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February 6, 2002

The Honorable Joe Barton, Chairman
The Honorable Rick Boucher, Ranking Member
Subcommittee on Energy and Air Quality
House Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, D.C. 20515-6115

Dear Chairman Barton and Representative Boucher:

Federal electricity reliability legislation is urgently needed to provide for enforceable regional reliability standards. HR 3406 holds promise of meeting the reliability needs of the West and the nation, however the bill would be improved by:

- the inclusion of language authorizing state advisory bodies; and
- perfecting amendments that will make the provisions workable in the West and other such interconnected regions without compromising its effectiveness in the balance of the country.

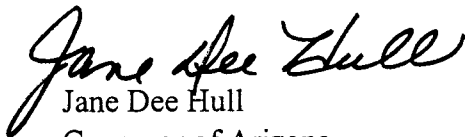
The legislation already recognizes that reliability decisions are regional decisions. These decisions are critical to the well-being of the citizens and economy of the West, as in other areas. Traditionally, states effectuated the approval and enforcement of reliability standards in their regulatory decisions. In this new era, states can best serve their central role by advising in the review and enforcement of such standards. This role is best exercised on a regional basis. Therefore, HR 3406 needs to be amended to authorize regional advisory bodies of states to which FERC may defer.

Attached are the proposed amendments and a brief explanation of the need for the amendments. Western states and the Western electric power industry support the amendments. It is also our understanding that the North American Electric Reliability Council and the Edison Electric Institute are comfortable with the changes.

The Honorable Joe Barton
The Honorable Rick Boucher
February 6, 2002
Page 2

We would be pleased to work with you to ensure workable reliability provisions are enacted.

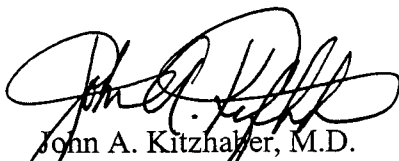
Sincerely,



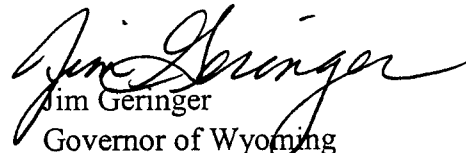
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John A. Kitzhaber, M.D.
Governor of Oregon
WGA Lead Governor on Energy



Jim Geringer
Governor of Wyoming
WGA Lead Governor on Energy

cc: Members of the Energy and Commerce Committee
Western Congressional delegations
Western Governors

SEC. 301. ELECTRIC RELIABILITY.

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by inserting the following after section 215 as added by this Act:

“SEC. 216. ELECTRIC RELIABILITY.

“(a) DEFINITIONS.--For purposes of this section--

“(1) ‘bulk-power system’ means the network of interconnected transmission facilities and generating facilities;

“(2) ‘electric reliability organization’ means a self-regulating organization certified by the Commission under subsection (c) whose purpose is to promote the reliability of the bulk power system; and

“(3) ‘reliability standard’ means a requirement to provide for reliable operation of the bulk power system approved by the Commission under this section.

“(b) JURISDICTION AND APPLICABILITY.--The Commission shall have jurisdiction, within the United States, over an electric reliability organization, any regional entities, and all users, owners and operators of the bulk power system, including but not limited to the entities described in section 201(f), for purposes of approving reliability standards and enforcing compliance with this section. All users, owners and operators of the bulk-power system shall comply with reliability standards that take effect under this section.

“(c) CERTIFICATION.--

“(1) The Commission shall issue a final rule to implement the requirements of this section not later than 180 days after the date of enactment of this section.

“(2) Following the issuance of a Commission rule under paragraph (1), any person may submit an application to the Commission for certification as an electric reliability organization. The Commission may certify an applicant if the Commission determines that the applicant--

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

“(B) has established rules that--

“(i) assure its independence of the users and owners and operators of the bulk power system; while assuring fair stakeholder representation in the selection of its directors and balanced decision-making in any committee or subordinate organizational structure;

“(ii) allocate equitably dues, fees, and other charges among end users *for all activities under this section*;

“(iii) provide fair and impartial procedures for enforcement of reliability standards through imposition of penalties (including limitations on activities, functions, or operations; or other appropriate sanctions); and

“(iv) provide for reasonable notice and opportunity for public comment, due process, openness, and balance of interests in developing reliability standards and otherwise exercising its duties.

“(4) (3) 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 implement the provisions of this section.

“(d) RELIABILITY STANDARDS.--

“(1) An electric reliability organization shall file a proposed reliability standard or modification to a reliability standard with the Commission.

“(2) The Commission may approve a proposed reliability standard *or modification to a reliability standard* if it determines that the standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest. The Commission shall give due weight to the technical expertise of the electric reliability organization with respect to the content of a proposed standard *or modification to a reliability standard*, but shall not defer with respect to its effect on competition.

“(3) The electric reliability organization and the Commission shall rebuttably presume that a proposal from a regional entity *organized on an interconnection-wide basis* for a reliability standard *or modification to a reliability standard* to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest.

“(4) The Commission shall remand to the electric reliability organization for further consideration a proposed reliability standard *or a modification to a reliability standard* that the Commission disapproves in whole or in part.

“(5) The Commission, upon its own motion or upon complaint, may order an electric reliability organization to submit to the Commission a proposed reliability standard or a modification to a reliability standard that addresses a specific matter if the Commission considers such a new or modified reliability standard appropriate to carry out this section.

“(e) ENFORCEMENT.--

“(1) An electric reliability organization may impose a penalty on a user or owner or operator of the bulk power system if the electric reliability organization, after notice and an opportunity for a hearing--

“(A) finds that the user or owner or operator of the bulk power system has violated a reliability standard approved by the Commission under subsection (d); and

“(B) files notice with the Commission, which shall affirm, set aside or modify the action.

“(2) On its own motion or upon complaint, the Commission may order compliance with a reliability standard and may impose a penalty against a user or owner or operator of the bulk power system, if the Commission finds, after notice and opportunity for a hearing, that the user or owner or operator of the bulk power system has violated or threatens to violate a reliability standard.

“(3) The Commission shall establish regulations authorizing the electric reliability organization to enter into an agreement to delegate authority to a regional entity for the purpose of *proposing and enforcing* reliability standards (*including related activities*) if the ~~agreement~~ *regional entity satisfies the applicable provisions of this section subsection (c)(2)(A) and (B) and the agreement promotes effective and efficient administration of bulk power system reliability, and may modify such delegation. The electric reliability organization and the Commission shall rebuttably presume that a proposal for delegation to a regional entity organized on an interconnection-wide basis promotes effective and efficient administration of bulk power system reliability and should be approved.* Such regulation may provide that the

Commission may assign the electric reliability organization's authority to enforce reliability standards directly to a regional entity consistent with the requirements of this paragraph.

“(4) (3) The Commission may take such action as is necessary or appropriate against the electric reliability organization or a regional entity to ensure compliance with a reliability standard or any Commission order affecting the electric reliability organization or a regional entity.

“(f) CHANGES IN ELECTRICITY RELIABILITY ORGANIZATION RULES.--An electric reliability organization shall file with the Commission for approval any proposed rule or proposed rule change, accompanied by an explanation of its basis and purpose. The Commission, upon its own motion or complaint, may propose a change to the rules of the electric reliability organization. A proposed rule or proposed rule change shall take effect upon a finding by the Commission, after notice and opportunity for comment, that the change is just, reasonable, not unduly discriminatory or preferential, is in the public interest, and satisfies the requirements of subsection (c) (2).

“(g) COORDINATION WITH CANADA AND MEXICO.--

“(1) The electric reliability organization shall take all appropriate steps to gain recognition in Canada and Mexico.

“(2) The President shall use his best efforts to enter into international agreements with the governments of Canada and Mexico to provide for effective compliance with reliability standards and the effectiveness of the electric reliability organization in the United States and Canada or Mexico.

“(h) RELIABILITY REPORTS.--The electric reliability organization shall conduct periodic assessments of the reliability and adequacy of the interconnected bulk-power system in North America.

“(i) SAVINGS PROVISIONS.--

“(1) The electric reliability organization shall have authority to develop and enforce compliance with standards for the reliable operation of only the bulk-power system.

“(2) This section does not provide the electric reliability organization or the Commission with the authority to order the construction of additional generation or transmission capacity or to set and enforce compliance with standards for adequacy or safety of electric facilities or services.

“(3) Nothing in this section shall be construed to preempt any authority of any State to take action to ensure the safety, adequacy, and reliability of electric service within that State, as long as such action is not inconsistent with any ~~organization~~ *reliability* standard.

“(4) Within 90 days of the application of the electric reliability organization or other affected party, and after notice and opportunity for comment, the Commission shall issue a final order determining whether a state action is inconsistent with a *reliability* ~~organization~~ standard, taking into consideration any recommendations of the electric reliability organization.

“(5) The Commission, after consultation with the electric reliability organization, may stay the effectiveness of any state action, pending the Commission's issuance of a final order.

“(j) APPLICATION OF ANTITRUST LAWS.--

“(1) IN GENERAL.--To the extent undertaken to develop, implement, or enforce a reliability standard, each of the following activities shall not, in any action under the antitrust laws, be deemed illegal per se:

“(A) activities undertaken by an electric reliability organization under this section, and

“(B) activities of a user or owner or operator of the bulk power system undertaken in good faith under the rules of an electric reliability organization.

“(2) RULE OF REASON.--In any action under the antitrust laws, an activity described in paragraph (1) shall be judged on the basis of its reasonableness, taking into account all relevant factors affecting competition and reliability.

“(3) DEFINITION.--For purposes of this subsection, ‘antitrust laws’ has the meaning given the term in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that it includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent that section 5 applies to unfair methods of competition.

“(k) REGIONAL ADVISORY BODIES.--The Commission shall establish a regional advisory body on the petition of at least two-thirds of the States within a region that have more than one-half of their electric load served within the region. A regional advisory body shall be composed of one member from each participating State in the region, appointed by the Governor of each State, and may include representatives of agencies, States, and provinces outside the United States. A regional advisory body may provide advice to the electric reliability organization, a regional reliability entity, or the Commission regarding the governance of an existing or proposed regional reliability entity within the same region, whether a standard proposed to apply within the region is just, reasonable, not unduly discriminatory or preferential, and in the public interest, whether fees proposed to be assessed within the region are just, reasonable, not unduly discriminatory or preferential, and in the public interest and any other responsibilities requested by the Commission. The Commission may give deference to the advice of any such regional advisory body if that body is organized on an interconnection-wide basis.

12-17-01

Explanation of Changes to Section 301 of HR 3406 AElectric Reliability

1. Delete **Implement** in subsection (c)(2)(A).

Transmission system operators (e.g. Regional Transmission Organizations), not the standard setting organization, will be the parties responsible for implementing reliability standards.

2. Insert **For** all activities under this subsection in (c)(2)(B)(ii)

Ensures funding of operations of regional reliability organization as well as associated regional advisory bodies provided for in new subsection (j). The existing Western reliability organization is currently funded through this mechanism.

3. Retitle subsection (c)(4) to (c)(3)

Technical correction.

4. Insert **For** modification of a reliability standard in subsections (d)(2), (3), and (4).

Ensures consistent treatment of proposed standards and modifications by the Commission. This occurs four times in this section.

5. Modify subsection (d)(3) to insert **For** organized on an interconnection-wide basis

Makes clear that the rebuttable presumption applies to standards proposed by interconnection-wide organization for that interconnection.

6. Modify renumbered subsection (e)(2)

Clarifies that a regional entity can propose as well as enforce standards and related activities such as system reliability studies, assessments, etc. Specifies that any regional entity must meet the provisions of subsection (c)(2)(A) and (B). These are the provisions that the electric reliability organization must meet. Once these conditions are met both the electric reliability organization and the Commission presume that the delegation to the regional interconnection-wide entity is efficient and effective and that the delegation is approved.

7. Delete **Organization** and add **reliability** in front of the word **standard** in renumbered subsections (h)(3) and (4)

The term **Organization standard** is a holdover from the original NERC **consensus** bill language and is not defined in HR 3406. The operative term is **reliability standard**.

8. Add subsection (k) REGIONAL ADVISORY BODIES

This provision enables states to continue to exercise a role in reliability while recognizing the increasing regional nature of electricity markets and reliability issues. Where that regional role is exercised on an interconnection-wide basis, FERC may defer to the advice of a regional advisory body. This provision complements the Commission's action approving the Western Electricity Coordinating Council and improves regional accountability.