DRAFT RELIABILITY LEGISLATION

SEC. 1 SHORT TITLE
This Act may be cited as the "Electric Reliability Act of 2001".

SEC. 2. ELECTRIC RELIABILITY ORGANIZATION AND OVERSIGHT.
(a) Part II of the Federal Power Act is amended by adding the following
new section at the end:
"Sec. 218. ELECTRIC RELIABILITY ORGANIZATION AND OVERSIGHT
"(a) Definitions - The Commission may, by rule, define any terms used in
this section, consistent with any definition as may otherwise be provided for
any such term in this Act.
"(b) Commission Authority.—
"(1) Notwithstanding section 201(f), within the United States this
section, and rules and orders thereunder, shall apply to and the Commission
shall have jurisdiction over the Electric Reliability Organization, all
Affiliated Regional Reliability Entities, all system operators, and all users of
the bulk-power system, including entities described in section 201(f), for
purposes of approving, monitoring, and enforcing compliance with the
requirements of this section.
"(2) The Commission shall approve the application of one Electric
Reliability Organization and oversee the activities in the United States of
that Electric Reliability Organization.
"(c) Organization Approval and Establishment of Standards.—
"(1) Not later than 90 days after the date of enactment of this section,
the Commission shall issue a proposed rule specifying the procedures and
requirements for an entity to apply for approval as the Electric Reliability
Organization and to file reliability standards. The Commission shall provide
notice and opportunity for comment on the proposed rules. The Commission
shall issue a final rule under this subsection within 180 days after the date of
enactment of this section.
"(2) Following the issuance of a Commission rule under paragraph (1), an entity may submit an application to the Commission for approval as the Electric Reliability Organization. The applicant shall specify in its application its governance, administration and funding procedures and requirements, and shall file any standards proposed to take effect under subsection (f).

"(3) The Commission shall provide public notice of the application and the proposed standards, and afford interested parties an opportunity to comment.

"(4) The Commission shall, by order, approve the application if the Commission determines that the applicant --

"(A) has the ability to develop, implement, and enforce standards that provide for an adequate level of reliability of the bulk-power system;

"(B) permits voluntary membership to any users of the bulk-power system or interested customer class or public interest group;

"(C) assures fair representation of its members in the selection of its directors and fair management of its affairs, taking into account the need for efficiency and effectiveness in decisionmaking and operations and the requirements for technical competency in the development of standards and the exercise of oversight of the reliability system, and assures that no two sectors of the industry have the ability to control and no one sector has the ability to veto the organization's discharge of its responsibilities;

"(D) provides for governance by a board wholly comprised of independent directors;

"(E) has funding procedures and requirements that are just, reasonable and not unduly discriminatory;

"(F) establishes procedures for development of standards that
“(i) provide reasonable notice and opportunity for public comment, taking into account the need for efficiency and effectiveness in decisionmaking and operations and the requirements for technical competency in the development of standards;

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

“(iii) include alternative procedures for emergencies;

"(G) establishes fair and impartial procedures for implementation and enforcement of standards, including penalties; limitation of activity, function, or operations; or other appropriate sanctions;

“(H) establishes procedures for notice and opportunity for public observation of all meetings, except that the procedures for public observation may include alternative procedures for emergencies or for the discussion of information the directors reasonably determine should take place in closed session, including the discussion of information with respect to proposed enforcement or disciplinary action, litigation, or personnel matters;

“(I) provides for the consideration of recommendations of States and State commissions; and

"(J) addresses other matters that the Commission may deem necessary or appropriate to ensure that the procedures, governance and funding of the Electric Reliability Organization are just, reasonable, not unduly discriminatory or preferential, and are in the public interest.

"(5) The Commission shall approve only one Electric Reliability Organization. If the Commission receives two or more timely applications that satisfy the requirements of this subsection, the Commission shall
approve only the application it concludes will best ensure a reliable bulk-power system.

"(6) The Commission may require as a condition of its approval that the procedures, governance or funding of the Electric Reliability Organization be amended pursuant to the procedures of subparagraph (g)(4), if the Commission determines that the procedures, governance or funding would otherwise be unjust, unreasonable, unduly discriminatory or preferential, or otherwise is not in the public interest.

"(d) Organization Membership.—Every system operator shall be required to be a member of the Electric Reliability Organization and shall be required also to be a member of any Affiliated Regional Reliability Entity operating under an agreement effective pursuant to subsection (i)(2) applicable to the region in which the system operator owns or operates transmission facilities.

"(e) Assessment and Recovery of Certain Costs.— The reasonable costs of the Electric Reliability Organization and the reasonable costs of each Affiliated Regional Reliability Entity shall be assessed and equitably allocated to system operators to be recovered from users of the bulk power system. The Commission shall provide by rule or order for the review and approval of such costs and allocations.

"(f) Review of Proposed Standards and Amendments to Standards.—

“(1) The Electric Reliability Organization shall file with the Commission any proposed reliability standard or an amendment to a reliability standard. Such submissions shall include: (i) a concise statement of the purpose of the proposal, and (ii) a summary of any proceeding conducted with respect to such proposal. The Commission shall provide notice of the filing of such proposal and afford interested persons 30 days to submit comments. The Commission, after taking into consideration any submitted comments, shall, by order, approve or disapprove such proposal not later than 60 days after the deadline for the submission of comments.
except that the Commission may extend the 60 day period for an additional
90 days for good cause, and except further that if the Commission does not
act to approve or disapprove a proposed standard or an amendment to a
standard within the foregoing periods the proposal shall go into effect
subject to its terms, without prejudice to the authority of the Commission
thereafter to require a modification of the standard in accordance with the
requirements of this section. Proposals approved by the Commission shall
take effect according to their terms but not earlier than 30 days after the
effective date of the Commission's order, except as provided in paragraph
(2)(D) of this subsection.

"(2) (A) The Commission shall approve a proposed standard or
amendment to a standard unless it determines the proposed standard or
amendment is unjust, unreasonable, unduly discriminatory or preferential,
or otherwise not in the public interest. In the exercise of its review
responsibilities under this subsection, the Commission shall give due weight
to the technical expertise of the Electric Reliability Organization with
respect to the development and content of a reliability standard or
amendment thereto.

"(B) An existing or proposed reliability standard or proposed
amendment thereto which is disapproved in whole or in part by the
Commission shall be remanded to the Electric Reliability Organization for
further consideration with a reasoned opinion setting forth the basis for
such disapproval.

"(C) The Commission, on its own motion or upon the request of any
person, may, by order, direct the Electric Reliability Organization to
develop a reliability standard, or propose an amendment to an existing
standard, addressing a specific matter by a date certain. The Electric
Reliability Organization shall file any such new or revised standard or
amendment in accordance with this subsection.
"(D) (i) Notwithstanding any other provision of this subsection, the
Electric Reliability Organization may request that a proposed standard or
amendment take effect without notice or comment and on a date earlier
than provided for under paragraph (1), but no earlier than the first business
day following the day of filing. The Electric Reliability Organization shall
include in such filing with the Commission a notice that such a departure
from the requirements of paragraphs (1) and (2) is necessary to provide for
the reliability of the bulk power system (or any portion thereof) and an
explanation of the need for such departure. Such a proposed standard or
amendment shall take effect according to its terms unless the Commission
determines, by order, that such a departure from the requirements of
paragraphs (1) and (2) is not necessary to provide for the reliability of the
bulk power system (or any portion thereof).

(ii) Following the procedures set out in subparagraph (i), the
Commission shall provide notice for comment of a proposed standard or
amendment filed pursuant to subparagraph (i), and shall follow the
procedures set out in paragraphs (1) and (2) for review of the proposed
standard or amendment. Any such proposed standard or amendment that
has gone into effect shall remain effective unless and until disapproved by
the Commission.

(iii) All system operators and users of the bulk power system shall
comply with any new or modified standard that takes effect under this
section.

"(g) Amendments to Electric Reliability Organization Procedures,
Governance, or Funding.—

(1) The Electric Reliability Organization shall file with the
Commission any proposed amendment in its procedures, governance, or
funding and accompany the filing with an explanation of the basis and
purpose for the amendment.
“(2)(A) A proposed procedural amendment may take effect 90 days after filing with the Commission if the amendment —

“(i) constitutes a statement of policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing procedure; or

“(ii) is concerned solely with administration of the Electric Reliability Organization.

“(B) A proposed procedural amendment that does not qualify under clause (i) or (ii) shall take effect only upon an order of the Commission approving the amendment. The Commission shall approve such an amendment unless it finds that the amendment is unjust, unreasonable, unduly discriminatory or preferential, or is otherwise not in the public interest.

“(3) An amendment to the Electric Reliability Organization’s governance or funding shall not take effect unless the Commission, by order, approves such amendment. The Commission shall approve such an amendment unless it finds that the amendment is unjust, unreasonable, unduly discriminatory or preferential, is not consistent with any agreement entered into under subsection (k), or is otherwise not in the public interest.

“(4) The Commission, by order, either upon complaint or upon its own motion, may require the Electric Reliability Organization to develop an amendment to its procedures, governance, or funding if the Commission determines that any part of the Electric Reliability Organization’s procedures, governance, or funding is unjust, unreasonable, unduly discriminatory or preferential, or is otherwise not in the public interest. The Electric Reliability Organization shall file such an amendment in accordance with paragraph (1) of this subsection.

“(h) Injunctions and Disciplinary Action.—

“(1) Consistent with the range of actions approved by the Commission under subsection (c)(4)(G), the Electric Reliability Organization
may impose a penalty or impose other disciplinary action the Electric
Reliability Organization finds appropriate against a system operator or a
user of the bulk-power system located in the United States if the Electric
Reliability Organization, after notice and an opportunity for the sanctioned
party to be heard, issues a finding in writing that the user has violated a
standard, procedure, or requirement of the Electric Reliability
Organization. The Electric Reliability Organization shall immediately
notify the Commission of any disciplinary action, and the sanctioned party
shall have the right to seek modification or recission of such action by the
Commission.

"(2) The Electric Reliability Organization may seek injunctive relief
in a court of competent jurisdiction against a system operator or a user of
the bulk-power system located in the United States.

"(3) A disciplinary action taken under subparagraph (1) may take
effect no earlier than the 30th day after the issuance of the Electric
Reliability Organization's written finding unless the Commission, on its own
motion or upon application by the system operator or user of the bulk-power
system which is the subject of the action, suspends the action. The action
shall remain in effect or remain suspended unless and until the Commission,
after notice and opportunity for comment, sets aside, modifies, or reinstates
the action.

"(4) The Commission, on its own motion, may impose a penalty or
take such other disciplinary action as the Commission finds appropriate
against a system operator or a user of the bulk power system located in the
United States if the Commission finds, after notice and opportunity for a
hearing, that the user has violated a standard, procedure, or requirement of
the Electric Reliability Organization.

"(i) Delegations of Authority. –

“(1) The Electric Reliability Organization may, upon request, enter
into an agreement with an Affiliate Regional Reliability Entity for the
delegation of authority to implement and enforce compliance with reliability
standards in a specified geographic area. The Electric Reliability
Organization may delegate to such entity other authority as set forth in the
degregation agreement, except that the Electric Reliability Organization shall
reserve the right to establish and approve variations to standards for the
reliability of the bulk power system in North America.

"(2) The Electric Reliability Organization shall file with the
Commission any agreement entered into under this subsection and any
information the Commission requires with respect to the Affiliated Regional
Reliability Entity to whom authority is to be delegated and with whom the
Electric Reliability Organization has entered into an agreement. The
Commission shall, by order, approve the agreement, following public notice
and an opportunity for comment, if it finds that the agreement promotes the
effective and efficient implementation and administration of the reliability of
the bulk-power system and is just and reasonable, not unduly
discriminatory or preferential, and is in the public interest. No agreement
shall take effect and no delegation by the Electric Reliability Organization
shall be valid unless approved by the Commission. A proposed delegation
agreement with an Affiliated Regional Reliability Entity organized on an
Interconnection-wide basis shall be rebuttably presumed to promote the
effective and efficient implementation and administration of the reliability of
the bulk-power system.

"(3) Any agreement entered into under this subsection shall specify
procedures for the Affiliated Regional Reliability Entity to obtain variances
from the reliability standards of the Electric Reliability Organization. The
Electric Reliability Organization shall give a variance that would apply on
an Interconnection-wide basis a rebuttable resumption of validity, so long as
the proposed variance has no material adverse effect on reliability or
commerce in other interconnections, all affected persons were provided a
reasonable opportunity to comment on the proposed variance, and there
would be no material threat to public health or safety.

"(j) Transitional Provisions.— Following enactment of the Act, the North
American Electric Reliability Council and its member Regional Reliability
Councils may file such of their reliability standards, guidance or practices as
they would propose to be made mandatory and enforceable. The
Commission, after allowing interested persons an opportunity to submit
comments, may, by order, approve or disapprove any such proposed
mandatory standard, guidance, or practice or any amendment thereto, if it
finds that the standard, guidance, practice, or amendment is just,
reasonable, not unduly discriminatory or preferential, and in the public
interest. Any standards, guidance, or practices, including any amendments
thereto, that are approved by the Commission pursuant to this subsection
are mandatory and applicable according to their terms and shall remain in
effect until withdrawn, disapproved or superseded by standards issued by
the Electric Reliability Organization. Standards in effect pursuant to the
transitional provisions of this subsection shall be enforceable by the
Commission.

“(k) Coordination with Canada and Mexico.— The Electric Reliability
Organization shall take all appropriate steps to gain recognition in Canada
and Mexico. The United States shall seek to enter into international
agreements with the governments of Canada and Mexico to provide for
effective compliance with standards and to provide for the effectiveness of
the Electric Reliability Organization in carrying out its mission and
responsibilities.”

(b) Sections 316 and 316A of the FPA are amended by striking “or 214” each
place it appears and inserting “214, or 218”.

Obtained and made public by the Natural Resources Defense Council, March/April 2002
SEC. 3. APPLICATION OF ANTITRUST LAWS

Notwithstanding any other provision of law, the following activities are rebuttably presumed to be in compliance with the antitrust laws of the United States:

(1) activities undertaken by the Electric Reliability Organization under section 218 of the FPA or by a person operating under a delegation agreement in effect under section 218(i) of the FPA, and

(2) activities of a member of the Electric Reliability Organization in pursuit of organization objectives under section 218 of the FPA undertaken in good faith under the rules of the organization.
Preliminary Assessment of
Summer 2001 Electricity Supply Conditions
February 5, 2001

NERC publishes (May and November) seasonal assessments of the reliability of bulk
electricity supply in North America. The Summer 2001 assessment will be published
May 15. It will be based on updated supply and demand projections.

The information in this preliminary assessment relies on preliminary information and
judgment, and is subject to change when the updated projections come in. As a result,
nothing in this report should be publicly attributed to NERC. Also, as a general caveat on
any assessment like this, even those areas that are expected to have adequate generation
and transmission for the coming summer could experience problems if extraordinary
weather or equipment outages occur.

The primary areas of concern for Summer 2001, as we see them now, are:

California and the Pacific Northwest

The California Independent System Operator (CAL-ISO) indicated in November 2000
that 2001 Summer demands could exceed available resources at the time of peak by 253
MW (mild temps) to 4,152 MW (hot temps). These projections include imports of 4,500
MW from outside the ISO, 1,421 MW of new generation, continued operation of CAL-
ISO's 44,050 MW of existing generation (except for any generator maintenance outages
and deratings due to low water conditions at hydro facilities), and a provision for required
operating reserves. (Interruptible demands have not be subtracted from the demand
forecast, but that may be academic since all of the hours of interruption allowed under
these contracts were used up during the month of January.)

In the northern part of the state, hydro-powered electric generators will be limited by low
water levels, as will imports from the Pacific Northwest.

California has an internal transmission constraint that limits how much power can be
moved from the southern to northern portions of the state. Therefore, most of the
reliability problems are expected to occur in northern California.

The Pacific Northwest is also heavily dependent upon hydro-powered electric generation.
Stream flows and reservoir levels are at critically low levels. The key hydro indicator in
the Northwest is runoff at the Dalles dam on the Columbia River. Current flow is about
65% of normal, and this will be the 4th worst year on record unless they get heavy spring
rains. The Pacific Northwest should be able to meet its own customer demand unless
weather is extremely hot, but will not be able to supply California with energy as they
typically do.

February 5, 2001

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Obtained and made public by the Natural Resources Defense Council, March/April 2002
Southeastern United States

Conditions in the Southeast are expected to be much the same as the last two summers – extremely tight. A number of new generators are planned to be added by the summer. However, there may be problems delivering the energy from some of these generators to the demand centers because the transmission system additions needed to connect these generators into the transmission system are lagging the construction of generators. Some existing generators are scheduled to be out of service this spring for maintenance to add emissions related equipment. This has the potential to reduce available resources at a critical time of the year.

Texas

Texas projects adequate capacity margins, but there are still some causes for concern in the state. Texas forecasts about 8,000 MW of new generation being added for the summer, but about 2,500 MW of this new generation is in an area of West Texas that prevents it from being delivered widely throughout Texas due to limitations in the transmission system. Some of the new generation is on the border between Texas and the southeastern United States and may not be used to serve the customers of Texas.

Texas experienced prolonged, extreme temperatures last summer, which required some generators to run many more hours than normal. This could lead to increased generator breakdowns this summer (like California experienced this winter).

A retail access pilot program is scheduled to commence on June 1, 2001 in Texas, and the ten power system operating centers (Control Areas) will be consolidated into a single center. Because June is a time of heavy electrical demand in Texas, this situation bears careful watching.

The Northeast

The northeastern United States experienced a very cool summer last year. If temperatures had been normal, it is very likely that New York and New England would have experienced serious electricity supply problems. While conditions have improved in this region since last summer, it is still susceptible to shortages if customer demand exceeds expectations due to abnormally hot weather, or if a significant number of generators are unexpectedly out of service.

Last summer, New York City experienced some minor supply shortages due to a lack of sufficient transmission into the city. About 440 MW of new generation will be added in distributed locations around New York City by Summer 2001, which should help alleviate this condition and contribute resources to serving total demand in the state.
ELECTRIC RELIABILITY ACT

SEC. 1. ELECTRIC RELIABILITY ORGANIZATION AND OVERSIGHT

(a) The FPA is amended by adding the following new section after section 217 as added by section 403 of this Act:

"ELECTRIC RELIABILITY ORGANIZATION AND OVERSIGHT"

"Sec. 218. (a) Definitions - The Commission may, by rule, define any terms used in this section, consistent with any definition as may otherwise be provided for any such term in this Act.

(b) Commission Authority.--(1) This section, and rules and orders thereunder, shall apply to and the Commission shall have jurisdiction over the Electric Reliability Organization, all Affiliated Regional Reliability Entities, all system operators, and all users of the bulk-power system for purposes of approving, monitoring, and enforcing compliance with the requirements of this section.

(2) The Commission shall approve the application of one Electric Reliability Organization and oversee the activities in the United States of that Electric Reliability Organization.

(c) Organization Approval and Establishment of Standards.--(1) Not later than 90 days after the date of enactment of this section, the Commission shall issue a proposed rule specifying the procedures and requirements for an entity to apply for approval as the Electric Reliability Organization and to file reliability standards. The Commission shall provide notice and opportunity for comment on the proposed rules. The Commission shall issue a final rule under this subsection within 180 days after the date of enactment of this section.
"(2) Following the issuance of a Commission rule under paragraph (1), an entity may submit an application to the Commission for approval as the Electric Reliability Organization. The applicant shall specify in its application its governance, administration and funding procedures and requirements, and shall file any standards proposed to take effect under subsection (f).

"(3) The Commission shall provide public notice of the application and the proposed standards, and afford interested parties an opportunity to comment.

"(4) The Commission shall, by order, approve the application if the Commission determines that the applicant --

"(A) has the ability to provide for an adequate level of reliability of the bulk-power system;

"(B) permits voluntary membership to any users of the bulk-power system or interested customer class or public interest group;

"(C) assures fair representation of its members in the selection of its directors and fair management of its affairs, taking into account the need for efficiency and effectiveness in decisionmaking and operations and the requirements for technical competency in the development of standards and the exercise of oversight of the reliability system, and assures that no two sectors of the industry have the ability to control and no one sector has the ability to veto the organization's discharge of its responsibilities;

"(D) provides for governance by a board wholly comprised of independent directors;

"(E) has funding procedures and requirements that are just, reasonable and not unduly discriminatory;
'(F) establishes procedures for standards development that provide reasonable notice and opportunity for public comment, taking into account the need for efficiency and effectiveness in decisionmaking and operations and the requirements for technical competency in the development of standards, except that the procedures may include alternative procedures for emergencies;

'(G) establishes fair and impartial procedures for implementation and enforcement of standards, including penalties; limitation of activity, function, or operations; or other appropriate sanctions;

'(H) establishes procedures for notice and opportunity for public observation of all meetings, except that the procedures for public observation may include alternative procedures for emergencies or for the discussion of information the directors determine should take place in closed session, including the discussion of information with respect to proposed enforcement or disciplinary action; and

'(I) addresses other matters that the Commission may deem necessary or appropriate to ensure that the procedures, governance and funding of the Electric Reliability Organization are just, reasonable, not unduly discriminatory or preferential, and are in the public interest.

'(5) The Commission shall approve only one Electric Reliability Organization. If the Commission receives two or more timely applications that satisfy the requirements of this subsection, the Commission shall approve only the application it concludes will best ensure a reliable bulk-power system.

'(6) The Commission may require as a condition of its approval that the procedures, governance or funding of the Electric Reliability Organization be
amended pursuant to the procedures of subparagraph (g)(4), if the Commission determines that the procedures, governance or funding would otherwise be unjust, unreasonable, unduly discriminatory or preferential, or otherwise is not in the public interest.

"(d) Organization Membership.--Every system operator shall be required to be a member of the Electric Reliability Organization and shall be required also to be a member of any Affiliated Regional Reliability Entity operating under an agreement effective pursuant to subsection (i)(2) applicable to the region in which the system operator owns or operates transmission facilities.

"(e) Assessment and Recovery of Certain Costs.-- The reasonable costs of the Electric Reliability Organization and the reasonable costs of each Affiliated Regional Reliability Entity shall be assessed and equitably allocated to system operators to be recovered from users of the bulk power system. The Commission shall provide by rule or order for the review and approval of such costs and allocations.

"(f) Review of Proposed Standards and Amendments to Standards.-- (1) The Electric Reliability Organization shall file with the Commission any proposed reliability standard or an amendment to a reliability standard. Such submissions shall include: (i) a concise statement of the purpose of the proposal, and (ii) a summary of any proceeding conducted with respect to such proposal. The Commission shall provide notice of the filing of such proposal and afford interested persons 30 days to submit comments. The Commission, after taking into consideration any submitted comments, shall, by order, approve or disapprove such proposal not later than 60 days after the deadline for the submission of comments, except that the Commission may extend the 60 day period for an additional 90 days.
for good cause, and except further that if the Commission does not act to approve or disapprove a proposed standard or an amendment to a standard within the foregoing periods the proposal shall go into effect subject to its terms, without prejudice to the authority of the Commission thereafter to suspend or modify the proposal in accordance with the standards and requirements of this section.

Proposals approved by the Commission shall take effect according to their terms but not earlier than 30 days after the effective date of the Commission's order, except as provided in paragraph (2) of this subsection.

"(2) (A) The Commission shall approve a proposed standard or amendment to a standard unless it determines the proposed standard or amendment is unjust, unreasonable, unduly discriminatory or preferential, or otherwise not in the public interest. The Commission may suspend an existing standard in whole or in part, if it determines the standard or any part thereof is unjust, unreasonable, unduly discriminatory or preferential or otherwise not in the public interest. In the exercise of its review responsibilities under this subsection, the Commission shall give due weight to the technical expertise of the Electric Reliability Organization with respect to the development and content of a reliability standard or amendment thereto.

"(B) An existing or proposed reliability standard or proposed amendment thereto which is disapproved or suspended in whole or in part by the Commission shall be remanded to the Electric Reliability Organization for further consideration with a reasoned opinion setting forth the basis for such disapproval or suspension.

"(C) The Commission, on its own motion or upon the request of any person, may, by order, direct the Electric Reliability Organization to develop a reliability standard, or propose an amendment to an existing standard, addressing a specific
matter by a date certain. The Electric Reliability Organization shall file any such
new or revised standard or amendment in accordance with this subsection.

"(D) (i) Notwithstanding any other provision of this subsection, the Electric
Reliability Organization may request that a proposed standard or amendment take
effect without notice or comment and on a date earlier than provided for under
paragraph (1), but no earlier than the first business day following the day of filing.
The Electric Reliability Organization shall include in such filing with the
Commission a notice that such a departure from the requirements of paragraphs (1)
and (2) is necessary to provide for the reliability of the bulk power system (or any
portion thereof) and an explanation of the need for such departure. Such a
proposed standard or amendment shall take effect according to its terms unless the
Commission determines, by order, that such a departure from the requirements of
paragraphs (1) and (2) is not necessary to provide for the reliability of the bulk
power system (or any portion thereof).

"(ii) Following the procedures set out in subparagraph (i), the Commission
shall provide notice for comment of a proposed standard or amendment filed
pursuant to subparagraph (i), and shall follow the procedures set out in paragraphs
(1) and (2) for review of the proposed standard or amendment. Any such proposed
standard or amendment that has gone into effect shall remain effective unless and
until suspended or disapproved by the Commission.

"(3) All system operators and users of the bulk power system shall comply
with any new or modified standard that takes effect under this section.

"(g) Amendments to Electric Reliability Organization Procedures,
Governance, or Funding.--(1) The Electric Reliability Organization shall file with
the Commission any proposed amendment in its procedures, governance, or funding
and accompany the filing with an explanation of the basis and purpose for the amendment.

"(2)(A) A proposed procedural amendment may take effect 90 days after filing with the Commission if the amendment --

"(i) constitutes a statement of policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing procedure; or

"(ii) is concerned solely with administration of the Electric Reliability Organization.

A proposed procedural amendment that does not qualify under clause (i) or (ii) shall take effect only upon an order of the Commission approving the amendment. The Commission shall approve such an amendment unless it finds that the amendment is unjust, unreasonable, unduly discriminatory or preferential, is not consistent with any agreement entered into under subsection (k), or is otherwise not in the public interest.

"(3) An amendment to the Electric Reliability Organization's governance or funding shall not take effect unless the Commission, by order, approves such amendment. The Commission shall approve such an amendment unless it finds that the amendment is unjust, unreasonable, unduly discriminatory or preferential, is not consistent with any agreement entered into under subsection (k), or is otherwise not in the public interest.

"(4) The Commission, by order, either upon complaint or upon its own motion, may require the Electric Reliability Organization to develop an amendment to its procedures, governance, or funding if the Commission determines that any part of the Electric Reliability Organization's procedures, governance, or funding is
unjust, unreasonable, unduly discriminatory or preferential, is not consistent with any agreement entered into under subsection (k), or is otherwise not in the public interest. The Electric Reliability Organization shall file such an amendment in accordance with paragraph (1) of this subsection.

"(h) Injunctions and Disciplinary Action.--(1) Consistent with the range of actions approved by the Commission under subsection (c)(4)(G) and requirements of any agreement entered into under subsection (k), the Electric Reliability Organization may impose a penalty or impose other disciplinary action the Electric Reliability Organization finds appropriate against a system operator or a user of the bulk-power system located in the United States if the Electric Reliability Organization, after notice and an opportunity for the sanctioned party to be heard, issues a finding in writing that the user has violated a standard, procedure, or requirement of the Electric Reliability Organization. The Electric Reliability Organization shall immediately notify the Commission of any disciplinary action, and the sanctioned party shall have the right to seek modification or recission of such action by the Commission.

"(2) The Electric Reliability Organization may seek injunctive relief in a court of competent jurisdiction against a system operator or a user of the bulk-power system located in the United States.

"(3) A disciplinary action taken under subparagraph (1) may take effect not earlier than the 30th day after the issuance of the Electric Reliability Organization's written finding unless the Commission, on its own motion or upon application by the system operator or user of the bulk-power system which is the subject of the action, suspends the action. The action shall remain in effect or
remain suspended unless and until the Commission, after notice and opportunity for comment, sets aside, modifies, or reinstates the action.

"(4) The Commission, on its own motion, may impose a penalty or take such other disciplinary action as the Commission finds appropriate against a system operator or a user of the bulk power system located in the United States if the Commission finds, after notice and opportunity for a hearing, that the user has violated a standard, procedure, or requirement of the Electric Reliability Organization.

"(i) Delegations of Authority. -- (1) The Electric Reliability Organization may, upon request, enter into an agreement with an Affiliate Regional Reliability Entity for the delegation of authority to implement and enforce compliance with reliability standards in a specified geographic area. The Electric Reliability Organization may delegate to such entity other authority as set forth in the delegation agreement, except that the Electric Reliability Organization shall reserve the right to establish and approve variations to standards for the reliability of the bulk power system in North America.

"(2) The Electric Reliability Organization shall file with the Commission any agreement entered into under this subsection and any information the Commission requires with respect to the Affiliated Regional Reliability Entity to whom authority is to be delegated and with whom the Electric Reliability Organization has entered into an agreement. The Commission shall, by order, approve the agreement, following public notice and an opportunity for comment, if it finds that the agreement promotes the effective and efficient implementation and administration of the reliability of the bulk-power system and is just and reasonable, not unduly
discriminatory or preferential, and is in the public interest. No agreement shall take effect and no delegation by the Electric Reliability Organization shall be valid unless approved by the Commission.

"(3) Any agreement entered into under this subsection shall specify procedures for the Affiliated Regional Reliability Entity to obtain variances from the reliability standards of the Electric Reliability Organization. [Deference language to be proposed by WSCC.] 1/

"(j) Transitional Provisions.-- Following enactment of the Act, the North American Electric Reliability Council and its member Regional Reliability Councils may file such of their reliability standards, guidance or practices as they would propose to be made mandatory and enforceable. The Commission, after allowing interested persons an opportunity to submit comments, may, by order, approve or disapprove any such proposed mandatory standard, guidance, or practice or any amendment thereto, if it finds that the standard, guidance, practice, or amendment is just, reasonable, not unduly discriminatory or preferential, and in the public interest. The Commission may, without further proceeding or finding, grant its approval to any standard, guidance, or practice for which no substantive objections are filed in the comment period. Consistent with any agreement entered into under subsection (k), filed standards, guidance, or practices, including any amendments

1/ Issue 5, Attachment A (Necessary Elements for Regional Reliability Implementation Agreements") to the July 1998 NERC Board materials included the following language: "NAERO gives strong deference and grants a rebuttable presumption to Interconnection-wide requests for variances from NAERO Standards, so long as there would be no material adverse reliability or commercial impact on the other Interconnections, that all affected stakeholders were provided a reasonable opportunity to comment on the proposed variance, and there would be no material threat to public health and safety."
thereto, are mandatory and applicable according to their terms following approval by the Commission and shall remain in effect until withdrawn, disapproved or superseded by standards issued by the Electric Reliability Organization. Standards in effect pursuant to the transitional provisions of this subsection shall be enforceable by the Commission.

"(k) Coordination with Canada and Mexico.--The Electric Reliability Organization shall take all appropriate steps to gain recognition in Canada and Mexico. The United States shall seek to enter into international agreements with the governments of Canada and Mexico to provide for effective compliance with standards and to provide for the effectiveness of the Electric Reliability Organization in carrying out its mission and responsibilities.

(b) Sections 316 and 316A of the FPA are amended by striking "or 214" each place it appears and inserting "214, or 218".

SEC. 2. APPLICATION OF ANTITRUST LAWS

Notwithstanding any other provision of law, the following activities are rebuttably presumed to be in compliance with the antitrust laws of the United States:

(1) activities undertaken by the Electric Reliability Organization under section 218 of the FPA or delegated person operating under an agreement in effect under section 218(i) of the FPA, and

(2) activities of a member of the Electric Reliability Organization in pursuit of organization objectives under section 218 of the FPA undertaken in good faith under the rules of the organization.
CORE PRINCIPLES FOR RELIABILITY LEGISLATION

Accreditation of a single North American SRRO
- FERC to approve a single SRRO.
- Procedures for an applicant to apply for SRRO status, and the procedures and requirements for FERC to approve such an application.
- Requires that all system operators be members of the SRRO.
- Provides procedures for the SRRO to modify its procedural, governance and funding rules.

Authority for that SRRO to set and enforce standards
- Specifies the procedures for the SRRO to file with FERC for approval of reliability standards.
- Provides that such proposed standards are to be approved unless FERC finds that they are unjust, unreasonable, unduly discriminatory or preferential, or otherwise not in the public interest.
- Provides that FERC is to give due weight to the technical expertise of the SRRO.
- Provides for the optional filing with FERC of existing standards by NERC and regional councils prior to approval of an SRRO, which FERC could approve and enforce.
- Gives the SRRO the authority to enforce its standards, subject to FERC review.

Allowance for the SRRO to delegate authority for implementation of standards and enforcement of compliance to regional organizations
- Permits the SRRO to delegate certain authority to regional entities by agreement.
- Such agreements would be filed with FERC for approval.

Funding authority
- Provides for the assessment and allocation of SRRO and regional entity costs to system operators, to be recovered from system users, through a non-bypassable charge.

International arrangements
- Governs international agreements and recognition of the SRRO.

Anti-trust protections
- Provides for a rebuttable presumption that activities undertaken under the Act are in compliance with the antitrust laws.

March 1, 2001

11954

Obtained and made public by the Natural Resources Defense Council, March/April 2002
Hi Joe,

I enjoyed lunch. Hope it was of some help as you try to sort things out. Per your request, attached is an earlier, shorter (sorry, it is 12 pages, not 6) version of the MERC reliability legislation, and a list of the key principles on which it is built. I will forward separately to you a paragraph that we have sent to Andrew Lundquist and Bob McNally for possible use in describing Administration support for the concept of this legislation.

Please let me know if you have any questions.

Thanks,

Linda

From: Dave Nevius <dave.nevius@nerc.com>
Cc: lstuntz@sdsatty.com <lstuntz@sdsatty.com>
To: Kelliher, Joseph
Cc: dcook@nerc.com <dcook@nerc.com>
Date: Friday, March 09, 2001 3:01 PM
Subject: Core Principles and Short Form Bill

Linda

>David and I will give you a call in a couple minutes, but here in advance is the 12 page version of the legislation that Charlie and John
>developed for us in Jan '99 when it looked like the GITS folks could
>reach consensus on detailed language. It doesn't have any state savings
>language or RAB language, deference language for the West, or RTO
>amendments.
>
>Also attached is a list of Core Principles that this bill addresses.
>
>We haven't studied this for a while, so there may be some glitches, but
>
>should be far better than Bingaman's version where FERC sets all the
>rules,
>and enforces them too.
As per our discussion. Thanks for you review and consideration.

Mark W. Menezes  
Vice President and Associate General Counsel  
American Electric Power  
801 Pennsylvania Avenue, N.W., Suite 320  
Washington DC 20004  
PH: 202.383.3430  
FX: 202.383.3459  
email: mwmeneses@aep.com

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