
FEDERAL ENERGY REGULATORY COMMISSION



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NEWS RELEASE

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COMMISSION FINALIZES ELECTRIC RELIABILITY RULEMAKING PURSUANT TO THE ENERGY POLICY ACT OF 2005

The Federal Energy Regulatory Commission, pursuant to the Energy Policy Act of 2005, today finalized landmark new rules on the certification of an Electric Reliability Organization and the procedures for the establishment, approval and enforcement of mandatory electric reliability standards.

“Today’s rulemaking heralds a historic new turn in the Commission’s regulatory responsibilities. It is a significant step toward establishing, for the first time, mandatory reliability standards for the operation of our nation’s electricity grid. We intend to firmly, yet fairly, implement this significant new program,” Chairman Joseph T. Kelliher said.

“Every major regional blackout since the 1960s was caused in part by violations of voluntary, unenforceable reliability standards. With these important new rules, compliance with reliability standards is not optional, but a legal requirement subject to substantial civil penalties,” Chairman Kelliher said. “While we can make no promise that the reliability standards ultimately established will never be violated, we can promise that, unlike in the past, violations of reliability standards will be subject to significant civil penalties,” the Chairman said.

The Commission’s new regulations spell out the process for certifying a single independent Electric Reliability Organization (ERO) to propose and enforce a new national regime of mandatory reliability standards subject to Commission review and oversight, as Congress mandated in the Energy Policy Act of 2005.

“The Commission recognizes the critical need for an ERO that is effective in developing and enforcing mandatory Reliability Standards,” the Commission said in its Final Rule. “The Commission believes that, to achieve that goal, it is necessary to have a strong ERO that promotes excellence in the development and enforcement of Reliability Standards.”

However, the rulemaking provides for regional variability and flexibility, Chairman Kelliher noted. “We had both continent-wide and regional reliability standards before enactment of the Energy Policy Act. I expect we will continue to have both continent-wide and regional reliability standards after issuance of our final rule,” Chairman Kelliher observed.

The regulations allow Regional Entities to propose reliability standards through the ERO, and allow the ERO to delegate compliance monitoring and enforcement to Regional Entities. The delegation agreement is subject to Commission approval and periodic review.

Both the ERO and Regional Entities will be reviewed periodically to assure the statutory qualifying criteria are maintained on an ongoing basis. This will entail a self-assessment of performance three years after certification and every five years thereafter. Regional entities can recommend performance improvements for the ERO.

Each proposed reliability standard must be submitted by the ERO to the Commission for its approval. Only reliability standards approved by the Commission are enforceable under the new section 215 of the Federal Power Act. The Commission may approve a proposed reliability standard if it determines the standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest.

The ERO and Regional Entities must monitor compliance with the reliability standards. They may direct violators to comply with the standards, and impose penalties for violations, subject to review by, and appeal to, the Commission. While the ERO is responsible for compliance and enforcement, the statute provides that the Commission can investigate compliance and impose penalties independently of the ERO.

The final rule addresses the ability of the ERO and Regional Entities to take remedial action other than penalties, and requires the ERO and Regional Entities to have an audit program to ensure compliance. The final rule requires the ERO to promptly notify the Commission of any violation or alleged violation, and to propose penalty guidelines and a range of monetary and non-monetary penalties to be applied for reliability standard violations.

Any investigation of reliability standard violations will be non-public, unless the Commission authorizes a public investigation. However, once a penalty is imposed and the Commission is provided a “notice of penalty,” or the matter is resolved through an admission or settlement, the Commission will make the matter public.

The Final Rule provides for ERO candidates to propose for Commission consideration a formula or method for funding that addresses cost allocation and cost

responsibility, as well as a proposed revenue collection mechanism. While the Commission is open to any proposals shown to be fair and reasonable, funding based on net energy for load is one fair, reasonable and uncomplicated method that minimizes the potential for “double counting,” the Commission said. The Final Rule also calls for the ERO to fund Regional Entities and approve their budgets under general oversight by the Commission. Periodic financial audits will ensure appropriate ERO-approved funding.

In sum, today’s final regulations establish:

- criteria that an entity must satisfy to qualify to be the ERO;
- procedures under which the ERO may propose new or modified reliability standards for Commission review;
- a process for timely resolution of any conflict between a reliability standard and a Commission-approved tariff or order;
- the process for resolution of an inconsistency between a state action and a reliability standard;
- regulations pertaining to the funding of the ERO;
- procedures governing an enforcement action by the ERO, regional entity or the Commission;
- criteria under which the ERO may enter into an agreement to delegate authority to a regional entity for the purpose of proposing reliability standards to the ERO and enforcing reliability standards;
- regulations governing the issuance of periodic reliability reports by the ERO that assess the reliability and adequacy of the Bulk-Power System in North America; and
- procedures for the establishment of regional advisory bodies that may provide advice to the Commission, the ERO or a regional entity on matters of governance, applicable reliability standards, the reasonableness of proposed fees within a region, and any other responsibilities requested by the Commission.

The final reliability rulemaking will take effect 30 days after publication in the *Federal Register*.