson	X			Rep. Sarbanes		X	
Rep. Bucshon	X			Rep. Tonko		X	
Rep. Hudson				Rep. Clarke		X	
Rep. Walberg	X			Rep. Cárdenas		X	
Rep. Carter	X			Rep. Ruiz		X	
Rep. Duncan	X			Rep. Peters		X	
Rep. Palmer	X			Rep. Dingell		X	
Rep. Dunn				Rep. Veasey		X	
Rep. Curtis				Rep. Kuster			
Rep. Lesko	X			Rep. Kelly		X	
Rep. Pence	X			Rep. Barragán		X	
Rep. Crenshaw	X			Rep. Blunt Rochester		X	
Rep. Joyce	X			Rep. Soto		X	
Rep. Armstrong	X			Rep. Craig		X	
Rep. Weber				Rep. Schrier		X	
Rep. Allen	X			Rep. Trahan		X	
Rep. Balderson	X			Rep. Fletcher			
Rep. Fulcher	X						
Rep. Pfluger	X						
Rep. Harshbarger	X						
Rep. Miller-Meeks							
Rep. Cammack	X						
Rep. Obernolte	X						

12/05/2023

OVERSIGHT FINDINGS AND RECOMMENDATIONS

Pursuant to clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII, the Committee held hearings and made findings that are reflected in this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Pursuant to clause 3(c)(2) of rule XIII, the Committee finds that H.R. 6185 would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

H.R. 6185, GRID Act			
As ordered reported by the House Committee on Energy and Commerce on December 5, 2023			
By Fiscal Year, Millions of Dollars	2024	2024-2029	2024-2034
Direct Spending (Outlays)	*	*	*
Revenues	*	*	*
Increase or Decrease (-) in the Deficit	*	*	*
Spending Subject to Appropriation (Outlays)	*	1	not estimated
Increases <i>net direct spending</i> in any of the four consecutive 10-year periods beginning in 2035?	*	Statutory pay-as-you-go procedures apply? Yes	
		Mandate Effects	
Increases <i>on-budget deficits</i> in any of the four consecutive 10-year periods beginning in 2035?	*	Contains intergovernmental mandate?	Yes, Under Threshold
		Contains private-sector mandate?	Yes, Under Threshold
* = between zero and \$500,000.			

H.R. 6185 would require the Federal Energy Regulatory Commission (FERC), in consultation with the Electric Reliability Organization (ERO), to review standards and regulations proposed by other federal agencies that could negatively affect the reliability of the bulk-power system in North America. Agencies could not finalize those actions until they respond to any concerns raised by FERC as part of that review.

Using information from FERC, CBO expects that the agency would need additional staff and would need to acquire new data to fulfill the bill's requirements. CBO estimates that implementing those requirements would cost FERC less than \$10 million each year. However, because FERC is authorized to recover 100 percent of its costs through user fees, any change in agency costs (which are controlled through annual appropriation acts) would be offset by an equal change in fees that the commission charges. Accordingly, CBO estimates that implementing those provisions would result in no net change in discretionary spending for FERC.

CBO further estimates that the costs for other agencies (primarily the Department of Energy) to coordinate with FERC on

those reviews would total \$1 million over the 2024–2029 period; that spending would be subject to the availability of appropriated funds.

Finally, enacting H.R. 6185 would increase direct spending and revenues because spending by the ERO is recorded on the budget as direct spending, and the organization assesses fees, which are recorded as revenues, to cover its costs. CBO estimates that consulting with FERC would increase costs for the ERO by less than \$500,000 over the 2024–2034 period. Because any amounts collected would be spent soon thereafter, CBO estimates that the net effect on the deficit would be negligible.

If FERC and the ERO increase fees as a result of the bill, it would increase the cost of an existing mandate on public and private entities, such as electric utilities, that are required to pay those fees. CBO estimates that the additional amount collected would average several million dollars annually and fall well below the annual threshold established in the Unfunded Mandates Reform Act for intergovernmental and private-sector mandates (\$100 million and \$200 million in 2024, respectively, adjusted annually for inflation).

The CBO staff contacts for this estimate are Aaron Krupkin (for federal costs) and Brandon Lever (for mandates). The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

PHILLIP L. SWAGEL,
Director, Congressional Budget Office.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII, the general performance goal or objective of this legislation is to amend the Federal Power Act to require coordination between FERC and any Federal agency that promulgates a regulation that could threaten the reliable operation of the bulk power system to ensure that electric reliability authorities are given adequate input in the regulatory process when such regulations pose a threat to grid reliability or resource adequacy.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII, no provision of H.R. 6185 is known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of Public Law 111–139 or the most recent Catalog of Federal Domestic Assistance.

RELATED COMMITTEE AND SUBCOMMITTEE HEARINGS

Pursuant to clause 3(c)(6) of rule XIII, the following hearings were used to develop or consider H.R. 6185:

- On June 6, 2023, the Subcommittee on Environment, Manufacturing, and Critical Minerals held a hearing entitled “Clean Power Plan 2.0: EPA’s Latest Attack on Electric Reliability.” The Subcommittee received testimony from:
 - Patrick O’Loughlin, President and CEO, Buckeye Power Inc. and Ohio Rural Electric Cooperatives;
 - Todd Snitchler, President and CEO, Electric Power Supply Association (EPSA);
 - Michael J. Nasi, Partner, Jackson Walker; and
 - Jay Duffy, Litigation Director, Clean Air Task Force.
- On June 13, 2023, the Subcommittee on Energy, Climate, and Grid Security held a hearing entitled “Oversight of FERC: Adhering To A Mission Of Affordable And Reliable Energy For America.” The Subcommittee received testimony from:
 - The Honorable Willie Phillips, Chairman, FERC (Democrat);
 - The Honorable James Danly, Commissioner, FERC (Republican);
 - The Honorable Mark Christie, Commissioner, FERC (Republican); and
 - The Honorable Allison Clements, Commissioner, FERC (Democrat).
- On September 13, 2023, the Subcommittee on Energy, Climate, and Grid Security held a hearing on several bills, including a discussion draft: H.R. ____, the “GRID Act.” The title of the hearing was “Keeping the Lights On: Enhancing Reliability and Efficiency to Power American Homes.” The Subcommittee received testimony from:
 - Gene Rodrigues, Assistant Secretary for Electricity, Office of Electricity, U.S. Department of Energy;
 - David Ortiz, Director, Office of Electric Reliability, Federal Energy Regulatory Commission;
 - Kevin Messner, Executive Vice President and Chief Policy Officer, Association of Home Appliance Manufacturers;
 - B. Robert “Bob” Paulling, President and CEO, Mid-Carolina Electric Cooperative, on behalf of the National Rural Electric Cooperatives Association;
 - Ben Lieberman, Senior Fellow, Competitive Enterprise Institute; and
 - Andrew deLaski, Executive Director, Appliance Standards Awareness Project.
- On September 28, 2023, the Subcommittee on Energy, Climate, and Grid Security held a hearing entitled “Powering America’s Economy, Security, and our Way of Life: Examining the State of Grid Reliability.” The Subcommittee received testimony from:
 - Gordon van Welie, President & Chief Executive Officer, ISO New England;
 - Paul Suskie, Executive Vice President, Regulatory Policy & General Counsel, Southwest Power Pool;
 - Richard J. Dewey, President & Chief Executive Officer, New York ISO;
 - Todd Ramey, Senior Vice President, Markets and Digital Strategy, Midcontinent ISO;

- Woody Rickerson, Senior Vice President & Chief Operating Officer, ERCOT;
- Neil Millar, Vice President for Infrastructure and Operations Planning, California ISO; and
- Frederick S. Bresler III, Senior Vice President—Market Services, PJM Interconnection, LLC.
- On November 14, 2023, the Subcommittee on Environment, Manufacturing, and Critical Minerals held a hearing entitled “Clean Power Plan 2.0: EPA’s Effort to Jeopardize Reliable and Affordable Energy for States.” The Subcommittee received testimony from:
 - L. David Glatt, Director, North Dakota Department of Environmental Quality;
 - Chris Parker, Director, Utah Department of Commerce Division of Public Utilities;
 - Michelle Walker Owenby, Director, Division of Air Pollution Control, Tennessee Department of Environment and Conservation; and
 - Serena McIlwain, Secretary of the Environment, State of Maryland.

COMMITTEE COST ESTIMATE

Pursuant to clause 3(d)(1) of rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

EARMARK, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

Pursuant to clause 9(e), 9(f), and 9(g) of rule XXI, the Committee finds that H.R. 6185 contains no earmarks, limited tax benefits, or limited tariff benefits.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 provides that the Act may be cited as the “Guaranteeing Reliable Infrastructure Development Act” or the “GRID Act.”

Section 2. Coordination process to protect electric reliability

Section 2 amends Section 215 of the FPA and redesignates subsections (h) through (k) as subsections (i) through (l), respectively. Section 2 then amends Section 215 of the FPA to include the legislation in the new subsection (h) Commission Review and Comment for Proposed Covered Agency Actions.

The new subsection (h)(1) includes the requirement that the Commission (FERC) or a State commission provide to the Commission for review the covered agency action that is likely to have a significant negative impact on reliability and adequacy of the bulk-power system. Subsection (h)(1)(A) requires that the agency action for review shall be provided to the Commission when the proposed covered agency action is provided to the Office of Management and Budget or another Federal agency for review. Subsection (h)(1)(B) requires that the proposed covered agency action be submitted to the Commission within 90 days of publication in the Federal Register if the proposed covered agency action is not provided to the Office of Management and Budget or another Federal agency for review and comment.

Subsection (h)(2) clarifies that the Commission shall consult with the ERO (NERC) to provide comments to the agency proposing the covered agency action. Subsection (h)(3)(A) requires that an agency proposing a covered agency action may not finalize a proposal covered in subsection (h)(1) until the agency head responds to the Commission in writing with an explanation of how the agency has modified, or why it proposes to not modify, the action in response to comments provided by the Commission. Subsection (h)(3)(B) states that the agency may not finalize the proposal if the agency has not modified the proposed to prevent a significant negative impact on reliability and adequacy of the bulk-power system based on the comments provided by the Commission.

Subsection (h)(4)(A) provides that an agency head shall include comments and responses in the Federal Register or otherwise publicly available under subsection (h)(4)(B).

Subsection (h)(5) provides definitions for terms used throughout this section.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

FEDERAL POWER ACT

* * * * *

PART II—REGULATION OF ELECTRIC UTILITY COMPANIES ENGAGED IN INTERSTATE COMMERCE

* * * * *

SEC. 215. ELECTRIC RELIABILITY.

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

(1) The term “bulk-power system” means—

(A) facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof); and

(B) electric energy from generation facilities needed to maintain transmission system reliability.

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

(2) The terms “Electric Reliability Organization” and “ERO” mean the organization certified by the Commission under subsection (c) the purpose of which is to establish and enforce reliability standards for the bulk-power system, subject to Commission review.

(3) The term “reliability standard” means a requirement, approved by the Commission under this section, to provide for reliable operation of the bulk-power system. The term includes requirements for the operation of existing bulk-power system facilities, including cybersecurity protection, and the design of planned additions or modifications to such facilities to the extent necessary to provide for reliable operation of the bulk-power system, but the term does not include any requirement to enlarge such facilities or to construct new transmission capacity or generation capacity.

(4) The term “reliable operation” means operating the elements of the bulk-power system within equipment and electric system thermal, voltage, and stability limits so that instability, uncontrolled separation, or cascading failures of such system will not occur as a result of a sudden disturbance, including a cybersecurity incident, or unanticipated failure of system elements.

(5) The term “Interconnection” means a geographic area in which the operation of bulk-power system components is synchronized such that the failure of one or more of such components may adversely affect the ability of the operators of other components within the system to maintain reliable operation of the facilities within their control.

(6) The term “transmission organization” means a Regional Transmission Organization, Independent System Operator, independent transmission provider, or other transmission organization finally approved by the Commission for the operation of transmission facilities.

(7) The term “regional entity” means an entity having enforcement authority pursuant to subsection (e)(4).

(8) The term “cybersecurity incident” means a malicious act or suspicious event that disrupts, or was an attempt to disrupt, the operation of those programmable electronic devices and communication networks including hardware, software and data that are essential to the reliable operation of the bulk power system.

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

(2) The Commission shall issue a final rule to implement the requirements of this section not later than 180 days after the date of enactment of this section.

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

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

(2) has established rules that—

(A) assure its independence of the users and owners and operators of the bulk-power system, while assuring fair stakeholder representation in the selection of its directors and balanced decisionmaking in any ERO committee or subordinate organizational structure;

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

(C) provide fair and impartial procedures for enforcement of reliability standards through the imposition of penalties in accordance with subsection (e) (including limitations on activities, functions, or operations, or other appropriate sanctions);

(D) provide for reasonable notice and opportunity for public comment, due process, openness, and balance of interests in developing reliability standards and otherwise exercising its duties; and

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

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

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

(3) The Electric Reliability Organization shall rebuttably presume that a proposal from a regional entity organized on an Interconnection-wide basis for a reliability standard or modification to a reliability standard to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest.

(4) The Commission shall remand to the Electric Reliability Organization for further consideration a proposed reliability standard or a modification to a reliability standard that the Commission disapproves in whole or in part.

(5) The Commission, upon its own motion or upon complaint, may order the Electric Reliability Organization to submit to the Commission a proposed reliability standard or a modification to a reliability standard that addresses a specific matter if the Commission considers such a new or modified reliability standard appropriate to carry out this section.

(6) The final rule adopted under subsection (b)(2) shall include fair processes for the identification and timely resolution of any conflict between a reliability standard and any function, rule, order, tariff, rate schedule, or agreement accepted, approved, or ordered by the Commission applicable to a transmission organization. Such transmission organization shall continue to comply with such function, rule, order, tariff, rate schedule or agreement accepted, approved, or ordered by the Commission until—

(A) the Commission finds a conflict exists between a reliability standard and any such provision;

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

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

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

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

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

(B) files notice and the record of the proceeding with the Commission.

(2) A penalty imposed under paragraph (1) may take effect not earlier than the 31st day after the ERO files with the Commission notice of the penalty and the record of proceedings. Such penalty shall be subject to review by the Commission, on its own motion or upon application by the user, owner or operator that is the subject of the penalty filed within 30 days after the date such notice is filed with the Commission. Application to the Commission for review, or the initiation of review by the Commission on its own motion, shall not operate as a stay of such penalty unless the Commission otherwise orders upon its own motion or upon application by the user, owner or operator that is the subject of such penalty. In any proceeding to review a penalty imposed under paragraph (1), the Commission, after notice and opportunity for hearing (which hearing may consist solely of the record before the ERO and opportunity for the presentation of supporting reasons to affirm, modify, or set aside the penalty), shall by order affirm, set aside, reinstate, or modify the penalty, and, if appropriate, remand to the ERO for further proceedings. The Commission shall implement expedited procedures for such hearings.

(3) On its own motion or upon complaint, the Commission may order compliance with a reliability standard and may impose a penalty against a user or owner or operator of the bulk-power sys-

tem if the Commission finds, after notice and opportunity for a hearing, that the user or owner or operator of the bulk-power system has engaged or is about to engage in any acts or practices that constitute or will constitute a violation of a reliability standard.

(4) The Commission shall issue regulations authorizing the ERO to enter into an agreement to delegate authority to a regional entity for the purpose of proposing reliability standards to the ERO and enforcing reliability standards under paragraph (1) if—

(A) the regional entity is governed by—

(i) an independent board;

(ii) a balanced stakeholder board; or

(iii) a combination independent and balanced stakeholder board.

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

(C) the agreement promotes effective and efficient administration of bulk-power system reliability.

The Commission may modify such delegation. The ERO and the Commission shall rebuttably presume that a proposal for delegation to a regional entity organized on an Interconnection-wide basis promotes effective and efficient administration of bulk-power system reliability and should be approved. Such regulation may provide that the Commission may assign the ERO's authority to enforce reliability standards under paragraph (1) directly to a regional entity consistent with the requirements of this paragraph.

(5) The Commission may take such action as is necessary or appropriate against the ERO or a regional entity to ensure compliance with a reliability standard or any Commission order affecting the ERO or a regional entity.

(6) Any penalty imposed under this section shall bear a reasonable relation to the seriousness of the violation and shall take into consideration the efforts of such user, owner, or operator to remedy the violation in a timely manner.

(f) CHANGES IN ELECTRIC RELIABILITY ORGANIZATION RULES.—The Electric Reliability Organization shall file with the Commission for approval any proposed rule or proposed rule change, accompanied by an explanation of its basis and purpose. The Commission, upon its own motion or complaint, may propose a change to the rules of the ERO. A proposed rule or proposed rule change shall take effect upon a finding by the Commission, after notice and opportunity for comment, that the change is just, reasonable, not unduly discriminatory or preferential, is in the public interest, and satisfies the requirements of subsection (c).

(g) RELIABILITY REPORTS.—The ERO shall conduct periodic assessments of the reliability and adequacy of the bulk-power system in North America.

(h) COMMISSION REVIEW AND COMMENT FOR PROPOSED COVERED AGENCY ACTIONS.—

(1) REQUIREMENT.—*If the Commission or a State commission determines, on its own motion or on a request from another Federal agency, that a covered agency action proposed by a Federal agency other than the Commission is likely to have a significant negative impact on the reliability and adequacy of the bulk-power system in North America, the agency head with respect to such proposed covered agency action shall provide to*

the Commission such proposed covered agency action for review and comment—

(A) on the first date on which such proposed covered agency action is provided to the Office of Management and Budget or any other Federal agency for review and comment; or

(B) if such proposed covered agency action is not provided to the Office of Management and Budget or any other Federal agency for review and comment, not later than 90 days before the date on which the agency head publishes in the Federal Register or otherwise makes available for public inspection or comment such proposed covered agency action.

(2) COMMISSION COMMENTS.—The Commission, in consultation with the ERO, shall, by order, provide to the agency head that provides a proposed covered agency action to the Commission under paragraph (1) comments on such proposed covered agency action.

(3) AGENCY RESPONSE.—An agency head may not finalize a proposed covered agency action for which a determination is made under paragraph (1)—

(A) until the agency head has responded in writing to the Commission with an explanation of how the agency head has modified, or why the agency head has determined not to modify, such proposed covered agency action in response to each comment provided by the Commission under paragraph (2); or

(B) if the Commission finds that the agency head has not modified such proposed covered agency action based on the comments provided by the Commission under paragraph (2) to prevent a significant negative impact on the reliability and adequacy of the bulk-power system in North America.

(4) PUBLIC AVAILABILITY OF COMMENTS AND RESPONSES.—An agency head shall include the comments and responses for the proposed covered agency action in the proposed agency action as—

(A) submitted to the Federal Register for publication; or

(B) otherwise made available for public inspection or comment.

(5) DEFINITIONS.—In this subsection:

(A) AGENCY HEAD.—The term “agency head” means the head of a Federal agency that proposed a covered agency action.

(B) COVERED AGENCY ACTION.—The term “covered agency action” means a rule, regulation, standard, criteria document, deadline, or determination.

(C) FEDERAL AGENCY.—The term “Federal agency” means an Executive department (as that term is defined in section 101 of title 5, United States Code) or any other Executive agency that is in the President’s cabinet.

[(h)] *(i) COORDINATION WITH CANADA AND MEXICO.—The President is urged to negotiate international agreements with the governments of Canada and Mexico to provide for effective compliance*

with reliability standards and the effectiveness of the ERO in the United States and Canada or Mexico.

[(i)] (j) SAVINGS PROVISIONS.—(1) The ERO shall have authority to develop and enforce compliance with reliability standards for only the bulk-power system.

(2) This section does not authorize the ERO or the Commission to order the construction of additional generation or transmission capacity or to set and enforce compliance with standards for adequacy or safety of electric facilities or services.

(3) Nothing in this section shall be construed to preempt any authority of any State to take action to ensure the safety, adequacy, and reliability of electric service within that State, as long as such action is not inconsistent with any reliability standard, except that the State of New York may establish rules that result in greater reliability within that State, as long as such action does not result in lesser reliability outside the State than that provided by the reliability standards.

(4) Within 90 days of the application of the Electric Reliability Organization or other affected party, and after notice and opportunity for comment, the Commission shall issue a final order determining whether a State action is inconsistent with a reliability standard, taking into consideration any recommendation of the ERO.

(5) The Commission, after consultation with the ERO and the State taking action, may stay the effectiveness of any State action, pending the Commission's issuance of a final order.

[(j)] (k) REGIONAL ADVISORY BODIES.—The Commission shall establish a regional advisory body on the petition of at least two-thirds of the States within a region that have more than one-half of their electric load served within the region. A regional advisory body shall be composed of one member from each participating State in the region, appointed by the Governor of each State, and may include representatives of agencies, States, and provinces outside the United States. A regional advisory body may provide advice to the Electric Reliability Organization, a regional entity, or the Commission regarding the governance of an existing or proposed regional entity within the same region, whether a standard proposed to apply within the region is just, reasonable, not unduly discriminatory or preferential, and in the public interest, whether fees proposed to be assessed within the region are just, reasonable, not unduly discriminatory or preferential, and in the public interest and any other responsibilities requested by the Commission. The Commission may give deference to the advice of any such regional advisory body if that body is organized on an Interconnection-wide basis.

[(k)] (l) ALASKA AND HAWAII.—The provisions of this section do not apply to Alaska or Hawaii.

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MINORITY VIEWS

H.R. 6185, the “Guaranteeing Reliable Infrastructure Development Act” would amend the Federal Power Act (FPA) to allow the Federal Energy Regulatory Commission (FERC) to block any rule, regulation, standard, criteria document, deadline, or determination from any other Federal agency under the guise of reliability concerns. Committee Democrats strongly oppose the bill, as it unnecessarily duplicates FERC’s existing ability to provide feedback on proposed rulemakings from other agencies. FERC itself does not think that it currently has the capacity to implement the bill, and it would unnecessarily slow down environmental regulations with clear benefits to public health.

The bill amends section 215 of the FPA to add a subsection (h) that would give FERC the ability to prevent any proposed covered action by another agency from going into effect until the agency is able to mollify FERC’s concerns through changes to the proposed action. The majority’s report compares this to “consultation,” however it is much more onerous than consultation. It would in effect give FERC veto power over any agency action that FERC—or a state public utility commission—seeks to alter, an unprecedented expansion of FERC’s power.

The power given to state commissions by the bill is particularly troubling. It would give state commissions the ability to bring any pending rulemaking process at any agency to a halt, by demanding that FERC consult with the North American Reliability Corporation (NERC) to provide comments to the head of the agency proposing such action. It would create 50 different veto points throughout the nation, and it is far too easy to imagine a particularly pernicious partisan state commission voting to subject every proposed Federal rule to this scrutiny, sending FERC, NERC, and the rest of the Federal government into gridlock.

These fears were validated during a Subcommittee on Energy, Climate, and Grid Security hearing on a draft version of H.R. 6185, where the Subcommittee heard testimony from Gene Rodrigues, Assistant Secretary for Electricity at the U.S. Department of Energy. Assistant Secretary Rodrigues testified that the real-world impact of the bill would be to create a vague standard that would make it “impossible for [the Department of Energy] to meet our legislative and court-ordered mandates” and anticipated that every single rule would be challenged by a State commission and would see its implementation delayed as FERC studied the proposed action.¹ Additionally, during that same hearing, the Subcommittee also heard testimony from Dr. David Ortiz, Director of FERC’s Office of Electric Reliability. Dr. Ortiz testified that FERC lacked the

¹House Committee on Energy and Commerce, Testimony of Gene Rodrigues, Assistant Secretary for Electricity, U.S. Department of Energy, *Hearing on Keeping the Lights on: Enhancing Reliability and Efficiency to Power American Homes*, 118th Cong. (Sept. 13, 2023).

staffing, data, and computational modeling resources necessary for FERC to implement the bill as written.²

The majority’s report seems particularly focused on a proposed rule by the Environmental Protection Agency (EPA) regarding new source performance standards for greenhouse gas emissions for certain electric power plants.³ However, FERC already enjoys broad authority to comment and consult on the potential reliability impacts of other agency’s regulations.

In April 2023—before the proposed rule was released, FERC staff within the Office of Electric Reliability met with EPA staff regarding their comments on the proposed rule.⁴ On November 9, 2023, FERC held its annual reliability technical conference. It devoted the entirety of the afternoon session of the conference to the EPA’s proposed rule, and Principal Deputy Assistant Administrator Joseph Goffman presented to FERC Commissioners and took questions. FERC staff then led two additional panels featuring stakeholder perspectives on the rule.⁵ FERC Chair Willie Phillips has committed to providing a link to the complete docket record of the technical conference to the EPA, and a transcript of the conference is publicly available.⁶ Furthermore, former FERC Commissioner James Danly submitted two comments to the EPA.^{7 8} Eleven days after the technical conference, EPA noticed in the Federal Register a supplemental notice of proposed rulemaking, specifically soliciting comments on how the proposed rule related to reliability.⁹

In short, the current feedback mechanisms that FERC possesses—including both its ability to call technical conferences and submit comments to a rulemaking docket—appear more than sufficient to meet the majority’s alleged goal of ensuring that FERC has adequate ability to provide feedback to EPA on its rules.

²House Committee on Energy and Commerce, Testimony of Dr. David Ortiz, Director, Office of Electric Reliability, Federal Energy Regulatory Commission, *Hearing on Keeping the Lights on: Enhancing Reliability and Efficiency to Power American Homes*, 118th Cong. (Sept. 13, 2023).

³The majority’s report makes several unfounded claims about EPA’s proposal. Under the Clean Air Act, EPA is clearly authorized and legally obligated to control greenhouse gas pollution from power plants. The majority’s report further ignores that Congress specifically directed EPA to reduce this pollution in the Inflation Reduction Act, and inaccurately describes the requirements and available, affordable technologies underpinning EPA’s proposal.” See e.g. Comment from Rep. Frank Pallone, Jr. and Sen. Thomas R. Carper, to Docket No. EPA–HQ–OAR–2023–0072 (Sept. 12, 2023).

⁴House Committee on Energy and Commerce, Response from Dr. David Ortiz, Director, Office of Electric Reliability, Federal Energy Regulatory Commission, to a Question for the Record from Chair Jeff Duncan, *Hearing on Keeping the Lights on: Enhancing Reliability and Efficiency to Power American Homes*, 118th Cong. (Sept. 13, 2023).

⁵Federal Energy Regulatory Commission, *2023 Annual Reliability Technical Conference* (Nov. 9, 2023).

⁶Response letter from Chairman Willie Phillips, Federal Energy Regulatory Commission, to Rep. McMorris Rodgers, Chair, House Committee on Energy and Commerce, et al. (Dec. 6, 2023).

⁷Commissioner James Danly, Comment to Docket No. EPA–HQ–OAR–2023–0072 (Aug. 8, 2023).

⁸Commissioner James Danly, Comment to Docket No. EPA–HQ–OAR–2023–0072 (Dec. 20, 2023).

⁹Environmental Protection Agency, *New Source Performance Standards for Greenhouse Gas Emissions From New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units*, 88 Fed. Reg. 80682. (Nov. 20, 2023) (proposed rule).

For the reasons stated above, we dissent from the views contained in the Committee's report.

FRANK PALLONE, Jr.,
Ranking Member.

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