National Rural Electric Cooperative Association
A Touchstone Energy® Cooperative

May 14, 2013

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Henry Waxman
Ranking Member
Committee on Energy and Commerce
2322A Rayburn House Office Building
Washington, DC 20515

Dear Chairman Upton and Ranking Member Waxman:

On behalf of America's consumer-owned electric cooperatives, I am writing to express our views regarding H.R. 271, the Resolving Environmental and Grid Reliability Conflicts Act of 2013. While NRECA strongly supports the notion that legislation is needed to protect utilities from overzealous litigation when running generating units under Department of Energy emergency orders, we are concerned that the legislation also provides a back-door way to undermine the very protections that are intended to be provided by the bill.

NRECA is the national service organization representing over 900 not-for-profit, member-owned, rural electric cooperative systems, which serve 42 million customers in 47 states. NRECA estimates that cooperatives own and maintain 2.5 million miles or 42 percent of the nation's electric distribution lines covering three-quarters of the nation's landmass. Cooperatives also own approximately five percent of the electric generating assets in the country. All told, electric cooperatives serve approximately 18 million businesses, homes, farms, schools and other establishments in 2,500 of the nation's 3,141 counties.

Under current law, if DOE determines that an emergency exists involving the reliability of the electric grid, DOE has the authority to issue an order requiring the use of some generation, delivery, interchange, or transmission facilities to address the emergency. However, it is also possible that the generators being used by the electric utilities to comply with a DOE emergency order would produce emissions in excess of permitted levels, resulting in a no-win situation for the utility: either ignore the emergency "must run" order and let the lights go out or keep the lights on and face substantial liability for exceeding pollution limits for the facility. This no-win scenario is the type of situation that H.R. 271 seeks to avoid.

Unfortunately, the bill also adds new legal standards to existing law that could permit a court to vacate a DOE emergency order, thereby negating the protection. For instance, the language invites litigants and courts to second guess the DOE Secretary's judgment that the emergency order is consistent with Federal, State, or local environmental laws and the Secretary's judgment that the order minimizes any adverse environmental impacts. If a court were to disagree with the Secretary and vacate the emergency order, it could not only undermine reliability, but also subject electric utilities to EPA fines and private law suits for their good faith compliance with the emergency order.

H.R. 271 would also limit emergency orders to just 90 days. Before DOE could renew or reissue the order, H.R. 271 would require DOE to consult with the primary environmental agency involved and to accept conditions on the order proposed by that agency, unless DOE finds that those conditions would prevent the order from addressing the emergency. This requirement places a heavy burden on DOE and again invites litigants and courts to challenge DOE action, putting at risk both reliability and those electric utilities that complied with the emergency order in good faith.

The important protections H.R. 271 offers electric utilities for good faith compliance with DOE emergency orders should not be undermined by new legal standards that invite litigation and uncertainty during national emergencies. Due to these significant concerns, NRECA is unable to support H.R. 271 without amendments to solidify the protection of electric utilities and eliminate the uncertainty in this language.

Sincerely,

Kirk Johnson
Senior Vice President, Government Relations