



Edison Electric  
Institute

Thomas R. Kuhn  
*President*

January 17, 2013

The Honorable Pete Olson  
312 Cannon House Office Building  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Representative Olson:

On behalf of the Edison Electric Institute (EEI), the association of U.S. shareholder-owned electric companies, I am writing to express support for H.R. 271, the "Resolving Environmental and Grid Reliability Conflicts Act of 2013." We applaud you for re-introducing this bipartisan, narrowly focused legislation again in the 113<sup>th</sup> Congress. H.R. 271 would ensure that electricity generators do not face the dilemma of being forced to choose between conflicting legal obligations when acting to comply with an emergency reliability order from the U.S. Department of Energy (DOE). The bill is identical to consensus legislation unanimously approved by the Energy and Commerce Committee and the House of Representatives in the 112<sup>th</sup> Congress.

In extraordinary circumstances, Section 202(c) of the Federal Power Act (FPA) allows DOE to order emergency operation of an electricity generating facility to protect grid reliability. At the same time, environmental laws and regulations may prohibit the same generating facility from full compliance with the order. In such a situation, the owner must choose between violating the DOE emergency order and violating environmental limitations, thus exposing the company to civil and even criminal liability. H.R. 271 would amend the FPA to clarify that electricity generators would not be liable for violations of environmental laws or regulations, or subject to civil or criminal liability, or citizen suits, as a result of complying with Section 202(c) emergency orders. Importantly, the legislation also provides a process for DOE, working with other agencies, to administer emergency orders in a manner that minimizes adverse environmental impacts, without jeopardizing reliability.

It is important that Congress take action to remedy this inconsistency in energy and environmental law and help safeguard the reliability of our nation's electricity grid. We appreciate your continuing leadership on this issue and look forward to working with you again on this legislation as it moves forward in the legislative process.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tom Kuhn", written in a cursive style.

Thomas R. Kuhn

CHAMBER OF COMMERCE  
OF THE  
UNITED STATES OF AMERICA

R. BRUCE JOSTEN  
EXECUTIVE VICE PRESIDENT  
GOVERNMENT AFFAIRS

1615 H STREET, N.W.  
WASHINGTON, D.C. 20062-2000  
202/463-5310

May 13, 2013

The Honorable Fred Upton  
Chairman  
Committee on Energy and Commerce  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Henry Waxman  
Ranking Member  
Committee on Energy and Commerce  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Upton and Ranking Member Waxman:

The U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million members and organizations of every size, sector, and region, as well as state and local chambers and industry associations, and dedicated to promoting, protecting, and defending America's free enterprise system, strongly supports H.R. 271, the "Resolving Environmental and Grid Reliability Conflicts Act of 2013," which would serve as an important tool to ensure that operators of electric generation facilities are not subject to an unreasonable choice of determining what law or regulation they should violate when undertaking actions to maintain the reliability of electricity in an emergency situation pursuant to the direct order of a Federal agency.

Federal Power Act (FPA) Section 202(c) provides the Department of Energy (DOE) with the authority to order the operation of electric generation facilities to maintain electric reliability. However, this law fails to provide any protection from liability to a generation operator in the event that such federally-directed operations lead to the violation of Federal, State, or local environmental laws, such as the Clean Air Act's National Ambient Air Quality Standards (NAAQS). In addition, costly civil lawsuits may also be utilized to hold a generation owner financially liable for environmental claims resulting from the generator's abidance with a DOE directive to operate.

Section 202(c) has twice been used to direct the operation of electric generation facilities upon a determination by the DOE of an existing emergency that would compromise the reliability of the electric system. In 2001, the Potrero Power Plant in the San Francisco area was directed to operate in excess of its 877 hour operating limit in order to maintain reliability in the wake of the California energy crisis. In 2005, the Potomac River Generating Station outside Washington, D.C. was directed to operate by the DOE to maintain regional reliability; such operation resulted in a single occurrence where the plant exceeded its 3-hour NAAQS limit. In each instance, the operator of the plant was subject to financial liability as a result of its compliance with DOE's Section 202(c) directive.

While FPA Section 202(c) has historically been used quite sparingly, the injustice resulting from this law's conflict with potential environmental law liability is likely to be more prevalent in the wake of the widespread retirement of electric generation facilities resulting from



## Industrial Energy Consumers of America

*The Voice of the Industrial Energy Consumers*

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Telephone 202-223-1420 • Fax 202-530-0659 • [www.ieca-us.org](http://www.ieca-us.org)

January 17, 2013

The Honorable Pete Olson  
U.S. House of Representatives  
312 Cannon House Office Building  
Washington, DC 20515

**Re: H.R. 271, the Resolving Environmental and Grid Reliability Conflicts Act of 2013**

Dear Representative Olson:

On behalf of the Industrial Energy Consumers of America (IECA), we support passage of H.R. 271, the Resolving Environmental and Grid Reliability Conflicts Act of 2013. As large industrial consumers of electricity, the cost and reliability of electricity is very important to our competitiveness. When government agencies require electric generators to run their facility, we do not want our providers to second guess the decision because of a potential lawsuit. We want them to operate and maintain the reliability of the grid.

Reliability of electricity supply is very important. If the power goes out in manufacturing facilities without warning, it becomes a safety issue for facility employees because many facilities have high pressure vessels and or operate furnaces at thousands of degrees Fahrenheit. Product that is in the equipment can be damaged or ruined. Equipment can be either partially or permanently damaged resulting in lost production capacity. For large facilities, costs can quickly run into the tens of millions of dollars.

Thank you for your leadership on this important legislation.

Sincerely,

Paul N. Cicio  
President

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*The Industrial Energy Consumers of America is a nonpartisan association of leading manufacturing companies with \$1.1 trillion in annual sales, over 1,000 facilities nationwide, and with more than 1.4 million employees worldwide. It is an organization created to promote the interests of manufacturing companies through advocacy and collaboration for which the availability, use and cost of energy, power or feedstock play a significant role in their ability to compete in domestic and world markets. IECA membership represents a diverse set of industries including: chemical, plastics, steel, aluminum, paper, food processing, fertilizer, insulation, glass, industrial gases, pharmaceutical, brewing, cement, agricultural equipment, and auto.*



Electric  
Reliability  
Coordinating  
Council

2000 K Street, NW – Suite 500  
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May 13, 2013

The Honorable Pete Olson  
312 Cannon House Office Building  
Washington, DC 20515

Dear Congressman Olson:

It is our understanding that later this week the House Energy and Commerce Committee intends to mark up your bill, H.R.271 - the Resolving Environmental and Grid Reliability Conflicts Act of 2013. The bill addresses a problem in the way federal agencies deal with regulations that can have profound impacts on electric reliability. Our organization, the Electric Reliability Coordinating Council, has long supported your bill as a piece of the puzzle in addressing reliability concerns and is happy to reiterate our support now.

ERCC is a group of power-generating companies providing reliable and affordable service to millions of consumers across the country. The group is committed to reasonable regulation, striking an important balance between energy and environmental concerns.

The bill addresses an issue the existence of which would surprise most: on several occasions, energy regulators have insisted on emergency operation of a power facility to ensure reliability for American households and businesses. At the same time, environmental regulators have insisted that compliance with such emergency orders would trigger environmental enforcement actions, essentially penalizing the power provider for service ordered by a sister agency. Those interested in sound energy and environmental policy as well as in the rule of law should have no problem supporting the bill.

The relationship between environmental regulation and potential threats to electric reliability is a complex and important one. In order to ensure that regulations do not cause significant threats to reliability, regulators at the US Environmental Protection Agency and elsewhere should take into account reliability concerns at the front end and refrain from standards that can place American health, safety, and security at risk. Your bill is an important step in the right direction.

Sincerely,

Scott H Segal  
Director

cc: Members, House Energy and Commerce Committee



**American  
Public Power  
Association**

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1875 Connecticut Avenue, NW  
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January 23, 2013

The Honorable Pete Olson  
312 Cannon House Office Building  
Washington, D.C. 20515

Dear Representative Olson:

On behalf of the American Public Power Association (APPA), I am writing to express our support for H.R. 271, the Resolving Environmental and Grid Reliability Conflicts Act of 2013. APPA is the national service organization representing the interests of over 2,000 community-owned, not-for-profit electric utilities. These utilities include state public power agencies, municipal electric utilities, and special utility districts that provide electricity and other services to over 46 million Americans.

The U.S. electric utility sector is facing implementation of several major, recently promulgated and proposed Environmental Protection Agency (EPA) regulations between 2012 and 2020. APPA believes these regulations can pose possible adverse reliability implications for regional electric systems if these environmental regulations go into effect within the time frames now proposed or already mandated.

Because of this regulatory environment, APPA supports legislation to provide the needed flexibility in the Federal Power Act to ensure that federal regulations do not threaten electric reliability. We, therefore, support H.R. 271, which would ensure that EPA penalties or other legal liability would not apply in certain circumstances, such as when electric generators are ordered, or voluntarily agree to comply with an order, to operate their generation units to protect local and regional electric system reliability.

Also, APPA applauds the language in the bill which would clarify that under Section 202(c) of the Federal Power Act, a utility that is ordered by the Department of Energy to generate power to maintain electric reliability cannot be fined for violating any environmental laws or regulations while running under that emergency order. This immunity would also prevent third parties from bringing citizen suits for environmental law violations (local, state, or federal) that might occur from running an electric generating unit pursuant to such an emergency order.

Thank you for introducing legislation highlighting this important issue affecting electric utilities. While there is still more to be done to address the electric reliability concerns due to the current and pending EPA regulations, this bill is an important first step. I hope you will feel free to contact me or the APPA government relations staff with any questions.

Sincerely,

A handwritten signature in black ink that reads 'Mark Crisson'.

Mark Crisson  
President & CEO



## The Large Public Power Council

PO Box 34321, Washington DC, 20043 | P (202) 430-0101 | F (843) 278-8351 | [lppc@lppc.org](mailto:lppc@lppc.org)

January 17, 2013

The Honorable Pete Olson  
U.S. House of Representatives  
312 Cannon House Office Building  
Washington, DC 20515

Dear Congressman Olson:

On behalf of the Large Public Power Council (LPPC), I am writing to express our support for H.R. 271, the Resolving Environmental and Grid Reliability Conflicts Act of 2013. LPPC represents 26 of the largest locally owned and operated not-for-profit electric systems in the nation. Members are located in 11 states and Puerto Rico, and supply electricity to some of the largest cities in the country -- including Los Angeles, Seattle, Omaha, Phoenix, Sacramento, Jacksonville, San Antonio, Orlando and Austin.

Collectively, our members own and operate approximately 35,000 circuit miles of transmission lines and over 86,000 megawatts of generation, reflecting a portfolio of renewable energy, fossil fuel, nuclear, hydropower and other resources.

LPPC supports H.R. 271 as an important tool to help maintain the electric grid reliability. In the narrow set of circumstances under which an electricity generation unit must run under an emergency order of the Federal Power Act, this bill would protect the unit from being in violation of environmental laws and would ensure that electricity generators are not forced to choose between conflicting legal obligations when acting to comply with an emergency reliability order from the U.S. Department of Energy. We anticipate that Emergency Orders may become more frequent as utilities take actions to comply with the new EPA regulations.

The members of the LPPC remain concerned that electric reliability could be jeopardized unless there is an effective mechanism in place to extend the utility MACT compliance deadline for those electric generating units that pose local or regional reliability problems.

Thank you for introducing this narrowly focused legislation that highlights an important issue affecting electric utilities.

If you have any questions or need additional assistance in this matter, please feel free to contact me or LPPC's Executive Director, Missy Mandell at [lppc@lppc.org](mailto:lppc@lppc.org) or call 202-430-0101.

Sincerely,

Lonnie N. Carter  
LPPC Chairman

Austin Energy (TX) • Chelan County PUD (WA) • Clark Public Utilities (WA) • Colorado Springs Utilities (CO) • CPS Energy (TX)  
ElectriCities of North Carolina, Inc. (NC) • Grand River Dam Authority (OK) • Grant County PUD (WA) • IID (CA) • JEA (FL)  
Long Island Power Authority (NY) • Los Angeles Department of Water and Power (CA) • Lower Colorado River Authority (TX) • MEAG Power (GA)  
Nebraska Public Power District (NE) • New York Power Authority (NY) • Omaha Public Power District (NE) • OUC (FL) • Platte River Power Authority (CO)  
Puerto Rico Electric Power Authority (PR) • Sacramento Municipal Utility District (CA) • Salt River Project (AZ) • Santee Cooper (SC)  
Seattle City Light (WA) • Snohomish County PUD (WA) • Tacoma Public Utilities (WA)



Electric Power Supply Association  
*Advocating the power of competition*

John E. Shelk  
President and CEO

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January 17, 2013

Honorable Pete Olson  
U.S. House of Representatives  
Washington, D.C. 20515

Re: EPSA Support for H.R. 271, the "Resolving Environmental and Grid Reliability Conflicts Act of 2013"

Dear Representative Olson:

The Electric Power Supply Association (EPSA) is the national trade association for competitive wholesale electricity suppliers, including generators and marketers. EPSA members are major suppliers of electricity nationwide including in the Electric Reliability Council of Texas and elsewhere in your state.

EPSA writes to commend you and your bipartisan original co-sponsors for introducing H.R. 271, the "Resolving Environmental and Grid Reliability Conflicts Act of 2013." EPSA supports this legislation to resolve the conflict of laws that presently exists when the Secretary of Energy issues an emergency order under Section 202(c) of the Federal Power Act. EPSA agrees that in the carefully defined circumstances addressed by the legislation a party subject to an emergency order to operate a facility should not be liable for violating federal, state or local environmental statutes, nor be subject to citizen suits, for complying with the emergency order.

EPSA agrees that it is important for Congress to address this conflict of laws dilemma. We again commend you and your co-sponsors for coming together in this bipartisan fashion to offer a tailored solution to an identified problem that has occurred in the past and need not occur in the future if your bill becomes law. We look forward to working with you on this bill as the legislative process moves forward.

Sincerely,

A handwritten signature in black ink that reads "John E. Shelk". The signature is written in a cursive, flowing style.

John E. Shelk



N A R U C  
National Association of Regulatory Utility Commissioners

May 8, 2013

The Honorable Pete Olsen  
United States House of Representatives  
Washington, D.C. 20515

**RE: H.R. 271, the "Resolving Environmental and Grid Reliability Conflicts Act of 2013"**

Dear Representative Olsen:

On behalf of the National Association of Regulatory Utility Commissioners (NARUC), I am writing to express our support for H.R. 271, the "Resolving Environmental and Grid Reliability Conflicts Act of 2013." Our membership includes the public utility commissions which regulate the retail rates and services of electric, gas, water, and telephone utilities in all U.S. States and territories. We are obligated under the laws of our respective States to assure the establishment and maintenance of such utility services as may be required by the public convenience and necessity and to assure that such services are provided under rates and subject to terms and conditions of service that are just, reasonable, and non-discriminatory.

Your legislation is important to supporting the reliability of our nation's electricity system. The unexpected loss of electric power can result in significant harm to human life and welfare, as well as the environment. Prior experience shows that in rare and limited circumstances emergency actions are needed to ensure the reliable delivery of electricity. Currently, under Section 202 (c) of the Federal Power Act, the Department of Energy (DOE) has the authority to order the emergency operation of electric generating facilities in order to protect the reliability of the electric grid. However, actions to comply with an emergency order from DOE under Section 202 (c) could at times conflict with environmental laws and regulations. Unfortunately, as has previously occurred when such conflicts arise, compliance with an emergency order from DOE under Section 202 (c) may result in civil lawsuits and/or criminal penalties to the company/generator which has been directed by DOE to act.

NARUC believes this situation to be detrimental to overall grid, and therefore distribution system, reliability. We therefore urge Congress to enact narrow legislation, such as H.R. 271, that would resolve conflicts between Section 202 (c) and environmental laws and regulations, and would ensure that a company/generator would not have to choose which law with which to comply during a DOE-declared emergency. NARUC thanks you and the co-sponsors of H.R. 271 for introducing this common sense legislation and supports its passage.

Sincerely,

Charles D. Gray  
Executive Director



February 4, 2013

The Honorable Pete Olson  
312 Cannon House Office Building  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Representative Olson:

The Midwest Power Coalition<sup>1</sup> writes to express our strong support for H.R. 271, the “Resolving Environmental and Grid Reliability Conflicts Act of 2013”, a bill to protect electric utilities complying with a Department of Energy emergency order to provide electricity for the purpose of ensuring reliability. Under such an order, electric utilities should be protected from noncompliance with environmental laws or regulations resulting from compliance with the DOE order. We believe H.R. 271 would provide much needed clarity to conflicting legal obligations if a generator receives an emergency reliability order from the Department of Energy.

Coal-dependent utilities have been making significant investments to transition their fleets towards a cleaner energy future for the last several decades. Because of their efforts, nationwide sulfur dioxide and nitrogen oxide levels have both been reduced by more than 60% since 1990. However, the short compliance timelines of several of the Environmental Protection Agency’s (EPA) new air, water, and solid waste regulations will be very challenging for some utilities and could threaten the reliability of parts of the nation’s electric grid. H.R. 271 would ensure that generators will not face the legal dilemma of having to choose between keeping the lights on or complying with environmental laws should a reliability emergency occur.

Thank you for introducing H.R. 271 and for making the reliability of our nation’s electric grid a top priority. Please feel free to contact Kyle Davis at 202.828.1006 if the Midwest Power Coalition can be of any assistance to you in the future.

Sincerely,

The Midwest Power Coalition

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<sup>1</sup> The Midwest Power Coalition is comprised of fourteen privately-owned electricity providers serving Midwestern states, including Alliant Energy Corp.; Black Hills Corp.; Energy Future Holdings; Great Plains Energy, Inc.; Integrys Energy Group; Kansas City Power & Light; MDU Resources Group, Inc.; MidAmerican Energy Holdings Company; Minnesota Power; NiSource Inc.; Oklahoma Gas & Electric Corp.; Vectren Corp.; Westar; and Wisconsin Energy Corp.



January 28, 2013

Congressman Pete Olson  
312 Cannon House Office Building  
U.S. House of Representatives  
Washington, DC 20515-4322

Dear Congressman Olson:

WEST Associates<sup>1</sup> writes in support of H.R 271, the Resolving Environmental and Grid Reliability Conflicts Act of 2013, a bill to protect electric utilities complying with a Department of Energy emergency order to provide electricity for the purpose of ensuring reliability. Under such an order, electric utilities should be protected from noncompliance with environmental laws or regulations resulting from compliance with the DOE order. Your bill achieves this goal in a balanced and environmentally protective manner. Any DOE emergency order will minimize adverse environmental impacts to the maximum extent practicable and require generation only during the hours necessary to meet the emergency. This is a responsible bill that rightfully passed the House of Representatives during the last Congress.

We commend you, Congressman Olson, for your leadership. We also commend the Energy and Commerce Committee members who worked together during the last Congress to find a bipartisan consensus solution to this problem of choosing between compliance with DOE emergency orders and applicable environmental laws.

Crafting a balanced approach is important to all those affected by any emergency DOE order. We look forward to working with you in support of this bill.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Erik Bakken', is written over a light blue horizontal line.

Erik Bakken, President , WEST Associates Board

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<sup>1</sup> WEST Associates is comprised of nine private and publicly-owned electricity providers serving customers in 11 western states including Arizona Electric Cooperative, Basin Electric Power Cooperative, Colorado Springs Utilities, N V Energy, PacifiCorp, Portland General Electric, Public Service of New Mexico, Salt River Project, and Tucson Electric Power Company.