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All Titles (/regulations/) > Title 18 (/regulations/title18) > Chapter I (/regulations/title18_chapterI) > Part 39 - RULES CONCERNING CERTIFICATION OF THE ELECTRIC RELIABILITY ORGANIZATION; AND PROCEDURES FOR THE ESTABLISHMENT, APPROVAL, AND ENFORCEMENT OF ELECTRIC RELIABILITY STANDARDS (/regulations/title18_chapterI_part39)

⊖ Collapse to view only § 39.5 - Reliability Standards. (/regulations/title18_chapterI_part39_section39.5)

§ 39.1 - Definitions.

As used in this part:

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

Cross-Border Regional Entity means a Regional Entity that encompasses a part of the United States and a part of Canada or Mexico.

Cybersecurity Incident means a malicious act or suspicious event that disrupts, or was an attempt to disrupt, the operation of those programmable electronic devices and communications networks including hardware, software and data that are essential to the Reliable Operation of the Bulk-Power System.

Electric Reliability Organization or *"ERO"* means the organization certified by the Commission under § 39.3 the purpose of which is to establish and enforce Reliability Standards for the Bulk-Power System, subject to Commission review.

Electric Reliability Organization Rule means, for purposes of this part, the bylaws, a rule of procedure or other organizational rule or protocol of the Electric Reliability Organization.

Interconnection means a geographic area in which the operation of Bulk-Power System components is synchronized such that the failure of one or more of such components may adversely affect the ability of the operators of other components within the system to maintain Reliable Operation of the facilities within their control.

Regional Advisory Body means an entity established upon petition to the Commission pursuant to section 215(j) of the Federal Power Act that is organized to advise the Electric Reliability Organization, a Regional Entity, or the Commission regarding certain matters in accordance with § 39.13.

Regional Entity means an entity having enforcement authority pursuant to § 39.8.

Regional Entity Rule means, for purposes of this part, the bylaws, a rule of procedure or other organizational rule or protocol of a Regional Entity.

Reliability Standard means a requirement approved by the Commission under section 215 of the Federal Power Act, to provide for Reliable Operation of the Bulk-Power System. The term includes requirements for the operation of existing Bulk-Power System facilities, including cybersecurity protection, 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, including a Cybersecurity Incident, or unanticipated failure of system elements.

Transmission Organization means a regional transmission organization, independent system operator, independent transmission provider, or other transmission organization finally approved by the Commission for the operation of transmission facilities.

§ 39.2 - Jurisdiction and applicability.

(a) Within the United States (other than Alaska and Hawaii), the Electric Reliability Organization, any Regional Entities, and all users, owners and operators of the Bulk-Power System, including but not limited to entities described in section 201(f) of the Federal Power Act, shall be subject to the jurisdiction of the Commission for the purposes of approving Reliability Standards established under section 215 of the Federal Power Act and enforcing compliance with section 215 of the Federal Power Act.

(b) All entities subject to the Commission's reliability jurisdiction under paragraph (a) of this section shall comply with applicable Reliability Standards, the Commission's regulations, and applicable Electric Reliability Organization and Regional Entity Rules made effective under this part.

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(c) Each user, owner and operator of the Bulk-Power System within the United States (other than Alaska and Hawaii) shall register with the Electric Reliability Organization and the Regional Entity for each region within which it uses, owns or operates Bulk-Power System facilities, in such manner as prescribed in the Rules of the Electric Reliability Organization and each applicable Regional Entity.

(d) Each user, owner or operator of the Bulk-Power System within the United States (other than Alaska and Hawaii) shall provide the Commission, the Electric Reliability Organization and the applicable Regional Entity such information as is necessary to implement section 215 of the Federal Power Act as determined by the Commission and set out in the Rules of the Electric Reliability Organization and each applicable Regional Entity. The Electric Reliability Organization and each Regional Entity shall provide the Commission such information as is necessary to implement section 215 of the Federal Power Act.

§ 39.3 - Electric Reliability Organization certification.

(a) Any person may submit an application to the Commission for certification as the Electric Reliability Organization no later than April 4, 2006. Such application shall comply with the requirements for filings in proceedings before the Commission in part 385 of this chapter.

(b) After notice and an opportunity for public comment, the Commission may certify one such applicant as an Electric Reliability Organization, if the Commission determines such applicant:

(1) Has the ability to develop and enforce, subject to § 39.7, Reliability Standards that provide for an adequate level of reliability of the Bulk-Power System, and

(2) Has established rules that:

(i) Assure its independence of users, owners and operators of the Bulk-Power System while assuring fair stakeholder representation in the selection of its directors and balanced decisionmaking in any Electric Reliability Organization committee or subordinate organizational structure;

(ii) Allocate equitably reasonable dues, fees and charges among end users for all activities under this part;

(iii) Provide fair and impartial procedures for enforcement of Reliability Standards through the imposition of penalties in accordance with § 39.7, including limitations on activities, functions, operations, or other appropriate sanctions or penalties;

(iv) Provide reasonable notice and opportunity for public comment, due process, openness, and balance of interests in developing Reliability Standards, and otherwise exercising its duties; and

(v) Provide appropriate steps, after certification by the Commission as the Electric Reliability Organization, to gain recognition in Canada and Mexico.

(c) The Electric Reliability Organization shall submit an assessment of its performance three years from the date of certification by the Commission, and every five years thereafter. After receipt of the assessment, the Commission will establish a proceeding with opportunity for public comment in which it will review the performance of the Electric Reliability Organization.

(1) The Electric Reliability Organization's assessment of its performance shall include:

(i) An explanation of how the Electric Reliability Organization satisfies the requirements of § 39.3(b);

(ii) Recommendations by Regional Entities, users, owners, and operators of the Bulk-Power System, and other interested parties for improvement of the Electric Reliability Organization's operations, activities, oversight and procedures, and the Electric Reliability Organization's response to such recommendations; and

(iii) The Electric Reliability Organization's evaluation of the effectiveness of each Regional Entity, recommendations by the Electric Reliability Organization, users, owners, and operators of the Bulk-Power System, and other interested parties for improvement of the Regional Entity's performance of delegated functions, and the Regional Entity's response to such evaluation and recommendations.

(2) The Commission will issue an order finding that the Electric Reliability Organization meets the statutory and regulatory criteria or directing the Electric Reliability Organization or a Regional Entity to come into compliance with or improve its compliance with the requirements of this part. If the ERO fails to comply adequately with the Commission order, the Commission may institute a proceeding to enforce its order, including, if necessary and appropriate, a proceeding to consider decertification of the ERO consistent with § 39.9. The Commission will issue an order finding that each Regional Entity meets the statutory and regulatory criteria or directing the Regional Entity to come into compliance with or improve its compliance with the requirements of this part. If a Regional Entity fails to comply adequately with the Commission order, the Commission may institute a proceeding to enforce its order, including, if necessary and appropriate, a proceeding to consider rescission of its approval of the Regional Entity's delegation agreement.

§ 39.4 - Funding of the Electric Reliability Organization.

(a) Any person who submits an application for certification as the Electric Reliability Organization shall include in its application a formula or method for the allocation and assessment of Electric Reliability Organization dues, fees and charges. The certified Electric Reliability Organization may subsequently file with the Commission a request to modify the formula or method.

(b) The Electric Reliability Organization shall file with the Commission its proposed entire annual budget for statutory and any non-statutory activities, including the entire annual budget for statutory and any non-statutory activities of each Regional Entity, with supporting materials, including the ERO's and each Regional Entity's complete business plan and organization chart, explaining the proposed collection of all dues, fees and charges and the

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proposed expenditure of funds collected in sufficient detail to justify the requested funding collection and budget expenditures 130 days in advance of the beginning of each Electric Reliability Organization fiscal year. The annual Electric Reliability Organization budget shall include line item budgets for the activities of each Regional Entity that are delegated or assigned to each Regional Entity pursuant to § 39.8.

(c) The Commission, after public notice and opportunity for hearing, will issue an order either accepting, rejecting, remanding or modifying the proposed Electric Reliability Organization budget and business plan no later than sixty (60) days in advance of the beginning of the Electric Reliability Organization's fiscal year.

(d) On a demonstration of unforeseen and extraordinary circumstances requiring additional funds prior to the next Electric Reliability Organization fiscal year, the Electric Reliability Organization may file with the Commission for authorization to collect a special assessment. Such filing shall include supporting materials explaining the proposed collection in sufficient detail to justify the requested funding, including any departure from the approved funding formula or method. After notice and an opportunity for hearing, the Commission will approve, disapprove, remand or modify such request.

(e) All entities within the Commission's jurisdiction as set forth in section 215(b) of the Federal Power Act shall pay any Electric Reliability Organization assessment of dues, fees and charges as approved by the Commission, in a timely manner reasonably as designated by the Electric Reliability Organization.

(f) Any person who submits an application for certification as the Electric Reliability Organization may include in the application a plan for a transitional funding mechanism that would allow such person, if certified as the Electric Reliability Organization, to continue existing operations without interruption as it transitions from one method of funding to another. Any proposed transitional funding plan should terminate no later than eighteen (18) months from the date of Electric Reliability Organization certification.

(g) The Electric Reliability Organization or a Regional Entity may not engage in any activity or receive revenues from any person that, in the judgment of the Commission represents a significant distraction from, or a conflict of interest with, its responsibilities under this part.

§ 39.5 - Reliability Standards.

(a) The Electric Reliability Organization shall file each Reliability Standard or modification to a Reliability Standard that it proposes to be made effective under this part with the Commission. The filing shall include a concise statement of the basis and purpose of the proposed Reliability Standard, either a summary of the Reliability Standard development proceedings conducted by the Electric Reliability Organization or a summary of the Reliability Standard development proceedings conducted by a Regional Entity together with a summary of the Reliability Standard review proceedings of the Electric Reliability Organization, and a demonstration that the proposed Reliability Standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest.

(b) The Electric Reliability Organization shall rebuttably presume that a proposal for a Reliability Standard or a modification to a Reliability Standard to be applicable on an Interconnection-wide basis is just, reasonable, not unduly discriminatory or preferential, and in the public interest, if such proposal is from a Regional Entity organized on an Interconnection-wide basis.

(c) The Commission may approve by rule or order a proposed Reliability Standard or a proposed modification to a Reliability Standard if, after notice and opportunity for public hearing, it determines that the proposed Reliability Standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest.

(1) The Commission will give due weight to the technical expertise of the Electric Reliability Organization with respect to the content of a proposed Reliability Standard or a proposed modification to a Reliability Standard,

(2) The Commission will give due weight to the technical expertise of a Regional Entity organized on an Interconnection-wide basis with respect to a proposed Reliability Standard or a proposed modification to a Reliability Standard to be applicable within that Interconnection, and

(3) The Commission will not defer to the Electric Reliability Organization or a Regional Entity with respect to the effect of a proposed Reliability Standard or a proposed modification to a Reliability Standard on competition.

(d) An approved Reliability Standard or modification to a Reliability Standard shall take effect as approved by the Commission.

(e) The Commission will remand to the Electric Reliability Organization for further consideration a proposed Reliability Standard or modification to a Reliability Standard that the Commission disapproves in whole or in part.

(f) The Commission may, upon its own motion or a complaint, order the Electric Reliability Organization to submit a proposed Reliability Standard or 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 section 215 of the Federal Power Act.

(g) The Commission, when remanding a Reliability Standard to the Electric Reliability Organization or ordering the Electric Reliability Organization to submit to the Commission a proposed Reliability Standard or proposed modification to a Reliability Standard that addresses a specific matter may order a deadline by which the Electric Reliability Organization must submit a proposed or modified Reliability Standard.

§ 39.6 - Conflict of a Reliability Standard with a Commission Order.

(a) If a user, owner or operator of the transmission facilities of a Transmission Organization determines that a Reliability Standard may conflict with a function, rule, order, tariff, rate schedule, or agreement accepted, approved, or ordered by the Commission with respect to such Transmission Organization, the Transmission Organization shall expeditiously notify the Commission, the Electric Reliability Organization and the relevant Regional Entity of the possible conflict.

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(b) After notice and opportunity for hearing, within sixty (60) days of the date that a notice was filed under paragraph (a) of this section, unless the Commission orders otherwise, the Commission will issue an order determining whether a conflict exists and, if so, resolve the conflict by directing:

(1) The Transmission Organization to file a modification of the conflicting function, rule, order, tariff, rate schedule, or agreement pursuant to section 206 of the Federal Power Act, as appropriate, or

(2) The Electric Reliability Organization to propose a modification to the conflicting Reliability Standard pursuant to § 39.5 of the Commission's regulations.

(c) The Transmission Organization shall continue to comply with the function, rule, order, tariff, rate schedule, or agreement accepted, approved, or ordered by the Commission until the Commission finds that a conflict exists, the Commission orders a change to such provision pursuant to section 206 of the Federal Power Act, and the ordered change becomes effective.

[Order 672, 71 FR 8736, Feb. 17, 2006, as amended at 71 FR 11505, Mar. 8, 2006; Order 672-A, 71 FR 19823, Apr. 18, 2006]

§ 39.7 - Enforcement of Reliability Standards.

(a) The Electric Reliability Organization and each Regional Entity shall have an audit program that provides for rigorous audits of compliance with Reliability Standards by users, owners and operators of the Bulk-Power System.

(b) The Electric Reliability Organization and each Regional Entity shall have procedures to report promptly to the Commission any self-reported violation or investigation of a violation or an alleged violation of a Reliability Standard and its eventual disposition.

(1) Any person that submits an application to the Commission for certification as an Electric Reliability Organization shall include in such application a proposal for the prompt reporting to the Commission of any self-reported violation or investigation of a violation or an alleged violation of a Reliability Standard and its eventual disposition.

(2) Any agreement for the delegation of enforcement authority to a Regional Entity shall include a provision for the prompt reporting through the Electric Reliability Organization to the Commission of any self-reported violation or investigation of a violation or an alleged violation of a Reliability Standard and its eventual disposition.

(3) Each report of a violation or alleged violation by a user, owner or operator of the Bulk-Power System shall include the user's, owner's or operator's name, which Reliability Standard or Reliability Standards were violated or allegedly violated, when the violation or alleged violation occurred, and the name of a person knowledgeable about the violation or alleged violation to serve as a point of contact with the Commission.

(4) Each violation or alleged violation shall be treated as nonpublic until the matter is filed with the Commission as a notice of penalty or resolved by an admission that the user, owner or operator of the Bulk-Power System violated a Reliability Standard or by a settlement or other negotiated disposition. The disposition of each violation or alleged violation that relates to a Cybersecurity Incident or that would jeopardize the security of the Bulk-Power System if publicly disclosed shall be nonpublic unless the Commission directs otherwise.

(5) The Electric Reliability Organization, and each Regional Entity through the ERO, shall file such periodic summary reports as the Commission shall from time to time direct on violations of Reliability Standards and summary analyses of such violations.

(c) The Electric Reliability Organization, or a Regional Entity, may impose, subject to section 215(e) of the Federal Power Act, a penalty on a user, owner or operator of the Bulk-Power System for a violation of a Reliability Standard approved by the Commission if, after notice and opportunity for hearing:

(1) The Electric Reliability Organization or the Regional Entity finds that the user, owner or operator has violated a Reliability Standard approved by the Commission; and

(2) The Electric Reliability Organization files a notice of penalty and the record of its or a Regional Entity's proceeding with the Commission. Simultaneously with the filing of a notice of penalty with the Commission, the Electric Reliability Organization shall serve a copy of the notice of penalty on the entity that is the subject of the penalty.

(d) A notice of penalty by the Electric Reliability Organization shall consist of:

(1) The name of the entity on whom the penalty is imposed;

(2) Identification of each Reliability Standard violated;

(3) A statement setting forth findings of fact with respect to the act or practice resulting in the violation of each Reliability Standard;

(4) A statement describing any penalty imposed;

(5) The record of the proceeding;

(6) Other matters the Electric Reliability Organization or the Regional Entity, as appropriate, may find relevant.

(e) A penalty imposed under this section may take effect not earlier than the thirty-first (31st) day after the Electric Reliability Organization files with the Commission the notice of penalty and the record of the proceedings.

(1) Such penalty will be subject to review by the Commission, on its own motion or upon application by the user, owner or operator of the Bulk-Power System that is the subject of the penalty filed within thirty (30) days after the date such notice is filed with Commission. In the absence of the filing of an application for review or motion or other action by the Commission, the penalty shall be affirmed by operation of law upon the expiration of the thirty (30)-day period for filing of an application for review.

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(2) An applicant filing an application for review shall comply with the requirements for filings in proceedings before the Commission. An application shall contain a complete and detailed explanation of why the applicant believes that the Electric Reliability Organization or Regional Entity erred in determining that the applicant violated a Reliability Standard, or in determining the appropriate form or amount of the penalty. The applicant may support its explanation by providing information that is not included in the record submitted by the Electric Reliability Organization.

(3) Application to the Commission for review, or the initiation of review by the Commission on its own motion, shall not operate as a stay of such penalty unless the Commission otherwise orders upon its own motion or upon application by the user, owner or operator that is the subject of such penalty.

(4) Any answer, intervention or comment to an application for review of a penalty imposed under this part must be filed within twenty (20) days after the application is filed, unless otherwise ordered by the Commission.

(5) In any proceeding to review a penalty imposed under this part, the Commission, after public notice and opportunity for hearing (which hearing may consist solely of the record before the Electric Reliability Organization or Regional Entity and the opportunity for the presentation of supporting reasons to affirm, modify, or set aside the penalty), will by order affirm, set aside, or modify the penalty or may remand the determination of a violation or the form or amount of the penalty to the Electric Reliability Organization for further consideration. The Commission may establish a hearing before an administrative law judge or initiate such further procedures as it determines to be appropriate, before issuing such an order. In the case of a remand to the Electric Reliability Organization, the Electric Reliability Organization may remand the matter to a Regional Entity for further consideration and resubmittal through the Electric Reliability Organization to the Commission.

(6) The Commission will take action on an application for review of a penalty within sixty (60) days of the date the application is filed unless the Commission determines on a case-by-case basis that an alternative expedited procedure is appropriate.

(7) A proceeding for Commission review of a penalty for violation of a Reliability Standard will be public unless the Commission determines that a nonpublic proceeding is necessary and lawful, including a proceeding involving a Cybersecurity Incident. For a nonpublic proceeding, the user, owner or operator of the Bulk-Power System that is the subject of the penalty will be given timely notice and an opportunity for hearing and the public will not be notified and the public will not be allowed to participate.

(f) On its own motion or upon complaint, the Commission may order compliance with a Reliability Standard and may impose a penalty against a user, owner or operator of the Bulk-Power System, if the Commission finds, after public notice and opportunity for hearing, that the user, owner or operator of the Bulk-Power System has engaged or is about to engage in any acts or practices that constitute or will constitute a violation of a Reliability Standard.

(g) Any penalty imposed for the violation of a Reliability Standard shall bear a reasonable relation to the seriousness of the violation and shall take into consideration efforts of such user, owner or operator of the Bulk-Power System to remedy the violation in a timely manner.

(1) The penalty imposed may be a monetary or a non-monetary penalty and may include, but is not limited to, a limitation on an activity, function, operation, or other appropriate sanction, including being added to a reliability watch list composed of major violators that is established by the Electric Reliability Organization, a Regional Entity or the Commission.

(2) The Electric Reliability Organization shall submit for Commission approval penalty guidelines that set forth a range of penalties for the violation of Reliability Standards. A penalty imposed by the Electric Reliability Organization or a Regional Entity must be within be within the range set forth in the penalty guidelines.

[Order 672, 71 FR 8736, Feb. 17, 2006, as amended by Order 737, 75 FR 43404, July 26, 2010]

§ 39.8 - Delegation to a Regional Entity.

(a) The Electric Reliability Organization may enter into an agreement to delegate authority to a Regional Entity for the purpose of proposing Reliability Standards to the Electric Reliability Organization and enforcing Reliability Standards under § 39.7.

(b) After notice and opportunity for comment, the Commission may approve a delegation agreement. A delegation agreement shall not be effective until it is approved by the Commission.

(c) The Electric Reliability Organization shall file a delegation agreement. Such filing shall include a statement demonstrating that:

(1) The Regional Entity is governed by an independent board, a balanced stakeholder board, or a combination independent and balanced stakeholder board;

(2) The Regional Entity otherwise satisfies the provisions of section 215(c) of the Federal Power Act; and

(3) The agreement promotes effective and efficient administration of Bulk-Power System reliability.

(d) The Commission may modify such delegation.

(e) The Electric Reliability Organization shall and the Commission will 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.

(f) An entity seeking to enter into a delegation agreement that is unable to reach an agreement with the Electric Reliability Organization within 180 days after proposing a delegation agreement to the Electric Reliability Organization may apply to the Commission to assign to it the Electric Reliability Organization's authority to enforce Reliability Standards within its region. The entity must demonstrate in its application that it meets the requirements of paragraph (c) of this section and that continued negotiations with the Electric Reliability Organization would not likely result in an appropriate delegation agreement within a reasonable period of time. After notice and opportunity for hearing, the Commission may designate the entity as a Regional Entity and assign enforcement authority to it.

(g) An application pursuant to paragraph (f) of this section must state:

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(1) Whether the Commission's Dispute Resolution Service, or other alternative dispute resolution procedures were used, or why these procedures were not used; and

(2) Whether the Regional Entity believes that alternative dispute resolution under the Commission's supervision could successfully resolve the disputes regarding the terms of the delegation agreement.

§ 39.9 - Enforcement of Commission Rules and Orders.

(a) The Commission may take such action as is necessary and 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, including, but not limited to:

(1) After notice and opportunity for hearing, imposition of civil penalties under the Federal Power Act.

(2) After notice and opportunity for hearing, suspension or decertification of the Commission's certification to be the Electric Reliability Organization.

(3) After notice and opportunity for hearing, suspension or rescission of the Commission's approval of an agreement to delegate certain Electric Reliability Organization authorities to a Regional Entity.

(b) The Commission may periodically audit the Electric Reliability Organization's performance under this part.

§ 39.10 - Changes to an Electric Reliability Organization Rule or Regional Entity Rule.

(a) The Electric Reliability Organization shall file with the Commission for approval any proposed Electric Reliability Organization Rule or Rule change. A Regional Entity shall submit a Regional Entity Rule or Rule change to the Electric Reliability Organization and, if approved by the Electric Reliability Organization, the Electric Reliability Organization shall file the proposed Regional Entity Rule or Rule change with the Commission for approval. Any filing by the Electric Reliability Organization shall be accompanied by an explanation of the basis and purpose for the Rule or Rule change, together with a description of the proceedings conducted by the Electric Reliability Organization or Regional Entity to develop the proposal.

(b) The Commission, upon its own motion or upon complaint, may propose a change to an Electric Reliability Organization Rule or Regional Entity Rule.

(c) A proposed Electric Reliability Organization Rule or Rule change or Regional Entity Rule or Rule change shall take effect upon a finding by the Commission, after notice and opportunity for public comment, that the change is just, reasonable, not unduly discriminatory or preferential, is in the public interest, and satisfies the requirements of § 39.3.

§ 39.11 - Reliability reports.

(a) The Electric Reliability Organization shall conduct assessments as determined by the Commission of the reliability of the Bulk-Power System in North America and provide a report to the Commission and provide subsequent reports of the same to the Commission.

(b) The Electric Reliability Organization shall conduct assessments of the adequacy of the Bulk-Power System in North America and report its findings to the Commission, the Secretary of Energy, each Regional Entity, and each Regional Advisory Body annually or more frequently if so ordered by the Commission.

§ 39.12 - Review of state action.

(a) 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 Reliability Standard, except that the State of New York may establish rules that result in greater reliability within that state, as long as such action does not result in lesser reliability outside the state than that provided by the Reliability Standards.

(b) Where a state takes action to ensure the safety, adequacy, or reliability of electric service, the Electric Reliability Organization, a Regional Entity or other affected person may apply to the Commission for a determination of consistency of the state action with a Reliability Standard.

(1) The application shall:

(i) Identify the state action;

(ii) Identify the Reliability Standard with which the state action is alleged to be inconsistent;

(iii) State the basis for the allegation that the state action is inconsistent with the Reliability Standard; and

(iv) Be served on the relevant state agency and the Electric Reliability Organization, concurrent with its filing with the Commission.

(2) Within ninety (90) days of the application of the Electric Reliability Organization, the Regional Entity, or other affected person, and after notice and opportunity for public comment, the Commission will issue a final order determining whether the state action is inconsistent with a Reliability Standard, taking into consideration any recommendation of the Electric Reliability Organization and the state.

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(c) The Commission, after consultation with the Electric Reliability Organization and the state taking action, may stay the effectiveness of the state action, pending the Commission's issuance of a final order.

§ 39.13 - Regional Advisory Bodies.

(a) The Commission will 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.

(b) A petition to establish a Regional Advisory Body shall include a statement that the Regional Advisory Body is 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.

(c) A Regional Advisory Body established by the Commission may provide advice to the Electric Reliability Organization or a Regional Entity or the Commission regarding:

(1) The governance of an existing or proposed Regional Entity within the same region;

(2) Whether a Reliability Standard proposed to apply within the region is just, reasonable, not unduly discriminatory or preferential, and in the public interest;

(3) Whether fees for all activities under this part proposed to be assessed within the region are just, reasonable, not unduly discriminatory or preferential, and in the public interest; and

(4) Any other responsibilities requested by the Commission.

(d) The Commission may give deference to the advice of a Regional Advisory Body established by the Commission that is organized on an Interconnection-wide basis.

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