

106TH CONGRESS  
1ST SESSION

# S. 516

To benefit consumers by promoting competition in the electric power industry,  
and for other purposes.

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IN THE SENATE OF THE UNITED STATES

MARCH 3, 1999

Mr. THOMAS 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 benefit consumers by promoting competition in the  
electric power industry, 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 “Electric Utility Re-  
5 structuring Empowerment and Competitiveness Act of  
6 1999”.

7 **SEC. 2. FINDINGS AND PURPOSES.**

8 (a) FINDINGS.—Congress finds that—

9 (1) the Nation’s electricity generation, trans-  
10 mission, and local distribution systems critically af-

1       fect the economy and productivity of the United  
2       States and the health, safety, welfare, and security  
3       of all Americans;

4               (2) competition will provide greater choices,  
5       lower prices, and innovative services and products to  
6       all consumers of electricity;

7               (3)(A) States have traditionally regulated the  
8       rates, terms, and conditions of selling electricity for  
9       end-use;

10              (B) regulation of the rates, terms, and condi-  
11       tions of selling electricity for end-use is properly the  
12       exclusive jurisdiction of States;

13              (C) virtually every State is considering reforms  
14       to traditional methods of regulating the provision of  
15       retail electric service to promote competition;

16              (D) many States, through legislation or by ad-  
17       ministrative decision, have already approved plans to  
18       begin retail competition; and

19              (E) States should—

20                      (i) continue to take the lead in managing  
21       the transition to a competitive electricity mar-  
22       ketplace; and

23                      (ii) determine the retail electric policies  
24       that provide the greatest benefits to consumers

1           in a manner that recognizes the unique charac-  
2           teristics of each State;

3           (4) all classes of consumers of electric energy  
4           should benefit from competition in electricity sales;

5           (5) consumers should have access to adequate,  
6           reliable, and efficient supplies of electricity;

7           (6) the transition to competition among elec-  
8           tricity providers should not impair the ability of the  
9           States to determine recovery of the substantial in-  
10          vestments made by electric utilities to serve their  
11          customers;

12          (7) reciprocity among competing retail elec-  
13          tricity providers will ensure that the States do not  
14          obtain undue advantages or disadvantages from the  
15          timing of their decisions;

16          (8) the Federal Government must address the  
17          matters within Federal jurisdiction as necessary to  
18          promote competition, but such actions must not be  
19          made at the expense of State authority; and

20          (9)(A) Congress should consider restricting gov-  
21          ernmental utilities with respect to facilities financed  
22          with tax-exempt debt;

23          (B) sales in a service territory in existence be-  
24          fore the restriction may continue to be financed  
25          using tax-exempt debt; and

1 (C) a governmental utility should have to fi-  
 2 nance sales outside its service territory on the same  
 3 basis as other competitors.

4 (b) PURPOSE.—The purpose of this Act is to promote  
 5 competition in the electric power industry through empow-  
 6 ering the States, deregulation, and streamlining.

7 **SEC. 3. STATE PROMOTION OF RETAIL COMPETITION.**

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

11 **“SEC. 215. STATE PROMOTION OF RETAIL COMPETITION.**

12 “(a) DEFINITIONS.—In this section:

13 “(1) NONREGULATED ELECTRIC UTILITY.—The  
 14 term ‘nonregulated electric utility’ has the meaning  
 15 given the term in section 3 of the Public Utility Reg-  
 16 ulatory Policies Act of 1978 (16 U.S.C. 2602).

17 “(2) RETAIL ELECTRIC SUPPLY.—

18 “(A) IN GENERAL.—The term ‘retail elec-  
 19 tric supply’ means the production, generation,  
 20 manufacture, aggregation, retail marketing, re-  
 21 tail brokering, retail selling, or other retail sup-  
 22 plying of electricity.

23 “(B) EXCLUSION.—The term ‘retail elec-  
 24 tric supply’ does not include the transmission of  
 25 electricity in interstate commerce.

1           “(3) RETAIL SALE.—The term ‘retail sale’  
2           means any sale of electric energy for ultimate con-  
3           sumption.

4           “(4) STATE REGULATED ELECTRIC UTILITY.—  
5           The term ‘State regulated electric utility’ has the  
6           meaning given the term in section 3 of the Public  
7           Utility Regulatory Policies Act of 1978 (16 U.S.C.  
8           2602).

9           “(b) JURISDICTION.—A State may regulate the pro-  
10          vision of any retail electric supply (including self-genera-  
11          tion) or any local distribution service provided to an ulti-  
12          mate consumer of electricity in the State.

13          “(c) PERFORMANCE STANDARDS.—A State may es-  
14          tablish and enforce performance standards for the retail  
15          sale, marketing, or delivery of electric energy to ensure  
16          system reliability, protect human health and public safety,  
17          and protect retail consumers from unfair business prac-  
18          tices.

19          “(d) STATE AUTHORITY OVER RETAIL TRANS-  
20          ACTIONS.—Notwithstanding any other provision of this  
21          Act, a State or a nonregulated electric utility may require,  
22          as a condition of the purchase by any person or municipal-  
23          ity located in the State or service area of the nonregulated  
24          electric utility, as appropriate, of a retail electric supply  
25          or local distribution service, the payment of a charge de-

1 terminated by the State or nonregulated electric utility to  
2 further public policy goals, including—

3           “(1) recover electric industry transition costs;

4           “(2) ensure that adequate electric service is  
5 available to all customers served by a retail elec-  
6 tricity distribution system;

7           “(3) ensure and enhance the reliability of retail  
8 electric service;

9           “(4) fund assistance to low-income consumers  
10 of electricity;

11           “(5) encourage environmental programs, renew-  
12 able-energy programs, energy-efficiency programs, or  
13 conservation programs;

14           “(6) provide for transition costs of electric util-  
15 ity workers adversely affected by restructuring; and

16           “(7) encourage research and development on  
17 electric technologies.

18       “(e) WHOLESale RECIPROCIty.—An electric utility  
19 may not provide any wholesale electric supply in commerce  
20 using open and nondiscriminatory transmission access un-  
21 less the electric utility, and every affiliate of the electric  
22 utility, provides comparable open and nondiscriminatory  
23 transmission access over any facility owned, controlled, or  
24 operated by the person or affiliate.

1       “(f) RETAIL RECIPROCITY.—A State may provide  
 2 that a nonregulated electric utility, a State regulated elec-  
 3 tric utility, or a cooperative utility in the State may deny  
 4 local distribution access to any other nonregulated electric  
 5 utility, State regulated electric utility, or cooperative util-  
 6 ity (or affiliate of any such utility) that is offering electric  
 7 energy for sale (referred to in this subsection as the ‘sell-  
 8 er’) to a customer of the in-State utility if the seller or  
 9 an affiliate of the seller is not providing comparable access  
 10 to any local distribution facility owned, controlled, or oper-  
 11 ated by the seller or affiliate.”.

12       (b) STATE AUTHORITY OVER SALES OF ELEC-  
 13 TRICITY TO FEDERAL FACILITIES.—Section 201 of the  
 14 Federal Power Act (16 U.S.C. 824) is amended by adding  
 15 at the end the following:

16       “(h) STATE AUTHORITY OVER SALES OF ELEC-  
 17 TRICITY TO FEDERAL FACILITIES.—The purchase of elec-  
 18 tricity for ultimate consumption by a Federal department,  
 19 agency, authority, instrumentality, facility, enclave, instal-  
 20 lation, establishment, or mixed-ownership government cor-  
 21 poration shall be subject to the laws (including regula-  
 22 tions) of the State in which the consumption of electricity  
 23 occurs with respect to the choice of supplier and rules,  
 24 rates, terms and conditions, if any, applicable to such a  
 25 purchase.”.

1 (c) UNIVERSAL SERVICE.—Section 201(b) of the  
 2 Federal Power Act (16 U.S.C. 824(b)) is amended by add-  
 3 ing at the end the following:

4 “(3) UNIVERSAL SERVICE.—Nothing in this Act  
 5 deprives a State of the authority to require, in ac-  
 6 cordance with State law, all electricity providers that  
 7 sell electricity to retail customers in the State to as-  
 8 sist in providing universal service.”.

9 **SEC. 4. DEREGULATION OF WHOLESALE SALES OF ELEC-**  
 10 **TRIC ENERGY.**

11 (a) DEREGULATION OF WHOLESALE SALES OF  
 12 ELECTRIC ENERGY.—Section 205 of the Federal Power  
 13 Act (16 U.S.C. 824d) is amended by adding at the end  
 14 the following:

15 “(g) DEREGULATION OF WHOLESALE SALES OF  
 16 ELECTRIC ENERGY.—

17 “(1) IN GENERAL.—A contract or agreement  
 18 for the sale of electric energy for resale made after  
 19 the date of enactment of this subsection shall be ex-  
 20 empt from regulation of rates and charges under  
 21 parts II and III of this Act.

22 “(2) STATE AUTHORITY OVER RETAIL SALES  
 23 UNAFFECTED.—Nothing in this subsection affects  
 24 the authority of a State or State commission to reg-  
 25 ulate sales to an ultimate customer.”.

1 (b) OPEN ACCESS TRANSMISSION FROM ALL TRANS-  
2 MITTING UTILITIES.—Part II of the Federal Power Act  
3 (16 U.S.C. 824 et seq.) (as amended by section 3(a)) is  
4 amended by adding at the end the following:

5 **“SEC. 216. OPEN ACCESS TRANSMISSION FROM ALL TRANS-**  
6 **MITTING UTILITIES.**

7 “A transmitting utility and any other entity that  
8 owns, operates, or controls transmission of electricity in  
9 interstate commerce—

10 “(1) shall be subject to the jurisdiction of the  
11 Commission under this Act regarding any wholesale  
12 transmission service; and

13 “(2) shall comply with all requirements applica-  
14 ble to a public utility regarding the provision of any  
15 wholesale transmission service.”.

16 **SEC. 5. TAX BENEFITS TO UTILITIES.**

17 Not later than 1 year after the date of enactment  
18 of this Act, the Inspector General of the Treasury shall  
19 submit to Congress a report detailing whether and how  
20 Internal Revenue Code provisions relating to the following  
21 benefits should be addressed in order to foster a competi-  
22 tive retail electricity market:

23 (1) Benefits received as a result of the Internal  
24 Revenue Code by an investor-owned electric utility

1 that is not received by other nonutility private cor-  
 2 porations under the Internal Revenue Code.

3 (2) Benefits received as a result of the Internal  
 4 Revenue Code by a utility providing electric service  
 5 to the public that is—

6 (A) an instrumentality of a State;

7 (B) a political subdivision of a State;

8 (C) a corporation that has at any time re-  
 9 ceived a loan from the Rural Utilities Service or  
 10 the Rural Electrification Administration under  
 11 the Rural Electrification Act of 1936 (17  
 12 U.S.C. 901 et seq.) for the purposes of provid-  
 13 ing electric service; or

14 (D) an entity that is owned, directly or in-  
 15 directly, by an entity described in subparagraph  
 16 (A), (B), or (C).

17 **SEC. 6. PURPA REFORM.**

18 Section 210 of the Public Utility Regulatory Policies  
 19 Act of 1978 (16 U.S.C. 824a-3) is amended by adding  
 20 at the end the following:

21 “(m) LIMITATION ON RULES.—

22 “(1) DEFINITION OF FACILITY.—In this sub-  
 23 section, the term ‘facility’ means a facility for the  
 24 generation of electric energy or an addition to or ex-

1       pansion of the generating capacity of a facility for  
2       the generation of electric energy.

3           “(2) LIMITATION.—This section shall not apply  
4       to a facility that begins commercial operation after  
5       the date of enactment of this subsection, except for  
6       a facility for which a power purchase contract was  
7       entered into under this section before the date of en-  
8       actment of this subsection.

9           “(3) CONTRACTS.—After the date of enactment  
10       of this subsection, an electric utility shall not be re-  
11       quired to enter into a new contract or obligation to  
12       purchase or sell electric energy under this section.”.

13   **SEC. 7. REPEAL OF PUHCA.**

14       (a) FINDINGS AND PURPOSES.—

15           (1) FINDINGS.—Congress finds that—

16               (A) the Public Utility Holding Company  
17               Act of 1935 (15 U.S.C. 79a et seq.) was in-  
18               tended to facilitate the work of Federal and  
19               State regulators by placing certain constraints  
20               on the activities of holding company systems;

21               (B) developments since 1935, including  
22               changes in other regulation and in the electric  
23               and gas industries, have called into question the  
24               continued relevance of the model of regulation  
25               established by that Act;

1 (C) there is a continuing need for State  
2 regulation in order to ensure the rate protection  
3 of utility customers; and

4 (D) limited Federal regulation is necessary  
5 to supplement the work of State commissions  
6 for continued rate protection for electric and  
7 gas utility customers.

8 (2) PURPOSES.—The purposes of this section  
9 are—

10 (A) to eliminate unnecessary regulation,  
11 yet continue to provide for consumer protection  
12 by facilitating existing rate regulatory authority  
13 through improved Federal and State commis-  
14 sion access to books and records of all compa-  
15 nies in a holding company system, to the extent  
16 that such information is relevant to rates paid  
17 by utility customers, while affording companies  
18 the flexibility required to compete in the energy  
19 markets; and

20 (B) to address protection of electric and  
21 gas utility customers by providing for Federal  
22 and State access to books and records of all  
23 companies in a holding company system that  
24 are relevant to utility rates.

25 (b) DEFINITIONS.—In this section:

1           (1) AFFILIATE.—The term “affiliate” means  
2 any company, 5 percent or more of the outstanding  
3 voting securities of which are owned, controlled, or  
4 held with power to vote, directly or indirectly, by a  
5 parent company.

6           (2) ASSOCIATE COMPANY.—The term “associate  
7 company” means any company in the same holding  
8 company system with another company.

9           (3) COMMISSION.—The term “Commission”  
10 means the Federal Energy Regulatory Commission.

11           (4) COMPANY.—The term “company” means a  
12 corporation, partnership, association, joint stock  
13 company, business trust, or any organized group of  
14 persons, whether incorporated or not, or a receiver,  
15 trustee, or other liquidating agent of any such en-  
16 tity.

17           (5) ELECTRIC UTILITY COMPANY.—The term  
18 “electric utility company” means any company that  
19 owns or operates facilities used for the generation,  
20 transmission, or distribution of electric energy for  
21 sale.

22           (6) EXEMPT WHOLESALE GENERATOR.—The  
23 term “exempt wholesale generator” has the meaning  
24 given the term in section 32(a) of the Public Utility  
25 Holding Company Act of 1935 (15 U.S.C. 79z–

1 5a(a)), as in effect on the day before the effective  
2 date of this section.

3 (7) FOREIGN UTILITY COMPANY.—The term  
4 “foreign utility company” has the meaning given the  
5 term in section 33(a) of the Public Utility Holding  
6 Company Act of 1935 (15 U.S.C. 79z–5b(a)), as in  
7 effect on the day before the effective date of this sec-  
8 tion.

9 (8) GAS UTILITY COMPANY.—The term “gas  
10 utility company” means any company that owns or  
11 operates facilities used for retail distribution (other  
12 than the distribution only in enclosed portable con-  
13 tainers or distribution to tenants or employees of the  
14 company operating such facilities for their own use  
15 and not for resale) of natural or manufactured gas  
16 for heat, light, or power.

17 (9) HOLDING COMPANY.—The term “holding  
18 company” means—

19 (A) a company that directly or indirectly  
20 owns, controls, or holds, with power to vote, 10  
21 percent or more of the outstanding voting secu-  
22 rities of a public utility company or of a holding  
23 company of any public utility company; and

24 (B) any person, determined by the Com-  
25 mission, after notice and opportunity for hear-

1           ing, to exercise directly or indirectly (either  
2           alone or under an arrangement or understand-  
3           ing with 1 or more persons) such a controlling  
4           influence over the management or policies of  
5           any public utility company or holding company  
6           as to make it necessary or appropriate for rate  
7           protection for utility customers with respect to  
8           rates that such person be subject to the obliga-  
9           tions, duties, and liabilities imposed by this Act  
10          upon holding companies.

11          (10) HOLDING COMPANY SYSTEM.—The term  
12          “holding company system” means a holding com-  
13          pany and all subsidiary companies of the holding  
14          company.

15          (11) JURISDICTIONAL RATE.—The term “juris-  
16          dictional rate” means a rate established by the Com-  
17          mission for the transmission of electric energy in  
18          interstate commerce, the sale of electric energy at  
19          wholesale in interstate commerce, the transportation  
20          of natural gas in interstate commerce, and the sale  
21          in interstate commerce of natural gas for resale for  
22          ultimate public consumption for domestic, commer-  
23          cial, industrial, or any other use.

24          (12) NATURAL GAS COMPANY.—The term “nat-  
25          ural gas company” means a person engaged in the

1 transportation of natural gas in interstate commerce  
2 or the sale of natural gas in interstate commerce for  
3 resale.

4 (13) PERSON.—The term “person” means an  
5 individual or company.

6 (14) PUBLIC UTILITY.—The term “public util-  
7 ity” means any person that owns or operates facili-  
8 ties used for transmission of electric energy in inter-  
9 state commerce or sales of electric energy at whole-  
10 sale in interstate commerce.

11 (15) PUBLIC UTILITY COMPANY.—The term  
12 “public utility company” means an electric utility  
13 company or a gas utility company.

14 (16) STATE COMMISSION.—The term “State  
15 commission” means any commission, board, agency,  
16 or officer, by whatever name designated, of a State,  
17 municipality, or other political subdivision of a State  
18 that, under the laws of such State, has jurisdiction  
19 to regulate public utility companies.

20 (17) SUBSIDIARY COMPANY.—The term “sub-  
21 sidiary company”, in reference to a subsidiary com-  
22 pany of a holding company, means—

23 (A) a company, 10 percent or more of the  
24 outstanding voting securities of which are di-  
25 rectly or indirectly owned, controlled, or held

1 with power to vote, by the holding company;  
2 and

3 (B) any person, the management or poli-  
4 cies of which the Commission, after notice and  
5 opportunity for hearing, determines to be sub-  
6 ject to a controlling influence, directly or indi-  
7 rectly, by the holding company (either alone or  
8 under an arrangement or understanding with 1  
9 or more other persons) so as to make it nec-  
10 essary for the rate protection of utility cus-  
11 tomers with respect to rates that the person be  
12 subject to the obligations, duties, and liabilities  
13 imposed by this section on subsidiary companies  
14 of holding companies.

15 (18) VOTING SECURITY.—The term “voting se-  
16 curity” means any security entitling the owner or  
17 holder of the security to vote in the direction or  
18 management of the affairs of a company.

19 (c) REPEAL OF THE PUBLIC UTILITY HOLDING COM-  
20 PANY ACT OF 1935.—The Public Utility Holding Com-  
21 pany Act of 1935 (15 U.S.C. 79a et seq.) is repealed.

22 (d) FEDERAL ACCESS TO BOOKS AND RECORDS.—

23 (1) IN GENERAL.—Each holding company and  
24 each associate company of a holding company shall  
25 maintain, and shall make available to the Commis-

1 sion, such books, accounts, memoranda, and other  
2 records as the Commission considers to be relevant  
3 to costs incurred by a public utility or natural gas  
4 company that is an associate company of the holding  
5 company and necessary or appropriate for the pro-  
6 tection of utility customers with respect to jurisdic-  
7 tional rates for the transmission of electric energy in  
8 interstate commerce, the sale of electric energy at  
9 wholesale in interstate commerce, the transportation  
10 of natural gas in interstate commerce, and the sale  
11 in interstate commerce of natural gas for resale for  
12 ultimate public consumption for domestic, commer-  
13 cial, industrial, or other use.

14 (2) AFFILIATE COMPANIES.—Each affiliate of a  
15 holding company or of any subsidiary company of a  
16 holding company shall maintain, and make available  
17 to the Commission, such books, accounts, memo-  
18 randa, and other records with respect to any trans-  
19 action with another affiliate, as the Commission con-  
20 siders relevant to costs incurred by a public utility  
21 or natural gas company that is an associate com-  
22 pany of the holding company and necessary or ap-  
23 propriate for the protection of utility customers with  
24 respect to jurisdictional rates.

1           (3) HOLDING COMPANY SYSTEMS.—The Com-  
2 mission may examine the books, accounts, memo-  
3 randa, and other records of any company in a hold-  
4 ing company system, or any affiliate of a company  
5 in a holding company system, as the Commission  
6 considers relevant to costs incurred by a public util-  
7 ity or natural gas company in the holding company  
8 system and necessary or appropriate for the protec-  
9 tion of utility customers with respect to jurisdic-  
10 tional rates.

11           (4) CONFIDENTIALITY.—No member, officer, or  
12 employee of the Commission shall divulge any fact or  
13 information that may come to the knowledge of the  
14 member, officer, or employee during the course of  
15 examination of a book, account, memorandum, or  
16 other record under this section, except as may be di-  
17 rected by the Commission or by a court of com-  
18 petent jurisdiction.

19           (e) STATE ACCESS TO BOOKS AND RECORDS.—

20           (1) IN GENERAL.—On the written request of a  
21 State commission having jurisdiction to regulate a  
22 public utility company in a holding company system,  
23 a holding company or an associate or affiliate of a  
24 holding company, wherever located, shall produce for

1 inspection any book, account, memorandum, or other  
2 record that—

3 (A) has been identified in reasonable detail  
4 in a proceeding before the State commission;

5 (B) the State commission considers rel-  
6 evant to costs incurred by the company; and

7 (C) is necessary for the effective discharge  
8 of the responsibilities of the State commission  
9 with respect to the proceeding.

10 (2) LIMITATION.—Paragraph (1) does not  
11 apply to any person that is a holding company solely  
12 by reason of ownership of 1 or more qualifying fa-  
13 cilities under the Public Utility Regulatory Policies  
14 Act of 1978 (16 U.S.C. 2601 et seq.).

15 (3) CONFIDENTIALITY OF INFORMATION.—The  
16 production of books, accounts, memoranda, and  
17 other records under paragraph (1) shall be subject  
18 to such terms and conditions as are necessary to  
19 safeguard against unwarranted disclosure to the  
20 public of any trade secrets or sensitive commercial  
21 information.

22 (4) EFFECT ON STATE LAW.—Nothing in this  
23 section preempts applicable State law concerning the  
24 provision of books, records, or any other informa-  
25 tion, or in any way limit the rights of any State to

1 obtain books, records, or any other information  
2 under Federal law, contract, or otherwise.

3 (5) COURT JURISDICTION.—Any United States  
4 district court located in the State in which the State  
5 commission referred to in paragraph (1) is located  
6 shall have jurisdiction to enforce compliance with  
7 this section.

8 (f) EXEMPTION AUTHORITY.—

9 (1) RULEMAKING.—Not later than 90 days  
10 after the effective date of this section, the Commis-  
11 sion shall promulgate a final rule to exempt from the  
12 requirements of subsection (d) any person that is a  
13 holding company, solely with respect to 1 or more—

14 (A) qualifying cogeneration facilities or  
15 qualifying small power production facilities  
16 under section 210 of the Public Utility Regu-  
17 latory Policies Act of 1978 (16 U.S.C. 824a–3  
18 et seq.);

19 (B) exempt wholesale generators; or

20 (C) foreign utility companies.

21 (2) OTHER AUTHORITY.—If, on application or  
22 on its own motion, the Commission finds that the  
23 books, records, accounts, memoranda, and other  
24 records of any person are not relevant to the juris-  
25 dictional rates of a public utility company, or if the

1 Commission finds that any class of transactions is  
2 not relevant to the jurisdictional rates of a public  
3 utility company, the Commission shall exempt the  
4 person or transaction from the requirements of sub-  
5 section (d).

6 (g) AFFILIATE TRANSACTIONS.—Nothing in this sec-  
7 tion precludes the Commission or a State commission from  
8 exercising its jurisdiction under otherwise applicable law  
9 to determine whether a public utility company may recover  
10 in rates any costs of an activity performed by an associate  
11 company, or any costs of goods or services acquired by  
12 the public utility company from an associate company.

13 (h) APPLICABILITY.—This section does not apply  
14 to—

15 (1) the United States;

16 (2) a State or a political subdivision of a State;

17 (3) a foreign governmental authority not oper-  
18 ating in the United States;

19 (4) an agency, authority, or instrumentality of  
20 an entity referred to in paragraph (1), (2), or (3);

21 or

22 (5) an officer, agent, or employee of an entity  
23 referred to in paragraph (1), (2), or (3) acting as  
24 such in the course of the official duties of the offi-  
25 cer, agent, or employee.

1 (i) EFFECT ON OTHER REGULATIONS.—Nothing in  
2 this section precludes the Commission or a State commis-  
3 sion from exercising jurisdiction under other law to protect  
4 utility customers.

5 (j) ENFORCEMENT.—The Commission shall have the  
6 powers set forth in sections 306 through 317 of the Fed-  
7 eral Power Act (16 U.S.C. 825d et seq.) to enforce this  
8 section.

9 (k) SAVINGS PROVISIONS.—

10 (1) IN GENERAL.—Nothing in this section pro-  
11 hibits a person from engaging in or continuing to  
12 engage in an activity or transaction in which the  
13 person was legally engaged or authorized to engage  
14 (whether by rule, order, or otherwise) on the day be-  
15 fore the effective date of this section, if the person  
16 continues to comply with the terms of any authoriza-  
17 tion.

18 (2) EFFECT ON OTHER COMMISSION AUTHOR-  
19 ITY.—Nothing in this section limits the authority of  
20 the Commission under the Federal Power Act (16  
21 U.S.C. 791a et seq.) or the Natural Gas Act (15  
22 U.S.C. 717 et seq.).

23 (l) IMPLEMENTATION.—Not later than 18 months  
24 after the date of enactment of this Act, the Commission  
25 shall—

1           (1) promulgate such regulations as are nec-  
2           essary or appropriate to implement this section  
3           (other than subsection (c)); and

4           (2) submit to Congress detailed recommenda-  
5           tions on technical and conforming amendments to  
6           Federal law necessary to carry out this section and  
7           the amendments made by this section.

8           (m) TRANSFER OF RESOURCES.—All books and  
9           records that relate primarily to responsibilities of the  
10          Commission under this section shall be transferred from  
11          the Securities and Exchange Commission to the Commis-  
12          sion.

13          (n) CONFORMING AMENDMENT TO THE FEDERAL  
14          POWER ACT.—Section 318 of the Federal Power Act (16  
15          U.S.C. 825q) is repealed.

16          (o) AUTHORIZATION OF APPROPRIATIONS.—There  
17          are authorized to be appropriated such sums as are nec-  
18          essary to carry out this section.

19          (p) EFFECTIVE DATE.—This section and the amend-  
20          ments made by this section take effect on the date that  
21          is 18 months after the date of enactment of this Act.

1 **SEC. 8. ELECTRIC RELIABILITY ORGANIZATION AND OVER-**  
2 **SIGHT.**

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

6 **“SEC. 217. ELECTRIC RELIABILITY ORGANIZATION AND**  
7 **OVERSIGHT.**

8 “(a) DEFINITIONS.—In this section:

9 “(1) AFFILIATED REGIONAL RELIABILITY EN-  
10 TITY.—The term ‘affiliated regional reliability entity’  
11 means an entity delegated authority under sub-  
12 section (h).

13 “(2) BULK-POWER SYSTEM.—

14 “(A) IN GENERAL.—The term ‘bulk-power  
15 system’ means an interconnected transmission  
16 grid in which electric power is transmitted over  
17 transmission lines with a capacity of more than  
18 115 kilovolts.

19 “(B) INCLUSIONS.—The term ‘bulk-power  
20 system’ includes—

21 “(i) transmission lines, substations,  
22 control centers, communications, data, op-  
23 erations planning facilities, control sys-  
24 tems, and all other facilities necessary for  
25 the operation of all or any part of the  
26 transmission grid; and

1                   “(ii) the output of generating units  
2                   necessary to maintain the reliability of the  
3                   transmission grid.

4                   “(3) BULK-POWER SYSTEM USER.—The term  
5                   ‘bulk-power system user’ means an entity that—

6                   “(A) sells, purchases, or transmits electric  
7                   power over a bulk-power system; or

8                   “(B) owns, operates, or maintains facilities  
9                   or control systems that are part of a bulk-power  
10                  system.

11                  “(4) ELECTRIC RELIABILITY ORGANIZATION.—  
12                  The term ‘electric reliability organization’ means the  
13                  organization designated by the Commission under  
14                  subsection (d).

15                  “(5) ENTITY RULE.—The term ‘entity rule’  
16                  means a rule adopted by an affiliated regional reli-  
17                  ability entity for a specific region and designed to  
18                  implement or enforce 1 or more organization stand-  
19                  ards.

20                  “(6) INDEPENDENT DIRECTOR.—The term  
21                  ‘independent director’ means a person that—

22                  “(A) is not an officer or employee of an  
23                  entity that would reasonably be perceived as  
24                  having a direct financial interest in the outcome

1 of a decision by the board of directors of the  
2 electric reliability organization; and

3 “(B) does not have a relationship that  
4 would interfere with the exercise of independent  
5 judgment in carrying out the responsibilities of  
6 a director of the electric reliability organization.

7 “(7) INDUSTRY SECTOR.—The term ‘industry  
8 sector’ means a group of bulk-power system users  
9 with substantially similar commercial interests, as  
10 determined by the board of directors of the electric  
11 reliability organization.

12 “(8) INTERCONNECTION.—The term ‘inter-  
13 connection’ means a geographic area in which the  
14 operation of bulk-power system components is syn-  
15 chronized so that the failure of 1 or more of the  
16 components may adversely affect the ability of the  
17 operators of other components within the inter-  
18 connection to maintain safe and reliable operation of  
19 the facilities within their control.

20 “(9) ORGANIZATION STANDARD.—

21 “(A) IN GENERAL.—The term ‘organiza-  
22 tion standard’ means a policy or standard  
23 adopted by the electric reliability organization  
24 to provide for the reliable operation of a bulk-  
25 power system.

1           “(B) INCLUSIONS.—The term ‘organiza-  
2           tion standard’ includes—

3                   “(i) an entity rule approved by the  
4                   electric reliability organization; and

5                   “(ii) a variance approved by the elec-  
6                   tric reliability organization.

7           “(10) PUBLIC INTEREST GROUP.—

8                   “(A) IN GENERAL.—The term ‘public in-  
9                   terest group’ means a nonprofit private or pub-  
10                  lic organization that has an interest in the ac-  
11                  tivities of the electric reliability organization.

12                  “(B) INCLUSIONS.—The term ‘public in-  
13                  terest group’ includes—

14                          “(i) a ratepayer advocacy group;

15                          “(ii) an environmental group; and

16                          “(iii) a State or local government or-  
17                          ganization that regulates participants in  
18                          and promulgates government policy with  
19                          respect to the market for electric power.

20           “(11) SYSTEM OPERATOR.—

21                   “(A) IN GENERAL.—The term ‘system op-  
22                   erator’ means an entity that operates or is re-  
23                   sponsible for the operation of a bulk-power sys-  
24                   tem.

1                   “(B) INCLUSIONS.—The term ‘system op-  
2                   erator’ includes—

3                           “(i) a control area operator;

4                           “(ii) an independent system operator;

5                           “(iii) a transmission company;

6                           “(iv) a transmission system operator;

7                           and

8                           “(v) a regional security coordinator.

9                   “(12) VARIANCE.—The term ‘variance’ means  
10                   an exception from the requirements of an organiza-  
11                   tion standard (including a proposal for an organiza-  
12                   tion standard in a case in which there is no organi-  
13                   zation standard) that is adopted by an affiliated re-  
14                   gional reliability entity and is applicable to all or a  
15                   part of the region for which the affiliated regional  
16                   reliability entity is responsible.

17                   “(b) JURISDICTION OF THE COMMISSION.—Within  
18                   the United States, the Commission shall have jurisdiction  
19                   over the electric reliability organization, all affiliated re-  
20                   gional reliability entities, all system operators, and all  
21                   bulk-power system users for purposes of approving organi-  
22                   zation standards and enforcing compliance with this sec-  
23                   tion.

24                   “(c) EXISTING RELIABILITY STANDARDS.—

1           “(1) SUBMISSION TO THE COMMISSION.—Be-  
2 fore designation of an electric reliability organization  
3 under subsection (d), any person, including the  
4 North American Electric Reliability Council and its  
5 member Regional Reliability Councils, may submit  
6 to the Commission any reliability standard, guid-  
7 ance, or practice that the person proposes to be  
8 made mandatory and enforceable.

9           “(2) REVIEW BY THE COMMISSION.—

10           “(A) IN GENERAL.—The Commission,  
11 after allowing interested persons an opportunity  
12 to submit comments, may approve any such  
13 proposed mandatory standard, guidance, or  
14 practice if the Commission finds that the stand-  
15 ard, guidance, or practice is just, reasonable,  
16 not unduly discriminatory or preferential, and  
17 in the public interest.

18           “(B) SUMMARY APPROVAL.—The Commis-  
19 sion may, without further proceeding or finding,  
20 approve any standard, guidance, or practice for  
21 which no substantive objections are submitted  
22 during the comment period.

23           “(3) EFFECT OF APPROVAL.—A standard, guid-  
24 ance, or practice shall be mandatory and applicable

1 according to its terms following approval by the  
2 Commission and shall remain in effect until it is—

3 “(A) withdrawn, disapproved, or super-  
4 seded by an organization standard that is  
5 issued or approved by the electric reliability or-  
6 ganization and made effective by the Commis-  
7 sion under section (e); or

8 “(B) disapproved or suspended by the  
9 Commission if, on complaint or upon motion by  
10 the Commission and after notice and an oppor-  
11 tunity for comment, the Commission finds the  
12 standard, guidance, or practice to be unjust,  
13 unreasonable, unduly discriminatory or pref-  
14 erential or not in the public interest.

15 “(4) ENFORCEABILITY.—A standard, guidance,  
16 or practice in effect under this subsection shall be  
17 enforceable by the Commission.

18 “(d) DESIGNATION OF ELECTRIC RELIABILITY OR-  
19 GANIZATION.—

20 “(1) REGULATIONS.—

21 “(A) PROPOSED REGULATIONS.—Not later  
22 than 90 days after the date of enactment of  
23 this section, the Commission shall propose regu-  
24 lations specifying procedures and requirements

1 for an entity to apply for selection as the elec-  
2 tric reliability organization.

3 “(B) NOTICE AND COMMENT.—The Com-  
4 mission shall provide notice and opportunity for  
5 comment on the proposed regulations.

6 “(C) FINAL REGULATION.—Not later than  
7 180 days after the date of enactment of this  
8 section, the Commission shall promulgate final  
9 regulations under this subsection.

10 “(2) APPLICATION.—

11 “(A) SUBMISSION.—Following the promul-  
12 gation of final regulations under paragraph (1),  
13 an entity may submit an application to the  
14 Commission for designation as the electric reli-  
15 ability organization.

16 “(B) CONTENTS.—The applicant shall—

17 “(i) specify in the application the gov-  
18 ernance and procedures of the applicant  
19 and its funding mechanism and initial  
20 funding requirements; and

21 “(ii) submit any organization stand-  
22 ards proposed to take effect under sub-  
23 section (e).

24 “(3) NOTICE AND COMMENT.—The Commission  
25 shall—

1           “(A) provide public notice of the applica-  
2           tion and the proposed organization standards;  
3           and

4           “(B) afford interested parties an oppor-  
5           tunity to comment.

6           “(4) DESIGNATION OF ELECTRIC RELIABILITY  
7           ORGANIZATION.—The Commission shall designate  
8           the applicant as the electric reliability organization  
9           if the Commission determines that the applicant—

10           “(A) has the ability to develop, implement,  
11           and enforce standards that provide for an ade-  
12           quate level of reliability of bulk-power systems;

13           “(B) permits voluntary membership to any  
14           bulk-power system user or public interest  
15           group;

16           “(C) ensures fair representation of its  
17           members in the selection of its directors and  
18           fair management of its affairs, taking into ac-  
19           count the need for efficiency and effectiveness  
20           in decisionmaking and operations and the re-  
21           quirements for technical competency in the de-  
22           velopment of organization standards and the ex-  
23           ercise of oversight of bulk-power system reliabil-  
24           ity;

1           “(D) ensures that no 2 industry sectors  
2           have the ability to control, and no 1 industry  
3           sector has the ability to veto, the applicant’s  
4           discharge of its responsibilities as the electric  
5           reliability organization (including actions by  
6           committees recommending standards for ap-  
7           proval by the board or other board actions to  
8           implement and enforce standards);

9           “(E) provides for governance by a board  
10          wholly comprised of independent directors;

11          “(F) provides a funding mechanism and  
12          requirements that—

13                 “(i) are just, reasonable, not unduly  
14                 discriminatory or preferential and in the  
15                 public interest; and

16                 “(ii) satisfy the requirements of sub-  
17                 section (l);

18          “(G) has established procedures for devel-  
19          opment of organization standards that—

20                 “(i) provide reasonable notice and op-  
21                 portunity for public comment, taking into  
22                 account the need for efficiency and effec-  
23                 tiveness in decisionmaking and operations  
24                 and the requirements for technical com-

1           petency in the development of organization  
2           standards; and

3           “(ii) ensure openness, a balancing of  
4           interests, and due process, subject to the  
5           application of alternative procedures when  
6           necessitated by a need to respond to an  
7           emergency;

8           “(H) has established fair and impartial  
9           procedures for implementation and enforcement  
10          of organization standards, either directly or  
11          through delegation to an affiliated regional reli-  
12          ability entity, including the imposition of pen-  
13          alties, limitations on activities, functions, or op-  
14          erations, or other appropriate sanctions;

15          “(I) has established procedures for notice  
16          and opportunity for public observation of all  
17          meetings, except that the procedures for public  
18          observation may include alternative procedures  
19          for emergencies or for the discussion of infor-  
20          mation that the directors determine should take  
21          place in closed session, such as litigation, per-  
22          sonnel actions, or commercially sensitive infor-  
23          mation;

1           “(J) provides for the consideration of rec-  
2           ommendations of States and State commissions;  
3           and

4           “(K) addresses such other matters as the  
5           Commission deems necessary or appropriate to  
6           ensure that the procedures, governance, and  
7           funding of the electric reliability organization  
8           are just, reasonable, not unduly discriminatory  
9           or preferential, and in the public interest.

10          “(5) EXCLUSIVE DESIGNATION.—

11           “(A) IN GENERAL.—The Commission shall  
12           designate only 1 electric reliability organization.

13           “(B) MULTIPLE APPLICATIONS.—If the  
14           Commission receives 2 or more timely applica-  
15           tions that satisfy the requirements of this sub-  
16           section, the Commission shall approve only the  
17           application that the Commission determines will  
18           best implement this section.

19          “(e) ORGANIZATION STANDARDS.—

20           “(1) SUBMISSION OF PROPOSALS TO COMMIS-  
21           SION.—

22           “(A) IN GENERAL.—If the electric reliabil-  
23           ity organization proposes a new organization  
24           standard or modification to an organization  
25           standard, the electric reliability organization

1 shall submit the new organization standard or  
2 modification to the Commission for review.

3 “(B) CONTENTS.—A proposal submitted  
4 under subparagraph (A) shall include—

5 “(i) a concise statement of the pur-  
6 pose of the proposal; and

7 “(ii) a record of any proceedings con-  
8 ducted with respect to the proposal.

9 “(2) REVIEW BY THE COMMISSION.—

10 “(A) NOTICE AND COMMENT.—The Com-  
11 mission shall—

12 “(i) provide notice of a proposal under  
13 paragraph (1); and

14 “(ii) allow interested persons 30 days  
15 to submit comments on the proposal.

16 “(B) ACTION BY THE COMMISSION.—After  
17 taking into consideration any submitted com-  
18 ments, the Commission shall approve or dis-  
19 approve a proposed organization standard or  
20 modification not later than the end of the 60-  
21 day period beginning on the date of the dead-  
22 line for the submission of comments, except  
23 that the Commission may extend the 60-day pe-  
24 riod for an additional 90 days for good cause.

1           “(C) FAILURE TO ACT.—If the Commis-  
2 sion does not act to approve or disapprove a  
3 proposed organization standard or modification  
4 within the period specified by subparagraph  
5 (B), the proposed organization standard or  
6 modification shall take effect subject to its  
7 terms, without prejudice to the authority of the  
8 Commission thereafter to suspend or modify the  
9 organization standard or modification in ac-  
10 cordance with this section.

11           “(D) EFFECTIVE DATE.—An organization  
12 standard or modification approved by the Com-  
13 mission shall take effect—

14                   “(i) not earlier than 30 days after the  
15 date of the Commission’s order of ap-  
16 proval; or

17                   “(ii) if the organization standard is to  
18 take effect under subparagraph (C), on the  
19 date that is 30 days after the end of the  
20 applicable period under subparagraph (B).

21           “(E) STANDARDS FOR APPROVAL OR SUS-  
22 PENSION.—

23                   “(i) IN GENERAL.—The Commission  
24 shall approve a proposed new organization  
25 standard or modification if the Commission

1 determines the organization standard or  
2 modification to be just, reasonable, not un-  
3 duly discriminatory or preferential, and in  
4 the public interest.

5 “(ii) SUSPENSION.—The Commission,  
6 on complaint or upon the motion of the  
7 Commission, shall suspend an organization  
8 standard or modification if the Commission  
9 determines the standard to be unjust, un-  
10 reasonable, unduly discriminatory or pref-  
11 erential, or not in the public interest.

12 “(iii) CONSIDERATIONS.—In the exer-  
13 cise of its review responsibilities under this  
14 subsection, the Commission—

15 “(I) shall give due weight to the  
16 technical expertise of the electric reli-  
17 ability organization with respect to  
18 the content of a new organization  
19 standard or modification; but

20 “(II) shall not defer to the elec-  
21 tric reliability organization with re-  
22 spect to the effect of the organization  
23 standard on competition.

24 “(F) REMAND.—

1           “(i) IN GENERAL.—An existing or  
2           proposed organization standard that is dis-  
3           approved or suspended in whole or in part  
4           by the Commission shall be remanded to  
5           the electric reliability organization for fur-  
6           ther consideration.

7           “(ii) GUIDANCE.—The Commission  
8           may offer guidance to the electric reliabil-  
9           ity organization as to how to cure the de-  
10          termined deficiency.

11          “(3) ORDERS TO DEVELOP OR MODIFY ORGANI-  
12          ZATION STANDARDS.—The Commission, on com-  
13          plaint or on motion of the Commission, may order  
14          the electric reliability organization to develop and  
15          submit to the Commission, by a date specified in the  
16          order, an organization standard or modification to  
17          an existing organization standard to address a spe-  
18          cific matter if the Commission considers a new orga-  
19          nization standard or modification appropriate to  
20          carry out this section.

21          “(4) VARIANCES AND ENTITY RULES.—

22                 “(A) PROPOSAL.—An affiliated regional  
23                 reliability entity may propose a variance or en-  
24                 tity rule to the electric reliability organization.

1           “(B) EXPEDITED CONSIDERATION.—If ex-  
2 pedited consideration is necessary to provide for  
3 bulk-power system reliability, the affiliated re-  
4 gional reliability entity may—

5           “(i) request that the electric reliability  
6 organization expedite consideration of the  
7 proposal; and

8           “(ii) file a notice of the request with  
9 the Commission.

10          “(C) FAILURE TO ACT.—

11          “(i) IN GENERAL.—If the electric reli-  
12 ability organization fails to adopt the vari-  
13 ance or entity rule, in whole or in part, the  
14 affiliated regional reliability entity may re-  
15 quest that the Commission review the pro-  
16 posal.

17          “(ii) ACTION BY THE COMMISSION.—  
18 If the Commission determines, after a re-  
19 view of the request, that the action of the  
20 electric reliability organization did not con-  
21 form to the applicable standards and pro-  
22 cedures approved by the Commission, or if  
23 the Commission determines that the vari-  
24 ance or entity rule is just, reasonable, not  
25 unduly discriminatory or preferential, and

1           that the electric reliability organization has  
2           unreasonably rejected or failed to act on  
3           the proposal, the Commission may—

4                   “(I) remand the proposal for fur-  
5                   ther consideration by the electric reli-  
6                   ability organization; or

7                   “(II) order the electric reliability  
8                   organization or the affiliated regional  
9                   reliability entity to develop a variance  
10                  or entity rule consistent with that re-  
11                  quested by the affiliated regional reli-  
12                  ability entity.

13                  “(D) PROCEDURE.—A variance or entity  
14                  rule proposed by an affiliated regional reliability  
15                  entity shall be submitted to the electric reliabil-  
16                  ity organization for review and submission to  
17                  the Commission in accordance with the proce-  
18                  dures specified in paragraph (2).

19                  “(5) IMMEDIATE EFFECTIVENESS.—

20                   “(A) IN GENERAL.—Notwithstanding any  
21                   other provision of this subsection, a proposed  
22                   organization standard or modification shall take  
23                   effect according to its terms if the electric reli-  
24                   ability organization determines that an emer-  
25                   gency exists requiring that the proposed organi-

1            zation standard or modification take effect  
2            without advance notice or comment.

3            “(B) NOTIFICATION.—The electric reliabil-  
4            ity organization shall—

5            “(i) notify the Commission imme-  
6            diately after making a determination under  
7            subparagraph (A);

8            “(ii) submit the emergency organiza-  
9            tion standard or modification to the Com-  
10           mission not later than 5 days after making  
11           the determination; and

12           “(iii) include in the submission an ex-  
13           planation of the need for the emergency or-  
14           ganization standard.

15           “(C) NOTICE AND COMMENT.—The Com-  
16           mission shall—

17           “(i) provide notice of the new organi-  
18           zation standard or modification for com-  
19           ment; and

20           “(ii) follow the procedures specified in  
21           paragraphs (2) and (3) for review of the  
22           new organization standard or modification.

23           “(D) DURATION OF EFFECTIVENESS.—An  
24           emergency organization standard or modifica-

1           tion shall remain in effect unless and until sus-  
2           pended or disapproved by the Commission.

3           “(E) SUSPENSION OR DISAPPROVAL.—If  
4           the Commission determines at any time that  
5           the emergency organization standard or modi-  
6           fication is not necessary, the Commission may  
7           suspend or disapprove the emergency organiza-  
8           tion standard or modification.

9           “(6) COMPLIANCE.—Each bulk power system  
10          user shall comply with an organization standard that  
11          takes effect under this section.

12          “(f) COORDINATION WITH CANADA AND MEXICO.—

13                 “(1) RECOGNITION.—The electric reliability or-  
14                 ganization shall take all appropriate steps to gain  
15                 recognition by the governments of and the industry  
16                 in Canada and Mexico.

17                 “(2) INTERNATIONAL AGREEMENTS.—

18                         “(A) IN GENERAL.—The United States  
19                         shall use its best efforts to enter into agree-  
20                         ments with the appropriate governments of  
21                         Canada and Mexico to provide for—

22                                 “(i) effective compliance with organi-  
23                                 zation standards; and

1                   “(ii) the effectiveness of the electric  
2                   reliability organization in carrying out its  
3                   mission and responsibilities.

4                   “(B) ACTION CONSISTENT WITH INTER-  
5                   NATIONAL AGREEMENTS.—All actions taken by  
6                   the electric reliability organization, any affili-  
7                   ated regional reliability entity, or the Commis-  
8                   sion shall be consistent with any international  
9                   agreements described in subparagraph (A).

10                  “(g) CHANGES IN PROCEDURES, GOVERNANCE, OR  
11                  FUNDING.—

12                   “(1) SUBMISSION TO THE COMMISSION.—The  
13                   electric reliability organization shall submit to the  
14                   Commission—

15                   “(A) any proposed change in a procedure,  
16                   governance, or funding provision; or

17                   “(B) any change in an affiliated regional  
18                   reliability entity’s procedure, governance, or  
19                   funding provision relating to delegated func-  
20                   tions.

21                   “(2) CONTENTS.—A submission under para-  
22                   graph (1) shall include an explanation of the basis  
23                   and purpose for the change.

24                   “(3) EFFECTIVE DATE.—

25                   “(A) CHANGES IN PROCEDURES.—

1           “(i) STATEMENTS WITH RESPECT TO  
2           EXISTING PROCEDURES.—A proposed  
3           change in a procedure may take effect 90  
4           days after submission to the Commission if  
5           the change constitutes a statement of pol-  
6           icy, practice, or interpretation with respect  
7           to the meaning or enforcement of a proce-  
8           dure that the Commission has determined  
9           to meet the requirements of subparagraph  
10          (G), (H), or (I) of subsection (d)(4).

11          “(ii) OTHER CHANGES IN PROCE-  
12          DURES.—A proposed change in procedure  
13          other than a change described in clause (i)  
14          shall take effect if the Commission, after  
15          notice and opportunity for comment, deter-  
16          mines that the change—

17                 “(I) is just, reasonable, not un-  
18                 duly discriminatory or preferential,  
19                 and in the public interest; and

20                 “(II) satisfies the requirements  
21                 of subsection (d)(4).

22          “(B) CHANGES IN GOVERNANCE OR FUND-  
23          ING.—A change in governance or funding shall  
24          take effect if the Commission, after notice and

1 opportunity for comment, determines that the  
2 change—

3 “(i) is just, reasonable, not unduly  
4 discriminatory or preferential, and in the  
5 public interest; and

6 “(ii) satisfies the requirements of sub-  
7 section (d)(4).

8 “(4) SUSPENSION.—The Commission, on com-  
9 plaint or on the motion of the Commission, may sus-  
10 pend application of a procedure, governance, or  
11 funding provision if the Commission determines that  
12 the provision—

13 “(A) is unjust, unreasonable, unduly dis-  
14 criminatory or preferential, or not in the public  
15 interest; or

16 “(B) does not meet the requirements of  
17 subsection (d)(4).

18 “(5) ORDER TO AMEND.—

19 “(A) IN GENERAL.—The Commission, on  
20 complaint or on the motion of the Commission,  
21 may require the electric reliability organization  
22 to amend a procedure, governance, or funding  
23 provision if the Commission determines that the  
24 amendment is necessary to meet the require-  
25 ments of this section.

1           “(B) FILING.—The electric reliability or-  
2           ganization shall submit the amendment in ac-  
3           cordance with paragraph (1).

4           “(h) DELEGATIONS OF AUTHORITY.—

5           “(1) IN GENERAL.—

6           “(A) IMPLEMENTATION AND ENFORCE-  
7           MENT OF COMPLIANCE.—At the request of an  
8           affiliated regional reliability entity, the electric  
9           reliability organization shall enter into an  
10          agreement with the affiliated regional reliability  
11          entity for the delegation of authority to imple-  
12          ment and enforce compliance with organization  
13          standards in a specified geographic area if the  
14          electric reliability organization finds that—

15               “(i) the affiliated regional reliability  
16               entity satisfies the requirements of sub-  
17               paragraphs (A), (B), (C), (D), (F), and  
18               (K) of subsection (d)(4); and

19               “(ii) the delegation would promote the  
20               effective and efficient implementation and  
21               administration of bulk-power system reli-  
22               ability.

23           “(B) OTHER AUTHORITY.—The electric re-  
24           liability organization may enter into an agree-  
25           ment to delegate to the affiliated regional au-

1           thority entity any other authority, except that  
2           the electric reliability organization shall reserve  
3           the right to set and approve standards for bulk-  
4           power system reliability.

5           “(2) APPROVAL BY THE COMMISSION.—

6                   “(A) SUBMISSION TO THE COMMISSION.—

7           The electric reliability organization shall submit  
8           to the Commission—

9                   “(i) any agreement entered into under  
10                  this subsection; and

11                   “(ii) any information the Commission  
12                  requires with respect to the affiliated re-  
13                  gional reliability entity to which authority  
14                  is delegated.

15           “(B) STANDARDS FOR APPROVAL.—The  
16           Commission shall approve the agreement, fol-  
17           lowing public notice and an opportunity for  
18           comment, if the Commission finds that the  
19           agreement—

20                   “(i) meets the requirements of para-  
21                  graph (1); and

22                   “(ii) is just, reasonable, not unduly  
23                  discriminatory or preferential, and in the  
24                  public interest.

1           “(C) REBUTTABLE PRESUMPTION.—A pro-  
2           posed delegation agreement with an affiliated  
3           regional reliability entity organized on an inter-  
4           connection-wide basis shall be rebuttably pre-  
5           sumed by the Commission to promote the effec-  
6           tive and efficient implementation and adminis-  
7           tration of the reliability of the bulk-power sys-  
8           tem.

9           “(D) INVALIDITY ABSENT APPROVAL.—No  
10          delegation by the electric reliability organization  
11          shall be valid unless approved by the Commis-  
12          sion.

13          “(3) PROCEDURES FOR ENTITY RULES AND  
14          VARIANCES.—

15                 “(A) IN GENERAL.—A delegation agree-  
16                 ment under this subsection shall specify the  
17                 procedures by which the affiliated regional reli-  
18                 ability entity may propose entity rules or  
19                 variances for review by the electric reliability  
20                 organization.

21                 “(B) INTERCONNECTION-WIDE ENTITY  
22                 RULES AND VARIANCES.—In the case of a pro-  
23                 posal for an entity rule or variance that would  
24                 apply on an interconnection-wide basis, the elec-  
25                 tric reliability organization shall presume that

1 the proposal is valid if the proposal is made by  
2 an interconnection-wide affiliated regional reli-  
3 ability entity unless the electric reliability orga-  
4 nization makes a written finding that the entity  
5 rule or variance—

6 “(i) was not developed in a fair and  
7 open process that provided an opportunity  
8 for all interested parties to participate;

9 “(ii) would have a significant adverse  
10 impact on reliability or commerce in other  
11 interconnections;

12 “(iii) fails to provide a level of reliabil-  
13 ity of the bulk-power system within the  
14 interconnection such that the entity rule or  
15 variance would constitute a serious and  
16 substantial threat to public health, safety,  
17 welfare, or national security; or

18 “(iv) would create a serious and sub-  
19 stantial burden on competitive markets  
20 within the interconnection that is not nec-  
21 essary for reliability.

22 “(C) NONINTERCONNECTION-WIDE ENTITY  
23 RULES AND VARIANCES.—In the case of a pro-  
24 posal for an entity rule or variance that would  
25 apply only to part of an interconnection, the

1 electric reliability organization shall find the  
2 proposal valid if the affiliated regional reliabil-  
3 ity entity making the proposal demonstrates  
4 that the proposal—

5 “(i) was developed in a fair and open  
6 process that provided and opportunity for  
7 all interested parties to participate;

8 “(ii) would not have an adverse im-  
9 pact on commerce that is not necessary for  
10 reliability;

11 “(iii) provides a level of bulk-power  
12 system reliability that is adequate to pro-  
13 tect public health, safety, welfare, and na-  
14 tional security and would not have a sig-  
15 nificant adverse impact on reliability; and

16 “(iv) in the case of a variance, is  
17 based on a technical difference between re-  
18 gions or between subregions within the af-  
19 filiated regional reliability entity’s geo-  
20 graphic area that necessitates application  
21 of different entity rules in different regions  
22 or subregions.

23 “(D) ACTION BY THE ELECTRIC RELIABIL-  
24 ITY ORGANIZATION.—

1           “(i) IN GENERAL.—The electric reli-  
2           ability organization shall approve or dis-  
3           approve a proposal under subparagraph  
4           (A) within 120 days after the proposal is  
5           submitted.

6           “(ii) FAILURE TO ACT.—If the electric  
7           reliability organization fails to act within  
8           the time specified in clause (i), the pro-  
9           posal shall be deemed to have been ap-  
10          proved.

11          “(iii) SUBMISSION TO THE COMMIS-  
12          SION.—After approving a proposal under  
13          subparagraph (A), the electric reliability  
14          organization shall submit the proposal to  
15          the Commission for approval under sub-  
16          section (e)(1).

17          “(E) NO DIRECT SUBMISSIONS.—An affili-  
18          ated regional reliability entity may not submit  
19          a proposal for approval directly to the Commis-  
20          sion except as provided in subsection (e)(4)(C).

21          “(4) FAILURE TO REACH DELEGATION AGREE-  
22          MENT.—

23                 “(A) IN GENERAL.—If an affiliated re-  
24                 gional reliability entity requests, consistent with  
25                 paragraph (1), that the electric reliability orga-

1 nization delegate authority to it, but is unable  
2 within 180 days to reach agreement with the  
3 electric reliability organization with respect to  
4 the requested delegation, the entity may seek  
5 relief from the Commission.

6 “(B) REVIEW BY THE COMMISSION.—The  
7 Commission may order the electric reliability  
8 organization to make a delegation requested  
9 under subparagraph (A) if, after notice and op-  
10 portunity for comment, the Commission deter-  
11 mines that—

12 “(i) a delegation to the affiliated re-  
13 gional reliability entity would—

14 “(I) meet the requirements of  
15 paragraph (1); and

16 “(II) be just, reasonable, not un-  
17 duly discriminatory or preferential,  
18 and in the public interest; and

19 “(ii) the electric reliability organiza-  
20 tion unreasonably withheld the delegation.

21 “(5) ORDERS TO MODIFY DELEGATION AGREE-  
22 MENTS.—

23 “(A) IN GENERAL.—On compliant, or on  
24 motion of the Commission, after notice to the  
25 appropriate affiliated regional reliability entity,

1 the Commission may order the electric reliabil-  
2 ity organization to propose a modification to a  
3 delegation agreement under this subsection if  
4 the Commission determines that—

5 “(i) the affiliated regional reliability  
6 entity—

7 “(I) no longer has the capacity to  
8 carry out effectively or efficiently the  
9 implementation or enforcement re-  
10 sponsibilities under the delegation  
11 agreement;

12 “(II) has failed to meet its obli-  
13 gations under the delegation agree-  
14 ment; or

15 “(III) has violated this section;

16 “(ii) the rules, practices, or proce-  
17 dures of the affiliated regional reliability  
18 entity no longer provide for fair and im-  
19 partial discharge of the implementation or  
20 enforcement responsibilities under the dele-  
21 gation agreement;

22 “(iii) the geographic boundary of a  
23 transmission entity approved by the Com-  
24 mission is not wholly within the boundary  
25 of an affiliated regional reliability entity,

1 and the discrepancy in the boundaries is  
2 inconsistent with the effective and efficient  
3 implementation and administration of  
4 bulk-power system reliability; or

5 “(iv) the agreement is inconsistent  
6 with another delegation agreement as a re-  
7 sult of actions taken under paragraph (4).

8 “(B) SUSPENSION.—

9 “(i) IN GENERAL.—Following an  
10 order to modify a delegation agreement  
11 under subparagraph (A), the Commission  
12 may suspend the delegation agreement if  
13 the electric reliability organization or the  
14 affiliated regional reliability entity does not  
15 propose an appropriate and timely modi-  
16 fication.

17 “(ii) RESUMPTION OF RESPONSIBIL-  
18 ITIES.—If a delegation agreement is sus-  
19 pended, the electric reliability organization  
20 shall resume the responsibilities delegated  
21 under the delegation agreement.

22 “(iii) APPEAL.—The Commission shall  
23 allow the electric reliability organization  
24 and the affiliated regional reliability entity

1           an opportunity to appeal a suspension  
2           under clause (i).

3           “(i) ORGANIZATION MEMBERSHIP.—Each system op-  
4 erator shall be a member of—

5           “(1) the electric reliability organization; and

6           “(2) any affiliated regional reliability entity op-  
7 erating under an agreement effective under sub-  
8 section (h) applicable to the region in which the sys-  
9 tem operator operates or is responsible for the oper-  
10 ation of bulk-power system facilities.

11          “(j) ENFORCEMENT.—

12           “(1) DISCIPLINARY ACTIONS.—

13           “(A) IN GENERAL.—Consistent with proce-  
14 dures that the Commission has determined to  
15 meet the requirements of subsection (d)(4)(H)  
16 and with any international agreement under  
17 subsection (f), the electric reliability organiza-  
18 tion may impose a penalty, limitation on activi-  
19 ties, functions, or operations, or other discipli-  
20 nary action that the electric reliability organiza-  
21 tion finds appropriate against a bulk-power sys-  
22 tem user if the electric reliability organization,  
23 after notice and an opportunity for interested  
24 parties to be heard, issues a written finding

1           that the bulk-power system user has violated an  
2           organization standard.

3           “(B) NOTIFICATION.—The electric reliabil-  
4           ity organization shall immediately notify the  
5           Commission of any disciplinary action imposed  
6           with respect to an act or failure to act of a  
7           bulk-power system user that affected or threat-  
8           ened to affect bulk-power system facilities lo-  
9           cated in the United States.

10          “(C) RIGHT TO PETITION.—A bulk-power  
11          system user that is the subject of disciplinary  
12          action under paragraph (1) shall have the right  
13          to petition the Commission for a modification  
14          or rescission of the disciplinary action.

15          “(D) INJUNCTIONS.—If the electric reli-  
16          ability organization finds it necessary to prevent  
17          a serious threat to reliability, the electric reli-  
18          ability organization may seek injunctive relief in  
19          the United States district court for the district  
20          in which the affected facilities are located.

21          “(E) EFFECTIVE DATE.—

22                 “(i) IN GENERAL.—Unless the Com-  
23                 mission, on motion of the Commission or  
24                 on application by the bulk-power system  
25                 user that is the subject of the disciplinary

1           action, suspends the effectiveness of a dis-  
2           ciplinary action, the disciplinary action  
3           may take effect not earlier than the 30th  
4           day after the date on which—

5                   “(I) the electric reliability organi-  
6                   zation has submitted to the Commis-  
7                   sion a written finding under subpara-  
8                   graph (A) and record of proceedings  
9                   before the electric reliability organiza-  
10                  tion; and

11                   “(II) the Commission has issued  
12                   a written finding.

13                   “(ii) DURATION.—A disciplinary ac-  
14                   tion shall remain in effect or remain sus-  
15                   pended until the Commission, after notice  
16                   and opportunity for hearing, affirms, sets  
17                   aside, modifies, or reinstates the discipli-  
18                   nary action.

19                   “(iii) EXPEDITED CONSIDERATION.—  
20                   The Commission shall conduct the hearing  
21                   under procedures established to ensure ex-  
22                   pedited consideration of the action taken.

23                   “(2) COMPLIANCE ORDERS.—The Commission,  
24                   on motion of the Commission, may order compliance  
25                   with an organization standard and may impose a

1 penalty, limitation on activities, functions, or oper-  
2 ations, or take such other disciplinary action as the  
3 Commission finds appropriate, against a bulk-power  
4 system user with respect to actions affecting or  
5 threatening to affect bulk-power system facilities lo-  
6 cated in the United States if the Commission finds,  
7 after notice and opportunity for a hearing, that the  
8 bulk-power system user has violated or threatens to  
9 violate an organization standard.

10 “(3) OTHER ACTIONS.—The Commission may  
11 take such action as is necessary against the electric  
12 reliability organization or an affiliated regional reli-  
13 ability entity to ensure compliance with an organiza-  
14 tion standard, or any Commission order affecting  
15 electric reliability organization or affiliated regional  
16 reliability entity.

17 “(k) RELIABILITY REPORTS.—The electric reliability  
18 organization shall—

19 “(1) conduct periodic assessments of the reli-  
20 ability and adequacy of the interconnected bulk-  
21 power system in North America; and

22 “(2) report annually to the Secretary of Energy  
23 and the Commission its findings and recommenda-  
24 tions for monitoring or improving system reliability  
25 and adequacy.

1       “(1) ASSESSMENT AND RECOVERY OF CERTAIN  
2 COSTS.—

3           “(1) IN GENERAL.—The reasonable costs of the  
4 electric reliability organization, and the reasonable  
5 costs of each affiliated regional reliability entity that  
6 are related to implementation or enforcement of or-  
7 ganization standards or other requirements con-  
8 tained in a delegation agreement approved under  
9 subsection (h), shall be assessed by the electric reli-  
10 ability organization and each affiliated regional reli-  
11 ability entity, respectively, taking into account the  
12 relationship of costs to each region and based on an  
13 allocation that reflects an equitable sharing of the  
14 costs among all end-users of electric power in each  
15 region.

16           “(2) RULES.—The Commission shall provide by  
17 rule for the review of costs and allocations under  
18 paragraph (1) in accordance with the standards in  
19 this subsection and subsection (d)(4)(F).

20       “(m) APPLICATION OF ANTITRUST LAWS.—

21           “(1) IN GENERAL.—Notwithstanding any other  
22 provision of law, the following activities are  
23 rebuttably presumed to be in compliance with the  
24 antitrust laws of the United States:

1           “(A) Activities undertaken by the electric  
2 reliability organization under this section or af-  
3 filiated regional reliability entity operating  
4 under a delegation agreement under subsection  
5 (h).

6           “(B) Activities of a member of the electric  
7 reliability organization or affiliated regional re-  
8 liability entity in pursuit of the objectives under  
9 this section undertaken in good faith under the  
10 rules of the organization.

11           “(2) APPLICABILITY OF LAW.—The law relating  
12 to the doctrine of primary jurisdiction and to immu-  
13 nities and other affirmative defenses shall be avail-  
14 able in any action brought alleging a violation of the  
15 antitrust laws to the extent otherwise applicable.

16           “(n) STATE AUTHORITY.—Nothing in this section  
17 limits the authority of a State to impose requirements nec-  
18 essary to ensure the continued reliability and public safety  
19 of electric facilities in the State.

20           “(o) REGIONAL ADVISORY ROLE.—

21           “(1) ESTABLISHMENT.—The Secretary of En-  
22 ergy shall establish a regional advisory body on the  
23 petition of the Governors of  $\frac{2}{3}$  of the States within  
24 a region that have more than  $\frac{1}{2}$  of their electrical  
25 loads served within the region.

1           “(2) MEMBERSHIP.—A regional advisory  
2 body—

3           “(A) shall be composed of 1 member from  
4 each State in the region, appointed by the Gov-  
5 ernor of each State; and

6           “(B) may include representatives of agen-  
7 cies, States, and provinces outside the United  
8 States, on execution of an appropriate inter-  
9 national agreement described in subsection (f).

10          “(3) FUNCTIONS.—A regional advisory body  
11 may provide advice to the Commission, the electric  
12 reliability organization, or an affiliated regional reli-  
13 ability entity regarding—

14           “(A) the governance of an affiliated re-  
15 gional reliability entity existing or proposed  
16 within a region;

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

21           “(C) whether fees proposed to be assessed  
22 within the region are—

23           “(i) just, reasonable, not unduly dis-  
24 criminatory or preferential, and in the pub-  
25 lic interest; and

1                   “(ii) consistent with the requirements  
2                   of subsection (l).

3                   “(4) DEFERENCE.—

4                   “(A) ENTIRE INTERCONNECTION.—

5                   “(i) IN GENERAL.—In a case in which  
6                   a regional advisory body encompasses an  
7                   entire interconnection, the Commission  
8                   shall give deference to the findings of the  
9                   regional advisory body unless the Commis-  
10                  sion determines that the findings by the  
11                  regional advisory body are not just, not  
12                  reasonable, unduly discriminatory or pref-  
13                  erential, or not in the public interest.

14                  “(ii) NO PRECEDENTIAL VALUE.—  
15                  Commission deference to the findings of a  
16                  regional advisory body under clause (i)  
17                  shall not constitute precedent outside the  
18                  interconnection unless the Commission so  
19                  indicates.

20                  “(B) IN GENERAL.—The Commission may  
21                  give deference to any findings made by a re-  
22                  gional advisory body.

23                  “(p) REGULATIONS.—The Commission may, by regu-  
24                  lation, define any term used in this section, so long as

1 the definition is consistent with the definitions in, and the  
2 purposes and intent of, this Act.”.

3 (b) ENFORCEMENT.—

4 (1) GENERAL PENALTIES.—Section 316(c) of  
5 the Federal Power Act (16 U.S.C. 825o(c)) is  
6 amended—

7 (A) by striking “subsection” and inserting  
8 “section”; and

9 (B) by striking “or 214” and inserting  
10 “214 or 217”.

11 (2) CERTAIN PROVISIONS.—Section 316A of the  
12 Federal Power Act (16 U.S.C. 825o-1) is amended  
13 by striking “or 214” each place it appears and in-  
14 serting “214, or 217”.

○