

107TH CONGRESS
1ST SESSION

S. 172

To benefit electricity consumers by promoting the reliability of the bulk-power system.

IN THE SENATE OF THE UNITED STATES

JANUARY 24, 2001

Mr. SMITH of Oregon introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To benefit electricity consumers by promoting the reliability of the bulk-power system.

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

3 **SECTION 1. SHORT TITLE.**

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

6 **SEC. 2. ELECTRIC RELIABILITY ORGANIZATION.**

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

1 **“SEC. 215. ELECTRIC RELIABILITY ORGANIZATION.**

2 “(a) DEFINITIONS.—In this section:

3 “(1) AFFILIATED REGIONAL RELIABILITY ENTI-
4 TY.—The term ‘affiliated regional reliability entity’
5 means an entity delegated authority under sub-
6 section (h).

7 “(2) BULK-POWER SYSTEM.—

8 “(A) IN GENERAL.—The term ‘bulk-power
9 system’ means all facilities and control systems
10 necessary for operating an interconnected elec-
11 tric power transmission grid or any portion of
12 an interconnected electric power transmission
13 grid.

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

16 “(i) high voltage transmission lines,
17 substations, control centers, communica-
18 tions, data, and operations planning facili-
19 ties necessary for the operation of all or
20 any part of the interconnected electric
21 power transmission grid; and

22 “(ii) the output of generating units
23 necessary to maintain the reliability of the
24 interconnected electric power transmission
25 grid.

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

3 “(A) sells, purchases, or transmits electric
4 energy over a bulk-power system;

5 “(B) owns, operates, or maintains facilities
6 or control systems that are part of a bulk-power
7 system; or

8 “(C) is a system operator.

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

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

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

20 “(A) is not an officer or employee of an
21 entity that would reasonably be perceived as
22 having a direct financial interest in the outcome
23 of a decision by the board of directors of the
24 electric reliability organization; and

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

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

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

18 “(9) ORGANIZATION STANDARD.—

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

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

1 “(i) an entity rule approved by the
2 electric reliability organization; and

3 “(ii) a variance approved by the elec-
4 tric reliability organization.

5 “(10) PUBLIC INTEREST GROUP.—

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

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

12 “(i) a ratepayer advocate;

13 “(ii) an environmental group; and

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

18 “(11) SYSTEM OPERATOR.—

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

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

25 “(i) a control area operator;

1 “(ii) an independent system operator;

2 “(iii) a transmission company;

3 “(iv) a transmission system operator;

4 and

5 “(v) a regional security coordinator.

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

14 “(b) COMMISSION AUTHORITY.—

15 “(1) JURISDICTION.—Notwithstanding section
 16 201(f), within the United States, the Commission
 17 shall have jurisdiction over the electric reliability or-
 18 ganization, all affiliated regional reliability entities,
 19 all system operators, and all bulk-power system
 20 users (including entities described in section 201(f)
 21 for purposes of approving organization standards
 22 and enforcing compliance with this section.

23 “(2) DEFINITION OF TERMS.—The Commission
 24 may by regulation define any term used in this sec-

1 tion consistent with the definitions in subsection (a)
 2 and the purpose and intent of this Act.

3 “(c) EXISTING RELIABILITY STANDARDS.—

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

13 “(2) REVIEW BY THE COMMISSION.—The Com-
 14 mission, after allowing interested persons an oppor-
 15 tunity to submit comments, may approve a proposed
 16 mandatory standard, guidance, practice, or amend-
 17 ment submitted under paragraph (1) if the Commis-
 18 sion finds that the standard, guidance, or practice is
 19 just, reasonable, not unduly discriminatory or pref-
 20 erential, and in the public interest.

21 “(3) EFFECT OF APPROVAL.—A standard, guid-
 22 ance, or practice shall be mandatory and applicable
 23 according to its terms following approval by the
 24 Commission and shall remain in effect until it is—

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

6 “(B) disapproved by the Commission if, on
 7 complaint or upon motion by the Commission
 8 and after notice and an opportunity for com-
 9 ment, the Commission finds the standard, guid-
 10 ance, or practice to be unjust, unreasonable,
 11 unduly discriminatory or preferential, or not in
 12 the public interest.

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

16 “(d) DESIGNATION OF ELECTRIC RELIABILITY OR-
 17 GANIZATION.—

18 “(1) REGULATIONS.—

19 “(A) PROPOSED REGULATIONS.—Not later
 20 than 90 days after the date of enactment of
 21 this section, the Commission shall propose regu-
 22 lations specifying procedures and requirements
 23 for an entity to apply for designation as the
 24 electric reliability organization.

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

4 “(C) FINAL REGULATION.—Not later than
 5 180 days after the date of enactment of this
 6 section, the Commission shall promulgate final
 7 regulations under this subsection.

8 “(2) APPLICATION.—

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

14 “(B) CONTENTS.—The applicant shall de-
 15 scribe in the application—

16 “(i) the governance and procedures of
 17 the applicant; and

18 “(ii) the funding mechanism and ini-
 19 tial funding requirements of the applicant.

20 “(3) NOTICE AND COMMENT.—The Commission
 21 shall—

22 “(A) provide public notice of the applica-
 23 tion; and

24 “(B) afford interested parties an oppor-
 25 tunity to comment.

1 “(4) DESIGNATION OF ELECTRIC RELIABILITY
2 ORGANIZATION.—The Commission shall designate
3 the applicant as the electric reliability organization
4 if the Commission determines that the applicant—

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

8 “(B) permits voluntary membership to any
9 bulk-power system user or public interest
10 group;

11 “(C) ensures fair representation of its
12 members in the selection of its directors and
13 fair management of its affairs, taking into ac-
14 count the need for efficiency and effectiveness
15 in decisionmaking and operations and the re-
16 quirements for technical competency in the de-
17 velopment of organization standards and the ex-
18 ercise of oversight of bulk-power system reli-
19 ability;

20 “(D) ensures that no 2 industry sectors
21 have the ability to control, and no 1 industry
22 sector has the ability to veto, the applicant’s
23 discharge of its responsibilities as the electric
24 reliability organization (including actions by
25 committees recommending standards for ap-

1 proval by the board or other board actions to
2 implement and enforce standards);

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

5 “(F) provides a funding mechanism and
6 requirements that—

7 “(i) are just, reasonable, not unduly
8 discriminatory or preferential and in the
9 public interest; and

10 “(ii) satisfy the requirements of sub-
11 section (l);

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

14 “(i) provide reasonable notice and op-
15 portunity for public comment, taking into
16 account the need for efficiency and effec-
17 tiveness in decisionmaking and operations
18 and the requirements for technical com-
19 petency in the development of organization
20 standards;

21 “(ii) ensure openness, a balancing of
22 interests, and due process; and

23 “(iii) includes alternative procedures
24 to be followed in emergencies;

1 “(H) has established fair and impartial
2 procedures for implementation and enforcement
3 of organization standards, either directly or
4 through delegation to an affiliated regional reli-
5 ability entity, including the imposition of pen-
6 alties, limitations on activities, functions, or op-
7 erations, or other appropriate sanctions;

8 “(I) has established procedures for notice
9 and opportunity for public observation of all
10 meetings, except that the procedures for public
11 observation may include alternative procedures
12 for emergencies or for the discussion of infor-
13 mation that the directors reasonably determine
14 should take place in closed session, such as liti-
15 gation, personnel actions, or commercially sen-
16 sitive information;

17 “(J) provides for the consideration of rec-
18 ommendations of States and State commissions;
19 and

20 “(K) addresses other matters that the
21 Commission considers appropriate to ensure
22 that the procedures, governance, and funding of
23 the electric reliability organization are just, rea-
24 sonable, not unduly discriminatory or pref-
25 erential, and in the public interest.

1 “(5) EXCLUSIVE DESIGNATION.—

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

4 “(B) MULTIPLE APPLICATIONS.—If the
5 Commission receives 2 or more timely applica-
6 tions that satisfy the requirements of this sub-
7 section, the Commission shall approve only the
8 application that the Commission determines will
9 best implement this section.

10 “(e) ORGANIZATION STANDARDS.—

11 “(1) SUBMISSION OF PROPOSALS TO COMMIS-
12 SION.—

13 “(A) IN GENERAL.—The electric reliability
14 organization shall submit to the Commission
15 proposals for any new or modified organization
16 standards.

17 “(B) CONTENTS.—A proposal submitted
18 under subparagraph (A) shall include—

19 “(i) a concise statement of the pur-
20 pose of the proposal; and

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

23 “(2) REVIEW BY THE COMMISSION.—

24 “(A) NOTICE AND COMMENT.—The Com-
25 mission shall—

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

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

5 “(B) ACTION BY THE COMMISSION.—

6 “(i) IN GENERAL.—After taking into
7 consideration any submitted comments, the
8 Commission shall approve or disapprove a
9 proposed organization standard not later
10 than the end of the 60-day period begin-
11 ning on the date of the deadline for the
12 submission of comments, except that the
13 Commission may extend the 60-day period
14 for an additional 90 days for good cause.

15 “(ii) FAILURE TO ACT.—If the Com-
16 mission does not approve or disapprove a
17 proposal within the period specified in
18 clause (i), the proposed organization stand-
19 ard shall go into effect subject to its terms,
20 without prejudice to the authority of the
21 Commission to modify the organization
22 standard in accordance with the standards
23 and requirements of this section.

24 “(C) EFFECTIVE DATE.—An organization
25 standard approved by the Commission shall

1 take effect not earlier than 30 days after the
2 date of the Commission's order of approval.

3 “(D) STANDARDS FOR APPROVAL.—

4 “(i) IN GENERAL.—The Commission
5 shall approve a proposed new or modified
6 organization standard if the Commission
7 determines the organization standard to be
8 just, reasonable, not unduly discriminatory
9 or preferential, and in the public interest.

10 “(ii) CONSIDERATIONS.—In the exer-
11 cise of its review responsibilities under this
12 subsection, the Commission—

13 “(I) shall give due weight to the
14 technical expertise of the electric reli-
15 ability organization with respect to
16 the content of a new or modified orga-
17 nization standard; but

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

22 “(E) REMAND.—A proposed organization
23 standard that is disapproved in whole or in part
24 by the Commission shall be remanded to the

1 electric reliability organization for further con-
 2 sideration.

3 “(3) ORDERS TO DEVELOP OR MODIFY ORGANI-
 4 ZATION STANDARDS.—The Commission, on com-
 5 plaint or on motion of the Commission, may order
 6 the electric reliability organization to develop and
 7 submit to the Commission, by a date specified in the
 8 order, an organization standard or modification to
 9 an existing organization standard to address a spe-
 10 cific matter if the Commission considers a new or
 11 modified organization standard appropriate to carry
 12 out this section, and the electric reliability organiza-
 13 tion shall develop and submit the organization
 14 standard or modification to the Commission in ac-
 15 cordance with this subsection.

16 “(4) VARIANCES AND ENTITY RULES.—

17 “(A) PROPOSAL.—An affiliated regional
 18 reliability entity may propose a variance or enti-
 19 ty rule to the electric reliability organization.

20 “(B) EXPEDITED CONSIDERATION.—If ex-
 21 pedited consideration is necessary to provide for
 22 bulk-power system reliability, the affiliated re-
 23 gional reliability entity may—

1 “(i) request that the electric reliability
2 organization expedite consideration of the
3 proposal; and

4 “(ii) file a notice of the request with
5 the Commission.

6 “(C) FAILURE TO ACT.—

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

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

1 “(I) remand the proposal for fur-
2 ther consideration by the electric reli-
3 ability organization; or

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

10 “(D) PROCEDURE.—A variance or entity
11 rule proposed by an affiliated regional reliability
12 entity shall be submitted to the electric reli-
13 ability organization for review and submission
14 to the Commission in accordance with the pro-
15 cedures specified in paragraph (2).

16 “(5) IMMEDIATE EFFECTIVENESS.—

17 “(A) IN GENERAL.—Notwithstanding any
18 other provision of this subsection, a new or
19 modified organization standard shall take effect
20 immediately on submission to the Commission
21 without notice or comment if the electric reli-
22 ability organization—

23 “(i) determines that an emergency ex-
24 ists requiring that the new or modified or-

1 ganization standard take effect imme-
 2 diately without notice or comment;

3 “(ii) notifies the Commission as soon
 4 as practicable after making the determina-
 5 tion;

6 “(iii) submits the new or modified or-
 7 ganization standard to the Commission not
 8 later than 5 days after making the deter-
 9 mination; and

10 “(iv) includes in the submission an ex-
 11 planation of the need for immediate effec-
 12 tiveness.

13 “(B) NOTICE AND COMMENT.—The Com-
 14 mission shall—

15 “(i) provide notice of the new or modi-
 16 fied organization standard or amendment
 17 for comment; and

18 “(ii) follow the procedures specified in
 19 paragraphs (2) and (3) for review of the
 20 new or modified organization standard.

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

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

1 “(1) RECOGNITION.—The electric reliability or-
 2 ganization shall take all appropriate steps to gain
 3 recognition in Canada and Mexico.

4 “(2) INTERNATIONAL AGREEMENTS.—

5 “(A) IN GENERAL.—The President shall
 6 use best efforts to enter into international
 7 agreements with the appropriate governments
 8 in Canada and Mexico to provide for—

9 “(i) effective compliance with organi-
 10 zation standards; and

11 “(ii) the effectiveness of the electric
 12 reliability organization in carrying out its
 13 mission and responsibilities.

14 “(B) COMPLIANCE.—All actions taken by
 15 the electric reliability organization, an affiliated
 16 regional reliability entity, and the Commission
 17 shall be consistent with any international agree-
 18 ment under subparagraph (A).

19 “(g) CHANGES IN PROCEDURE, GOVERNANCE, OR
 20 FUNDING.—

21 “(1) SUBMISSION TO THE COMMISSION.—The
 22 electric reliability organization shall submit to the
 23 Commission—

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

1 “(B) any change in an affiliated regional
2 reliability entity’s procedure, governance, or
3 funding provision relating to delegated func-
4 tions.

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

8 “(3) EFFECTIVENESS.—

9 “(A) CHANGES IN PROCEDURE.—

10 “(i) CHANGES CONSTITUTING A
11 STATEMENT OF POLICY, PRACTICE, OR IN-
12 TERPRETATION.—A proposed change in
13 procedure shall take effect 90 days after
14 submission to the Commission if the
15 change constitutes a statement of policy,
16 practice, or interpretation with respect to
17 the meaning or enforcement of the proce-
18 dure.

19 “(ii) OTHER CHANGES.—A proposed
20 change in procedure other than a change
21 described in clause (i) shall take effect on
22 a finding by the Commission, after notice
23 and opportunity for comment, that the
24 change—

1 “(I) is just, reasonable, not un-
 2 duly discriminatory or preferential,
 3 and in the public interest; and

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

6 “(B) CHANGES IN GOVERNANCE OR FUND-
 7 ING.—A proposed change in governance or
 8 funding shall not take effect unless the Com-
 9 mission finds that the change—

10 “(i) is just, reasonable, not unduly
 11 discriminatory or preferential, and in the
 12 public interest; and

13 “(ii) satisfies the requirements of sub-
 14 section (d)(4).

15 “(4) ORDER TO AMEND.—

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

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

1 “(h) DELEGATIONS OF AUTHORITY.—

2 “(1) IN GENERAL.—

3 “(A) IMPLEMENTATION AND ENFORCE-
 4 MENT OF COMPLIANCE.—At the request of an
 5 entity, the electric reliability organization shall
 6 enter into an agreement with the entity for the
 7 delegation of authority to implement and en-
 8 force compliance with organization standards in
 9 a specified geographic area if the electric reli-
 10 ability organization finds that—

11 “(i) the entity satisfies the require-
 12 ments of subparagraphs (A), (B), (C), (D),
 13 (F), (J), and (K) of subsection (d)(4); and

14 “(ii) the delegation would promote the
 15 effective and efficient implementation and
 16 administration of bulk-power system reli-
 17 ability.

18 “(B) OTHER AUTHORITY.—The electric re-
 19 liability organization may enter into an agree-
 20 ment to delegate to an entity any other author-
 21 ity, except that the electric reliability organiza-
 22 tion shall reserve the right to set and approve
 23 standards for bulk-power system reliability.

24 “(2) APPROVAL BY THE COMMISSION.—

1 “(A) SUBMISSION TO THE COMMISSION.—

2 The electric reliability organization shall submit
3 to the Commission—

4 “(i) any agreement entered into under
5 this subsection; and

6 “(ii) any information the Commission
7 requires with respect to the affiliated re-
8 gional reliability entity to which authority
9 is delegated.

10 “(B) STANDARDS FOR APPROVAL.—The
11 Commission shall approve the agreement, fol-
12 lowing public notice and an opportunity for
13 comment, if the Commission finds that the
14 agreement—

15 “(i) meets the requirements of para-
16 graph (1); and

17 “(ii) is just, reasonable, not unduly
18 discriminatory or preferential, and in the
19 public interest.

20 “(C) REBUTTABLE PRESUMPTION.—A pro-
21 posed delegation agreement with an affiliated
22 regional reliability entity organized on an inter-
23 connection-wide basis shall be rebuttably pre-
24 sumed by the Commission to promote the effec-
25 tive and efficient implementation and adminis-

1 tration of the reliability of the bulk-power sys-
2 tem.

3 “(D) INVALIDITY ABSENT APPROVAL.—No
4 delegation by the electric reliability organization
5 shall be valid unless the delegation is approved
6 by the Commission.

7 “(3) PROCEDURES FOR ENTITY RULES AND
8 VARIANCES.—

9 “(A) IN GENERAL.—A delegation agree-
10 ment under this subsection shall specify the
11 procedures by which the affiliated regional reli-
12 ability entity may propose entity rules or
13 variances for review by the electric reliability
14 organization.

15 “(B) INTERCONNECTION-WIDE ENTITY
16 RULES AND VARIANCES.—In the case of a pro-
17 posal for an entity rule or variance that would
18 apply on an interconnection-wide basis, the elec-
19 tric reliability organization shall approve the en-
20 tity rule or variance unless the electric reli-
21 ability organization makes a written finding
22 that the entity rule or variance—

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

1 “(ii) would have a significant adverse
2 impact on reliability or commerce in other
3 interconnections;

4 “(iii) fails to provide a level of reli-
5 ability of the bulk-power system within the
6 interconnection such that the entity rule or
7 variance would be likely to cause a serious
8 and substantial threat to public health,
9 safety, welfare, or national security; or

10 “(iv) would create a serious and sub-
11 stantial burden on competitive markets
12 within the interconnection that is not nec-
13 essary for reliability.

14 “(C) NONINTERCONNECTION-WIDE ENTITY
15 RULES AND VARIANCES.—In the case of a pro-
16 posal for an entity rule or variance that would
17 apply only to part of an interconnection, the
18 electric reliability organization shall approve the
19 entity rule or variance if the affiliated regional
20 reliability entity demonstrates that the
21 proposal—

22 “(i) was developed in a fair and open
23 process that provided an opportunity for
24 all interested parties to participate;

1 “(ii) would not have an adverse im-
2 pact on commerce that is not necessary for
3 reliability;

4 “(iii) provides a level of bulk-power
5 system reliability that is adequate to pro-
6 tect public health, safety, welfare, and na-
7 tional security and would not have a sig-
8 nificant adverse impact on reliability; and

9 “(iv) in the case of a variance, is
10 based on a justifiable difference between
11 regions or subregions within the affiliated
12 regional reliability entity’s geographic area.

13 “(D) ACTION BY THE ELECTRIC RELI-
14 ABILITY ORGANIZATION.—

15 “(i) IN GENERAL.—The electric reli-
16 ability organization shall approve or dis-
17 approve a proposal under subparagraph
18 (A) within 120 days after the proposal is
19 submitted.

20 “(ii) FAILURE TO ACT.—If the electric
21 reliability organization fails to act within
22 the time specified in clause (i), the pro-
23 posal shall be deemed to have been ap-
24 proved.

1 “(iii) SUBMISSION TO THE COMMIS-
 2 SION.—After approving a proposal under
 3 subparagraph (A), the electric reliability
 4 organization shall submit the proposal to
 5 the Commission for approval under the
 6 procedures prescribed under subsection (e).

7 “(E) DIRECT SUBMISSIONS.—An affiliated
 8 regional reliability entity may not submit a pro-
 9 posal for approval directly to the Commission
 10 except as provided in subsection (e)(4).

11 “(4) FAILURE TO REACH DELEGATION AGREE-
 12 MENT.—

13 “(A) IN GENERAL.—If an affiliated re-
 14 gional reliability entity requests, consistent with
 15 paragraph (1), that the electric reliability orga-
 16 nization delegate authority to it, but is unable
 17 within 180 days to reach agreement with the
 18 electric reliability organization with respect to
 19 the requested delegation, the entity may seek
 20 relief from the Commission.

21 “(B) REVIEW BY THE COMMISSION.—The
 22 Commission shall order the electric reliability
 23 organization to enter into a delegation agree-
 24 ment under terms specified by the Commission

1 if, after notice and opportunity for comment,
 2 the Commission determines that—

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

5 “(I) meet the requirements of
 6 paragraph (1); and

7 “(II) would be just, reasonable,
 8 not unduly discriminatory or pref-
 9 erential, and in the public interest;
 10 and

11 “(ii) the electric reliability organiza-
 12 tion unreasonably withheld the delegation.

13 “(5) ORDERS TO MODIFY DELEGATION AGREE-
 14 MENTS.—

15 “(A) IN GENERAL.—On complaint, or on
 16 motion of the Commission, after notice to the
 17 appropriate affiliated regional reliability entity,
 18 the Commission may order the electric reli-
 19 ability organization to propose a modification to
 20 a delegation agreement under this subsection if
 21 the Commission determines that—

22 “(i) the affiliated regional reliability
 23 entity—

24 “(I) no longer has the capacity to
 25 carry out effectively or efficiently the

1 implementation or enforcement re-
2 sponsibilities under the delegation
3 agreement;

4 “(II) has failed to meet its obli-
5 gations under the delegation agree-
6 ment; or

7 “(III) has violated this section;

8 “(ii) the rules, practices, or proce-
9 dures of the affiliated regional reliability
10 entity no longer provide for fair and im-
11 partial discharge of the implementation or
12 enforcement responsibilities under the dele-
13 gation agreement;

14 “(iii) the geographic boundary of a
15 transmission entity approved by the Com-
16 mission is not wholly within the boundary
17 of an affiliated regional reliability entity,
18 and the difference in boundaries is incon-
19 sistent with the effective and efficient im-
20 plementation and administration of bulk-
21 power system reliability; or

22 “(iv) the agreement is inconsistent
23 with a delegation ordered by the Commis-
24 sion under paragraph (4).

25 “(B) SUSPENSION.—

1 “(i) IN GENERAL.—Following an
 2 order to modify a delegation agreement
 3 under subparagraph (A), the Commission
 4 may suspend the delegation agreement if
 5 the electric reliability organization or the
 6 affiliated regional reliability entity does not
 7 propose an appropriate and timely modi-
 8 fication.

9 “(ii) ASSUMPTION OF RESPONSIBIL-
 10 ITIES.—If a delegation agreement is sus-
 11 pended, the electric reliability organization
 12 shall assume the responsibilities delegated
 13 under the delegation agreement.

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

16 “(1) the electric reliability organization; and

17 “(2) any affiliated regional reliability entity op-
 18 erating under an agreement effective under sub-
 19 section (h) applicable to the region in which the sys-
 20 tem operator operates, or is responsible for the oper-
 21 ation of, a transmission facility.

22 “(j) ENFORCEMENT.—

23 “(1) DISCIPLINARY ACTIONS.—

24 “(A) IN GENERAL.—Consistent with proce-
 25 dures approved by the Commission under sub-

1 section (d)(4)(H), the electric reliability organi-
2 zation may impose a penalty, limitation on ac-
3 tivities, functions, or operations, or other dis-
4 ciplinary action that the electric reliability orga-
5 nization finds appropriate against a bulk-power
6 system user if the electric reliability organiza-
7 tion, after notice and an opportunity for inter-
8 ested parties to be heard, issues a finding in
9 writing that the bulk-power system user has
10 violated an organization standard.

11 “(B) NOTIFICATION.—The electric reli-
12 ability organization shall immediately notify the
13 Commission of any disciplinary action imposed
14 with respect to an act or failure to act of a
15 bulk-power system user that affected or threat-
16 ened to affect bulk-power system facilities lo-
17 cated in the United States.

18 “(C) RIGHT TO PETITION.—A bulk-power
19 system user that is the subject of disciplinary
20 action under paragraph (1) shall have the right
21 to petition the Commission for a modification
22 or rescission of the disciplinary action.

23 “(D) INJUNCTIONS.—If the electric reli-
24 ability organization finds it necessary to prevent
25 a serious threat to reliability, the electric reli-

1 ability organization may seek injunctive relief in
2 the United States district court for the district
3 in which the affected facilities are located.

4 “(E) EFFECTIVE DATE.—

5 “(i) IN GENERAL.—Unless the Com-
6 mission, on motion of the Commission or
7 on application by the bulk-power system
8 user that is the subject of the disciplinary
9 action, suspends the effectiveness of a dis-
10 ciplinary action, the disciplinary action
11 shall take effect on the 30th day after the
12 date on which—

13 “(I) the electric reliability organi-
14 zation submits to the Commission—

15 “(aa) a written finding that
16 the bulk-power system user vio-
17 lated an organization standard;
18 and

19 “(bb) the record of pro-
20 ceedings before the electric reli-
21 ability organization; and

22 “(II) the Commission posts the
23 written finding on the Internet.

24 “(ii) DURATION.—A disciplinary ac-
25 tion shall remain in effect or remain sus-

1 pended unless the Commission, after notice
2 and opportunity for hearing, affirms, sets
3 aside, modifies, or reinstates the discipli-
4 nary action.

5 “(iii) EXPEDITED CONSIDERATION.—

6 The Commission shall conduct the hearing
7 under procedures established to ensure ex-
8 pedited consideration of the action taken.

9 “(2) COMPLIANCE ORDERS.—The Commission,

10 on complaint by any person or on motion of the
11 Commission, may order compliance with an organi-
12 zation standard and may impose a penalty, limita-
13 tion on activities, functions, or operations, or take
14 such other disciplinary action as the Commission
15 finds appropriate, against a bulk-power system user
16 with respect to actions affecting or threatening to
17 affect bulk-power system facilities located in the
18 United States if the Commission finds, after notice
19 and opportunity for a hearing, that the bulk-power
20 system user has violated or threatens to violate an
21 organization standard.

22 “(3) OTHER ACTIONS.—The Commission may

23 take such action as is necessary against the electric
24 reliability organization or an affiliated regional reli-
25 ability entity to ensure compliance with an organiza-

1 tion standard, or any Commission order affecting
 2 electric reliability organization or affiliated regional
 3 reliability entity.

4 “(k) RELIABILITY REPORTS.—The electric reliability
 5 organization shall—

6 “(1) conduct periodic assessments of the reli-
 7 ability and adequacy of the interconnected bulk-
 8 power system in North America; and

9 “(2) report annually to the Secretary of Energy
 10 and the Commission its findings and recommenda-
 11 tions for monitoring or improving system reliability
 12 and adequacy.

13 “(l) ASSESSMENT AND RECOVERY OF CERTAIN
 14 COSTS.—

15 “(1) IN GENERAL.—The reasonable costs of the
 16 electric reliability organization, and the reasonable
 17 costs of each affiliated regional reliability entity that
 18 are related to implementation or enforcement of or-
 19 ganization standards or other requirements con-
 20 tained in a delegation agreement approved under
 21 subsection (h), shall be assessed by the electric reli-
 22 ability organization and each affiliated regional reli-
 23 ability entity, respectively, taking into account the
 24 relationship of costs to each region and based on an

1 allocation that reflects an equitable sharing of the
 2 costs among all electric energy consumers.

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

7 “(m) APPLICATION OF ANTITRUST LAWS.—

8 “(1) IN GENERAL.—Notwithstanding any other
 9 provision of law, the following activities are
 10 rebuttably presumed to be in compliance with the
 11 antitrust laws of the United States:

12 “(A) Activities undertaken by the electric
 13 reliability organization under this section or af-
 14 filiated regional reliability entity operating
 15 under a delegation agreement under subsection
 16 (h).

17 “(B) Activities of a member of the electric
 18 reliability organization or an affiliated regional
 19 reliability entity in pursuit of the objectives of
 20 the electric reliability organization or affiliated
 21 regional reliability entity under this section un-
 22 dertaken in good faith under the rules of the
 23 organization of the electric reliability organiza-
 24 tion or affiliated regional reliability entity.

1 “(2) AVAILABILITY OF DEFENSES.—In a civil
 2 action brought by any person or entity against the
 3 electric reliability organization or an affiliated re-
 4 gional reliability entity alleging a violation of an
 5 antitrust law based on an activity under this Act,
 6 the defenses of primary jurisdiction and immunity
 7 from suit and other affirmative defenses shall be
 8 available to the extent applicable.

9 “(n) REGIONAL ADVISORY ROLE.—

10 “(1) ESTABLISHMENT OF REGIONAL ADVISORY
 11 BODY.—The Commission shall establish a regional
 12 advisory body on the petition of the Governors of at
 13 least two-thirds of the States within a region that
 14 have more than one-half of their electrical loads
 15 served within the region.

16 “(2) MEMBERSHIP.—A regional advisory
 17 body—

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

21 “(B) may include representatives of agen-
 22 cies, States, and Provinces outside the United
 23 States, on execution of an appropriate inter-
 24 national agreement described in subsection (f).

1 “(3) FUNCTIONS.—A regional advisory body
2 may provide advice to the electric reliability organi-
3 zation, an affiliated regional reliability entity, or the
4 Commission regarding—

5 “(A) the governance of an affiliated re-
6 gional reliability entity existing or proposed
7 within a region;

8 “(B) whether a standard proposed to apply
9 within the region is just, reasonable, not unduly
10 discriminatory or preferential, and in the public
11 interest; and

12 “(C) whether fees proposed to be assessed
13 within the region are—

14 “(i) just, reasonable, not unduly dis-
15 criminatory or preferential, and in the pub-
16 lic interest; and

17 “(ii) consistent with the requirements
18 of subsection (l).

19 “(4) DEFERENCE.—In a case in which a re-
20 gional advisory body encompasses an entire inter-
21 connection, the Commission may give deference to
22 advice provided by the regional advisory body under
23 paragraph (3).

24 “(o) APPLICABILITY OF SECTION.—This section does
25 not apply outside the 48 contiguous States.

1 “(p) REHEARINGS; COURT REVIEW OF ORDERS.—
 2 Section 313 applies to an order of the Commission issued
 3 under this section.

4 “(q) PRESERVATION OF STATE AUTHORITY.—

5 “(1) EXTENT OF AUTHORITY OF THE ELECTRIC
 6 RELIABILITY ORGANIZATION.—The electric reliability
 7 organization shall have authority to develop, imple-
 8 ment, and enforce compliance with standards for the
 9 reliable operation of only the bulk-power system.

10 “(2) NO AUTHORITY WITH RESPECT TO ADE-
 11 QUACY OR SAFETY.—This section does not provide
 12 the electric reliability organization or the Commis-
 13 sion with the authority to establish or enforce com-
 14 pliance with standards for adequacy or safety of
 15 electric facilities or services.

16 “(3) NO PREEMPTION.—

17 “(A) IN GENERAL.—Nothing in this sec-
 18 tion preempts the authority of any State to
 19 take action to ensure the safety, adequacy, and
 20 reliability of electric service within the State, so
 21 long as the action is not inconsistent with any
 22 organization standard.

23 “(B) CONSISTENCY DETERMINATION.—

24 Not later than 90 days after the electric reli-
 25 ability organization or any other affected party

1 submits to the Commission a petition for a de-
 2 termination that a State action is inconsistent
 3 with an organization standard, the Commission
 4 shall issue a final order determining whether a
 5 State action is inconsistent with an organiza-
 6 tion standard, after notice and opportunity for
 7 comment, taking into consideration any rec-
 8 ommendations of the electric reliability organi-
 9 zation.

10 “(C) STAY.—The Commission, after con-
 11 sultation with the electric reliability organiza-
 12 tion, may stay the effectiveness of any State ac-
 13 tion, pending the Commission’s issuance of a
 14 final order.”.

15 (b) ENFORCEMENT.—

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

19 (A) by striking “subsection” and inserting
 20 “section”; and

21 (B) by striking “or 214” and inserting
 22 “214, or 215”.

23 (2) CERTAIN PROVISIONS.—Section 316A of the
 24 Federal Power Act (16 U.S.C. 825o–1) is amended

- 1 by striking “or 214” each place it appears and in-
- 2 serting “214, or 215”.

