

## **SUMMARY OF RELIABILITY LEGISLATION<sup>1</sup>**

(Based on section 1211 of H.R. 6, as contained in the conference report that the House of Representatives agreed to on November 18, 2003. That conference report remains as pending business in the Senate.)

The reliability legislation amends Part II of the Federal Power Act to add a new section 215 making reliability standards for the bulk-power system mandatory and enforceable.

### **Definitions**

“Bulk-power system” means the facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof) and electric energy from generation facilities needed to maintain transmission system reliability. The term does not include facilities used in the local distribution of electric energy.

“Reliability standard” means a requirement approved by FERC to provide for reliable operation of the bulk-power system. The term includes requirements for the operation of existing bulk-power system facilities and the design of planned additions or modifications to such facilities to the extent necessary to provide for reliable operation of the bulk-power system, but the term does not include any requirement to enlarge such facilities or to construct new transmission capacity or generation capacity.

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

### **Jurisdiction**

The reliability legislation gives the Federal Energy Regulatory Commission subject matter jurisdiction over the reliability of the bulk-power system in the U.S. For purposes of reliability only, the section gives FERC jurisdiction in the U.S. over all owners, operators, and users of the bulk-power system, including state and municipal entities, rural electric cooperatives, the federal entities, the electric reliability organization certified by FERC, and any regional entities that receive delegated enforcement authority.

### **Electric Reliability Organization**

FERC may certify one electric reliability organization to develop and enforce reliability standards. The ERO must be independent of owners, operators, and users of the bulk-power system. Stakeholders must have fair representation in the selection of directors, and there must be balanced decision-making in the ERO’s committees and subordinate structures. The ERO must provide “reasonable notice and opportunity for public comment, due process, openness,

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and a balance of interests” in developing reliability standards and managing its affairs. The ERO must follow fair and impartial procedures in its enforcement actions. The ERO must equitably allocate reasonable dues, fees, and other charges among end-users for its activities. The ERO must also file any changes in its rules of procedure with FERC before they may take effect.

### **Reliability Standards**

The ERO must file with FERC each reliability standard that it proposes to be made effective and enforceable. FERC may approve the proposed standard by rule or order if it determines that the standard is “just, reasonable, not unduly discriminatory or preferential, and in the public interest.” FERC must give due weight to the technical competence of the ERO or any regional entity organized on an Interconnection-wide basis, but is not to defer as to the effect of the standard on competition. If FERC disapproves a standard, it must remand the standard to the ERO for further consideration — it cannot modify the standard itself. FERC may direct the ERO to submit a new or modified standard if it deems that action appropriate to carry out the purposes of the section.

### **Enforcement**

The ERO may impose a penalty (which may include limitations on activities, functions, or operations, or other appropriate sanctions) on an owner, operator, or user of the bulk-power system if, after notice and an opportunity for a hearing, the ERO finds that the owner, operator, or user violated a reliability standard made effective under the statute. Any penalty must bear a reasonable relationship to the seriousness of the violation and must take into account any effort by the owner, operator, or user to remedy the violation in a timely manner. No penalty may take effect until the 31<sup>st</sup> day after the ERO files notice and the record of proceeding with FERC. FERC may affirm, modify, or set aside the penalty.

FERC may also order compliance with a reliability standard and impose a penalty on an owner, operator, or user of the bulk-power system if it finds that the owner, operator, or user has engaged in, or is about to engage in, activity that violates a reliability standard. FERC may also take action against the ERO or a regional entity with delegated enforcement authority to ensure compliance with a reliability standard or any FERC order regarding the ERO or the regional entity.

### **Regional Entities**

The ERO may, by agreement, delegate its enforcement authority in a particular area to a regional entity. The regional entity must meet the same criteria as the ERO, except that the regional entity may have an independent board, a balanced stakeholder board or a combination balanced stakeholder and independent board. In addition, the delegation agreement must promote effective and efficient administration of bulk-power system reliability. No delegation agreement may take effect until FERC approves it. FERC may modify the delegation agreement. The ERO and FERC must rebuttably presume that a proposal for a delegation agreement with a regional entity organized on an Interconnection-wide basis promotes effective and efficient administration of bulk-power system reliability. FERC may include in its

regulations a provision for directly assigning the ERO's enforcement authority to a regional entity, consistent with the requirements for a delegation agreement.

### **Adequacy**

The ERO is to assess and periodically report on the adequacy of the bulk-power system, but the ERO does not have the authority to set or enforce mandatory standards for adequacy. Nor does the section give the ERO or FERC the authority to require the expansion of generation or transmission.

### **States**

The reliability legislation reserves to the states matters related to the local distribution system. The legislation states it does not pre-empt any authority of a state to take action regarding the safety, adequacy, and reliability of electric service within that state, so long as the state's action is not inconsistent with a reliability standard. Upon application by the ERO or another affected party, FERC may determine whether a state action is inconsistent with a reliability standard and may stay the state action pending the determination.

### **Regional Advisory Bodies**

The legislation directs FERC to establish a regional advisory body on petition from at least two-thirds of the states in a region that have at least half their electric load served within that region. Each state is to have one representative appointed by the governor. The regional advisory body may give advice to the ERO, FERC, and the regional entity on matters coming before them. FERC may give deference to the advice from a regional advisory body if it is organized on an Interconnection-wide basis.

### **Coordination with RTOs, ISOs, and other transmission organizations**

FERC's implementing rule must include fair processes for identifying and timely resolving any conflicts between a reliability standard and a function, rule, order, tariff, rate schedule, or agreement accepted, approved, or ordered by FERC that is applicable to an RTO, ISO, or other transmission organization. Until the conflict is resolved, the RTO, ISO, or other transmission organization is to continue following its tariff or rate schedule.

### **Coordination with Canada and Mexico**

The ERO is to take appropriate steps to gain recognition in Canada and Mexico. The President is urged to negotiate international agreements with the governments of Canada and Mexico to provide for compliance with reliability standards and the effectiveness of the ERO in Canada and Mexico.

### **FERC Implementation**

FERC must complete its implementing rulemaking within six months of enactment of the legislation.