

106<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 2071

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## AN ACT

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 2000 Act”.

1 **SEC. 2. ELECTRIC RELIABILITY ORGANIZATION.**

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

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

6 “(a) DEFINITIONS.—In this section:

7 “(1) AFFILIATED REGIONAL RELIABILITY ENTI-  
8 TY.—The term ‘affiliated regional reliability entity’  
9 means an entity delegated authority under sub-  
10 section (h).

11 “(2) BULK-POWER SYSTEM.—

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

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

19 “(i) high voltage transmission lines,  
20 substations, control centers, communica-  
21 tions, data, and operations planning facili-  
22 ties necessary for the operation of all or  
23 any part of the interconnected trans-  
24 mission 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                   energy 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; or

11                  “(C) is a system operator.

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

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

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

23                  “(A) is not an officer or employee of an  
24                  entity that would reasonably be perceived as  
25                  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 advocate;

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 energy.

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) COMMISSION AUTHORITY.—

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

1           “(2) DEFINITION OF TERMS.—The Commission  
2           may by regulation define any term used in this sec-  
3           tion consistent with the definitions in subsection (a)  
4           and the purpose and intent of this Act.

5           “(c) EXISTING RELIABILITY STANDARDS.—

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

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

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 subsection (e); or

8 “(B) disapproved by the Commission if, on  
9 complaint or upon motion by the Commission  
10 and after notice and an opportunity for com-  
11 ment, the Commission finds the standard, guid-  
12 ance, or practice to be unjust, unreasonable,  
13 unduly discriminatory or preferential, or not in  
14 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 designation as the  
2 electric 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 de-  
17 scribe in the application—

18 “(i) the governance and procedures of  
19 the applicant; and

20 “(ii) the funding mechanism and ini-  
21 tial funding requirements of the applicant.

22 “(3) NOTICE AND COMMENT.—The Commission  
23 shall—

24 “(A) provide public notice of the applica-  
25 tion; and

1           “(B) afford interested parties an oppor-  
2           tunity to comment.

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

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

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

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

22                   “(D) ensures that no 2 industry sectors  
23                   have the ability to control, and no 1 industry  
24                   sector has the ability to veto, the applicant’s  
25                   discharge of its responsibilities as the electric

1 reliability organization (including actions by  
2 committees recommending standards for ap-  
3 proval by the board or other board actions to  
4 implement and enforce standards);

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

7 “(F) provides a funding mechanism and  
8 requirements that—

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

12 “(ii) satisfy the requirements of sub-  
13 section (l);

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

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

23 “(ii) ensure openness, a balancing of  
24 interests, and due process; and

1                   “(iii) includes alternative procedures  
2                   to be followed in emergencies;

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

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

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

22                  “(K) addresses other matters that the  
23                  Commission considers appropriate to ensure  
24                  that the procedures, governance, and funding of  
25                  the electric reliability organization are just, rea-

1 sonable, not unduly discriminatory or pref-  
2 erential, and in the public interest.

3 “(5) EXCLUSIVE DESIGNATION.—

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

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

12 “(e) ORGANIZATION STANDARDS.—

13 “(1) SUBMISSION OF PROPOSALS TO COMMIS-  
14 SION.—

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

19 “(B) CONTENTS.—A proposal submitted  
20 under subparagraph (A) shall include—

21 “(i) a concise statement of the pur-  
22 pose of the proposal; and

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

25 “(2) REVIEW BY THE COMMISSION.—

1           “(A) NOTICE AND COMMENT.—The Com-  
2 mission shall—

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

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

7           “(B) ACTION BY THE COMMISSION.—

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

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

1           “(C) EFFECTIVE DATE.—An organization  
2           standard approved by the Commission shall  
3           take effect not earlier than 30 days after the  
4           date of the Commission’s order of approval.

5           “(D) STANDARDS FOR APPROVAL.—

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

12                  “(ii) 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 or modified orga-  
19                           nization standard; 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                  “(E) REMAND.—A proposed organization  
25                  standard that is disapproved in whole or in part

1           by the Commission shall be remanded to the  
2           electric reliability organization for further con-  
3           sideration.

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

17          “(4) VARIANCES AND ENTITY RULES.—

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

21                 “(B) EXPEDITED CONSIDERATION.—If ex-  
22                 pedited consideration is necessary to provide for  
23                 bulk-power system reliability, the affiliated re-  
24                 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 organization 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 set out 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           of 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 the 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                    pending 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 organizations or affiliated regional re-  
19 liability entity in pursuit of the objectives of the  
20 electric reliability organization or affiliated re-  
21 gional 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) The electric reliability organization shall  
6 have authority to develop, implement, and enforce  
7 compliance with standards for the reliable operation  
8 of only the bulk-power system.

9           “(2) This section does not provide the electric  
10 reliability organization or the Commission with the  
11 authority to set and enforce compliance with stand-  
12 ards for adequacy or safety of electric facilities or  
13 services.

14           “(3) Nothing in this section shall be construed  
15 to preempt any authority of any State to take action  
16 to ensure the safety, adequacy, and reliability of  
17 electric service within that State, as long as such ac-  
18 tion is not inconsistent with any organization stand-  
19 ard.

20           “(4) Not later than 90 days after the applica-  
21 tion of the electric reliability organization or other  
22 affected party, the Commission shall issue a final  
23 order determining whether a State action is incon-  
24 sistent with an organization standard, after notice  
25 and opportunity for comment, taking into consider-

1        ation any recommendations of the electric reliability  
2        organization.

3            “(5) The Commission, after consultation with  
4        the electric reliability organization, may stay the ef-  
5        fectiveness of any State action, pending the Commis-  
6        sion’s issuance of a final order.”.

7        (b) ENFORCEMENT.—

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

11            (A) by striking “subsection” and inserting  
12            “section”; and

13            (B) by striking “or 214” and inserting  
14            “214 or 215”.

15            (2) CERTAIN PROVISIONS.—Section 316A of the  
16        Federal Power Act (16 U.S.C. 825o–1) is amended  
17        by striking “or 214” each place it appears and in-  
18        serting “214, or 215”.

Passed the Senate June 30, 2000.

Attest:

*Secretary.*

106TH CONGRESS  
2D SESSION

**S. 2071**

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**AN ACT**

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

S 2071 ES—2

S 2071 ES—3

S 2071 ES—4

S 2071 ES—5