



January 8, 2014

The Honorable Michael McCaul
Chairman
House Committee on Homeland Security
H2-176 Ford House Office Building
Washington, DC 20515

The Honorable Bennie G. Thompson
Ranking Member
House Committee on Homeland Security
H2-176 Ford House Office Building
Washington, DC 20515

Dear Chairman McCaul and Ranking Member Thompson:

We write to thank you and your colleagues for your outreach in drafting H.R. 3696, the “National Cybersecurity and Critical Infrastructure Protection Act of 2013” (the “NCCIP Act”).

Like you, we are very focused on protecting the nation’s critical energy infrastructure from the impacts of a cyber event. While thankfully the nation has yet to experience a cyber attack that has damaged infrastructure, we appreciate that the House Committee on Homeland Security has taken the time and effort to craft legislation that attempts to help address the preparedness for and response to such events should they occur in the future.

The undersigned associations represent the vast majority of electric and gas utilities. We are proud of the efforts our members have undertaken, collectively and individually, to improve the reliability and resiliency of their systems. In the gas sector, this encompasses a variety of public, private and, jointly developed public-private sector cybersecurity standards designed to protect pipeline infrastructure and ensure safe and reliable gas delivery. In the electric sector, this includes mandatory and enforceable cybersecurity standards already in place. Developed by the North American Electric Reliability Corporation for review and approval by the Federal Energy Regulatory Commission and applicable Canadian governmental authorities, these standards ensure that owners, users, and operators of the North American bulk electric system meet a baseline level of security.

Even considering those measures, the issue of liability after a cyber event creates serious concerns for us and our members. In particular, we are deeply concerned that no matter what

steps are taken, our members could face costly and unnecessary litigation in state or federal courts after a cyber event that would serve no purpose.

Therefore, we applaud Section II of the NCCIP Act, specifically the section seeking to clarify the scope of the Support Anti-Terrorism By Fostering Effective Technologies Act of 2002 (the “SAFETY Act”). The language of the SAFETY Act statute as well as its Final Rule have always made clear that the protections offered by the law applies to cyber events, and indeed that the SAFETY Act applies regardless of whether a “terrorist” group conducted such an attack. However, in practice there has been some hesitancy on the part of industry to utilize the SAFETY Act to protect against federal claims arising out of cyber attacks due to the requirement that the attack be deemed an “act of terrorism” by the Secretary of Homeland Security before liability protections become available.

The decision to include in H.R. 3696 a provision that explicitly allows the Secretary of Homeland Security to declare that a “qualifying cyber incident” triggers the liability protections of the SAFETY Act is an excellent one. Removing the need to link a cyber attack to an “act of terrorism” is a good step. While state liability actions remain a concern, the industry and vendors of cyber security technologies and services will be much more likely to use the SAFETY Act program, thereby fulfilling the law’s original intent of promoting the widespread deployment of products and services that can deter, defend against, respond to, mitigate, defeat, or otherwise mitigate a variety of malicious events, including those related to cyber security.

We share your goal of protecting the nation’s critical infrastructure from cyber threats and appreciate your efforts to address this important national security issue. We look forward to continuing to work together to ensure H.R. 3696 remains focused on these principles as it moves through the legislative process.

Respectfully,

American Gas Association
Edison Electric Institute

American Public Power Association
National Rural Electric Cooperative Association