

109TH CONGRESS
1ST SESSION

H. R. 878

To improve the reliability of the Nation's electric transmission system.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 17, 2005

Mr. DINGELL (for himself, Mr. MARKEY, Mr. PALLONE, Mr. RUSH, Mr. TOWNS, Mr. STRICKLAND, Mr. BOUCHER, Ms. SCHAKOWSKY, Mrs. CAPPS, Mr. INSLEE, Mr. WAXMAN, Ms. BALDWIN, Mr. ENGEL, Mr. WYNN, Mr. STUPAK, Mr. ALLEN, Mr. GORDON, Mr. DOYLE, Mr. BROWN of Ohio, Ms. DEGETTE, and Ms. SOLIS) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To improve the reliability of the Nation's electric transmission 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 Im-
5 provement Act of 2005”.

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

7 Part II of the Federal Power Act (16 U.S.C. 824 et
8 seq.) is amended by inserting the following new section
9 at the end thereof:

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

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

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

4 “(A) facilities and control systems nec-
5 essary for operating an interconnected electric
6 energy transmission network (or any portion
7 thereof); and

8 “(B) electric energy from generation facili-
9 ties needed to maintain transmission system re-
10 liability.

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

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

19 “(3) The term ‘reliability standard’ means a re-
20 quirement, approved by the Commission under this
21 section, to provide for reliable operation of the bulk-
22 power system. The term includes requirements for
23 the operation of existing bulk-power system facilities
24 and the design of planned additions or modifications
25 to such facilities to the extent necessary to provide
26 for reliable operation of the bulk-power system, but

1 the term does not include any requirement to en-
2 large such facilities or to construct new transmission
3 capacity or generation capacity.

4 “(4) The term ‘reliable operation’ means oper-
5 ating the elements of the bulk-power system within
6 equipment and electric system thermal, voltage, and
7 stability limits so that instability, uncontrolled sepa-
8 ration, or cascading failures of such system will not
9 occur as a result of a sudden disturbance or unan-
10 ticipated failure of system elements.

11 “(5) The term ‘Interconnection’ means a geo-
12 graphic area in which the operation of bulk-power
13 system components is synchronized such that the
14 failure of one or more of such components may ad-
15 versely affect the ability of the operators of other
16 components within the system to maintain reliable
17 operation of the facilities within their control.

18 “(6) The term ‘transmission organization’
19 means a regional transmission organization, inde-
20 pendent system operator, independent transmission
21 provider, or other transmission organization finally
22 approved by the Commission for the operation of
23 transmission facilities.

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

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

15 “(2) The Commission shall issue a final rule to imple-
16 ment the requirements of this section not later than 180
17 days after the date of enactment of this section.

18 “(c) CERTIFICATION.—Following the issuance of a
19 Commission rule under subsection (b)(2), any person may
20 submit an application to the Commission for certification
21 as the Electric Reliability Organization (ERO). The Com-
22 mission may certify one such ERO if the Commission de-
23 termines that such ERO—

24 “(1) has the ability to develop and enforce, sub-
25 ject to subsection (e)(2), reliability standards that

1 provide for an adequate level of reliability of the
2 bulk-power system; and

3 “(2) has established rules that—

4 “(A) assure its independence of the users
5 and owners and operators of the bulk-power
6 system, while assuring fair stakeholder rep-
7 resentation in the selection of its directors and
8 balanced decisionmaking in any ERO com-
9 mittee or subordinate organizational structure;

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

13 “(C) provide fair and impartial procedures
14 for enforcement of reliability standards through
15 the imposition of penalties in accordance with
16 subsection (e) (including limitations on activi-
17 ties, functions, or operations, or other appro-
18 priate sanctions);

19 “(D) provide for reasonable notice and op-
20 portunity for public comment, due process,
21 openness, and balance of interests in developing
22 reliability standards and otherwise exercising its
23 duties; and

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

4 “(d) RELIABILITY STANDARDS.—(1) The Electric
5 Reliability Organization shall file each reliability standard
6 or modification to a reliability standard that it proposes
7 to be made effective under this section with the Commis-
8 sion.

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

23 “(3) The Electric Reliability Organization shall
24 rebuttably presume that a proposal from a regional entity
25 organized on an Interconnection-wide basis for a reliability

1 standard or modification to a reliability standard to be ap-
2 plicable on an Interconnection-wide basis is just, reason-
3 able, and not unduly discriminatory or preferential, and
4 in the public interest.

5 “(4) The Commission shall remand to the Electric
6 Reliability Organization for further consideration a pro-
7 posed reliability standard or a modification to a reliability
8 standard that the Commission disapproves in whole or in
9 part.

10 “(5) The Commission, upon its own motion or upon
11 complaint, may order the Electric Reliability Organization
12 to submit to the Commission a proposed reliability stand-
13 ard or a modification to a reliability standard that ad-
14 dresses a specific matter if the Commission considers such
15 a new or modified reliability standard appropriate to carry
16 out this section.

17 “(6) The final rule adopted under subsection (b)(2)
18 shall include fair processes for the identification and time-
19 ly resolution of any conflict between a reliability standard
20 and any function, rule, order, tariff, rate schedule, or
21 agreement accepted, approved, or ordered by the Commis-
22 sion applicable to a transmission organization. Such trans-
23 mission organization shall continue to comply with such
24 function, rule, order, tariff, rate schedule or agreement ac-
25 cepted approved, or ordered by the Commission until—

1 “(A) the Commission finds a conflict exists be-
2 tween a reliability standard and any such provision;

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

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

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

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

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

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

23 “(2) A penalty imposed under paragraph (1) may
24 take effect not earlier than the 31st day after the electric
25 reliability organization files with the Commission notice of

1 the penalty and the record of proceedings. Such penalty
2 shall be subject to review by the Commission, on its own
3 motion or upon application by the user, owner or operator
4 that is the subject of the penalty filed within 30 days after
5 the date such notice is filed with the Commission. Applica-
6 tion to the Commission for review, or the initiation of re-
7 view by the Commission on its own motion, shall not oper-
8 ate as a stay of such penalty unless the Commission other-
9 wise orders upon its own motion or upon application by
10 the user, owner or operator that is the subject of such
11 penalty. In any proceeding to review a penalty imposed
12 under paragraph (1), the Commission, after notice and op-
13 portunity for hearing (which hearing may consist solely
14 of the record before the electric reliability organization and
15 opportunity for the presentation of supporting reasons to
16 affirm, modify, or set aside the penalty), shall by order
17 affirm, set aside, reinstate, or modify the penalty, and,
18 if appropriate, remand to the electric reliability organiza-
19 tion for further proceedings. The Commission shall imple-
20 ment expedited procedures for such hearings.

21 “(3) On its own motion or upon complaint, the Com-
22 mission may order compliance with a reliability standard
23 and may impose a penalty against a user or owner or oper-
24 ator of the bulk-power system, if the Commission finds,
25 after notice and opportunity for a hearing, that the user

1 or owner or operator of the bulk-power system has en-
2 gaged or is about to engage in any acts or practices that
3 constitute or will constitute a violation of a reliability
4 standard.

5 “(4) The Commission shall establish regulations au-
6 thorizing the ERO to enter into an agreement to delegate
7 authority to a regional entity for the purpose of proposing
8 reliability standards to the ERO and enforcing reliability
9 standards under paragraph (1) if—

10 “(A) the regional entity is governed by—

11 “(i) an independent board;

12 “(ii) a balanced stakeholder board; or

13 “(iii) a combination independent and bal-
14 anced stakeholder board.

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

17 “(C) the agreement promotes effective and effi-
18 cient administration of bulk-power system reliability.

19 The Commission may modify such delegation. The ERO
20 and the Commission shall rebuttably presume that a pro-
21 posal for delegation to a regional entity organized on an
22 Interconnection-wide basis promotes effective and efficient
23 administration of bulk-power system reliability and should
24 be approved. Such regulation may provide that the Com-
25 mission may assign the ERO’s authority to enforce reli-

1 ability standards under paragraph (1) directly to a re-
2 gional entity consistent with the requirements of this para-
3 graph.

4 “(5) The Commission may take such action as is nec-
5 essary or appropriate against the ERO or a regional entity
6 to ensure compliance with a reliability standard or any
7 Commission order affecting the ERO or a regional entity.

8 “(6) Any penalty imposed under this section shall
9 bear a reasonable relation to the seriousness of the viola-
10 tion and shall take into consideration the efforts of such
11 user, owner, or operator to remedy the violation in a time-
12 ly manner.

13 “(f) CHANGES IN ELECTRICITY RELIABILITY ORGA-
14 NIZATION RULES.—The Electric Reliability Organization
15 shall file with the Commission for approval any proposed
16 rule or proposed rule change, accompanied by an expla-
17 nation of its basis and purpose. The Commission, upon
18 its own motion or complaint, may propose a change to the
19 rules of the Electric Reliability Organization. A proposed
20 rule or proposed rule change shall take effect upon a find-
21 ing by the Commission, after notice and opportunity for
22 comment, that the change is just, reasonable, not unduly
23 discriminatory or preferential, is in the public interest, and
24 satisfies the requirements of subsection (c).

1 “(g) RELIABILITY REPORTS.—The Electric Reli-
2 ability Organization shall conduct periodic assessments of
3 the reliability and adequacy of the bulk-power system in
4 North America.

5 “(h) COORDINATION WITH CANADA AND MEXICO.—
6 The President is urged to negotiate international agree-
7 ments with the governments of Canada and Mexico to pro-
8 vide for effective compliance with reliability standards and
9 the effectiveness of the Electric Reliability Organization
10 in the United States and Canada or Mexico.

11 “(i) SAVINGS PROVISIONS.—(1) The Electric Reli-
12 ability Organization shall have authority to develop and
13 enforce compliance with reliability standards for only the
14 bulk-power system.

15 “(2) This section does not authorize the Electric Reli-
16 ability Organization or the Commission to order the con-
17 struction of additional generation or transmission capacity
18 or to set and enforce compliance with standards for ade-
19 quacy or safety of electric facilities or services.

20 “(3) Nothing in this section shall be construed to pre-
21 empt any authority of any State to take action to ensure
22 the safety, adequacy, and reliability of electric service
23 within that State, as long as such action is not incon-
24 sistent with any reliability standard.

1 “(4) Within 90 days of the application of the Electric
2 Reliability Organization or other affected party, and after
3 notice and opportunity for comment, the Commission shall
4 issue a final order determining whether a State action is
5 inconsistent with a reliability standard, taking into consid-
6 eration any recommendation of the Electric Reliability Or-
7 ganization.

8 “(5) The Commission, after consultation with the
9 Electric Reliability Organization and the State taking ac-
10 tion, may stay the effectiveness of any State action, pend-
11 ing the Commission’s issuance of a final order.

12 “(j) REGIONAL ADVISORY BODIES.—The Commis-
13 sion shall establish a regional advisory body on the petition
14 of at least two-thirds of the States within a region that
15 have more than one-half of their electric load served within
16 the region. A regional advisory body shall be composed or
17 of one member from each participating State in the region,
18 appointed by the Governor of each State, and may include
19 representatives of agencies, States, and provinces outside
20 the United States. A regional advisory body may provide
21 advice to the Electric Reliability Organization, a regional
22 entity, or the Commission regarding the governance of an
23 existing or proposed regional entity within the same re-
24 gion, whether a standard proposed to apply within the re-
25 gion is just, reasonable, not unduly discriminatory or pref-

1 erential, and in the public interest, whether fees proposed
2 to be assessed within the region are just, reasonable, not
3 unduly discriminatory or preferential, and in the public
4 interest and any other responsibilities requested by the
5 Commission. The Commission may give deference to the
6 advice of any such regional advisory body if that body is
7 organized on an Interconnection-wide basis.

8 “(k) APPLICATION TO ALASKA AND HAWAII.—The
9 provisions of this section do not apply to Alaska or Ha-
10 waii.”.

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