



**National Rural Electric
Cooperative Association**

A Touchstone Energy® Cooperative 

Testimony of Mr. Duane D. Highley
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to the Committee on Energy and Natural Resources
U.S. Senate
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Introduction

Chairman Murkowski, Ranking Member Cantwell, and all members of the Committee, thank you for inviting me to testify today on the committee's proposed energy accountability and reform legislation package.

I serve as President and CEO of Arkansas Electric Cooperative, a not-for-profit power supply system serving 17 distribution systems, who in turn serve about 1 million Arkansans. I report to a democratically-elected board representing the customers I serve. Arkansas Electric Cooperative Corporation (AECC) was created in 1949 and provides power for more than 500,000 farms, homes and businesses served by our 17 distribution electric cooperative owners. AECC relies on a diverse generation mix, including hydropower, natural gas, coal, and renewables, to serve its members.

The electric cooperatives of Arkansas are members of the National Rural Electric Cooperative Association (NRECA), a service organization for over 900 not-for-profit electric utilities serving over 42 million people in 47 states. NRECA's members also include 67 generation and transmission ("G&T") cooperatives, which generate and transmit power to 668 of the 838 distribution cooperatives across the nation. Electric cooperative service territory makes up 75 percent of the nation's land mass. Kilowatt-hour sales by rural electric cooperatives account for approximately 11 percent of all electric energy sold in the United States. NRECA members generate approximately 50 percent of the electric energy they sell and purchase the remaining 50 percent.

As member owned not-for-profit utilities, distribution cooperatives and G&Ts reflect the values of our membership, and are uniquely focused on providing reliable energy at the lowest reasonable cost. We have to answer to our owners and justify every expense to them. There is never any debate as to whether a proposed project will benefit our shareholders or our customers because they are one and the same.

Today I am offering testimony on behalf of the Arkansas Cooperatives and NRECA, and intend to focus on two bills before the Committee today:

- 1) S. 1068 – Cybersecurity Emergency Authority; and
- 2) S. 1221 – Bulk-Power System Reliability Impact Statement Act.

S. 1068 Cybersecurity Emergency Authority

Let's start with the emergency authority language as considered in S. 1068. Electric cooperatives take protection and security of their consumer-members' assets very seriously. One of the big challenges is ensuring appropriate information sharing with government and among industry so that those who operate the systems can take action. NRECA agrees that where the federal government has information regarding an imminent cyber security threat against the bulk-power system requiring immediate action, that as described in Section (b)(1) the Secretary of Energy should have the authority to order action(s) to avert or mitigate the threat. Ensuring that owners and operators of impacted bulk-power systems are consulted, as time permits, along with the Electricity Sub-sector Coordinating Council (ESCC) where I serve as a co-chair, is also appropriate and appreciated.

The ESCC it was formed to serve as the principal policy-level liaison between the leadership of industry and government. After recent reforms, the ESCC is now composed of 30 utility CEO's and trade association leaders, representing all segments of the electricity industry, and engages with government, including, senior Administration officials from the White House, Department of Energy (DOE), Department of Homeland Security (DHS), the Federal Energy Regulatory Agency (FERC), and the Federal Bureau of Investigation (FBI) and others as needed. The ESCC works with government to coordinate policy-level efforts to prevent, prepare for, and respond to, national-level incidents affecting critical infrastructure. These efforts include several areas like: planning and exercising coordinated responses; ensuring that information about threats is communicated quickly among government and industry stakeholders; and deploying government technologies on utility systems that improve situational awareness of threats. It also serves an advisory role with the Electric Sector Information Sharing and Analysis Center (ES-ISAC)

We believe the cost-recovery provision under proposed Federal Power Act (FPA) Sec. 224(b)(4) is unnecessary and duplicative of current provisions of the FPA. As it exists today, FERC uses FPA Section 205 and 206 to determine just and reasonable and not unduly discriminatory rates for jurisdictional costs. There is no need to amend the FPA to provide a new mechanism for cost recovery related to a cyber-emergency as defined in the bill as FPA Sections 205 and 206 clearly provide existing mechanisms to do so.

NRECA wants to be clear – we do not oppose those with cost-based rates having the ability to recover costs for actions described in the bill. However, we do not support those entities with market-based rate authority for power sales having the ability to recover costs over and above the market-based rate they are free to charge. Holders of market-based rate authority are able to charge much higher prices for power supply during times of scarce resources (i.e., during peak weather conditions) whereas cost-based entities are not permitted to do so. Those entities that made a business decision to seek market-based rate authority from FERC must rely on market forces for cost recovery.

S. 1221 – Bulk-Power System Reliability Impact Statement Act

Next I'd like to discuss S. 1221, which is essentially a call for Federal agencies to take a "look before they leap" by ensuring that experts with a comprehensive understanding of the potential impact of a proposed major rule have a real role in explaining what a rule would do to the reliability of our electric system. However, the legislation as it currently reads requires the use of Reliability Coordinators to create the reliability impact statements. It would be more appropriate for the role to sit within the North American Electric Reliability Corporation (NERC) itself.

Section 215 of the Federal Power Act authorizes FERC to oversee the reliable operation of the Nation's bulk power system. In 2007, FERC approved mandatory national reliability standards for administration by NERC. The national standards apply to entities that own,

operate, or use the bulk power system. As owners and operators of the bulk power system, utilities are subject to mandatory compliance with many of these reliability standards.

NERC's role in working with industry and creating mandatory standards for the bulk power system means that NERC is in a unique position to be able to assess major regulations to ensure they do not impair or impede bulk power system reliability.

While nobody can guarantee future reliability, we can do better in understanding the risks and issues facing the bulk power system in the future. For example, the sufficiency of our generating resources has been clouded by uncertainties arising from changing environmental regulation. Despite FERC & NERC's unique and well-established roles in overseeing bulk power system reliability and recent FERC technical conferences, there has been a troublesome lack of coordination between EPA and these entities regarding major rules. There needs to be careful analysis and coordination with those familiar with the largest machine in our country – the United States bulk power system – to ensure that reliability is promoted through collaboration.

Department of Energy Emergency Orders

Rural electric cooperatives face a unique situation. Many co-ops that generate electricity are not subject to the jurisdiction of the Federal Energy Regulatory Commission, and, as a result, these co-ops are not required to adhere to a "must run" emergency order. However when DOE issues such an order, co-ops comply on a voluntary basis to address the emergency. Unfortunately, a no-win situation emerges where, due to compliance with the order, electric utilities may violate environmental laws and regulations resulting in agency penalties and potentially third party law suits.

Additional legislation S. 1222, the Continuity of Electric Capacity Resources Act, contemplates the establishment of protection against this very liability. If we could work with you to ensure that both voluntary and mandatory compliance with an emergency order is protected, all electric utilities, including co-ops, would benefit.

Conclusion

Thank you for holding this hearing today on these very important bills. In closing, I thank you again for inviting me to testify today and would be happy to answer any questions you may have.