



August 30, 2021

The Honorable Gary Peters  
Chairman, Committee on Homeland Security &  
Government Affairs  
United States Senate

The Honorable Rob Portman  
Ranking Member, Committee on Homeland  
Security & Government Affairs  
United States Senate

The Honorable Mark Warner  
Chairman, Select Committee on Intelligence  
United States Senate

The Honorable Marco Rubio  
Vice Chairman, Select Committee on  
Intelligence United States Senate

The Honorable Bennie Thompson  
Chairman, Committee on Homeland Security  
United States House of Representatives

The Honorable John Katko  
Ranking Member, Committee on Homeland  
Security  
United States House of Representatives

The Honorable Yvette Clarke  
Chairwoman, Subcommittee on Cybersecurity,  
Infrastructure Protection, and Innovation  
United States House of Representatives

The Honorable Andrew Garbarino  
Ranking Member, Subcommittee on  
Cybersecurity, Infrastructure Protection, and  
Innovation  
United States House of Representatives

Dear Chairs, Vice Chairmen, and Ranking Members:

We are writing to you regarding several introduced and draft bills that would mandate critical infrastructure sectors to report “cyber incidents” to the Department of Homeland Security’s Cybersecurity and Infrastructure Security Agency (DHS CISA). The American Public Power Association (APPA) and the National Rural Electric Cooperative Association (NRECA) do not support additional cyber incident reporting mandates for the electric sector. We believe that the incident reporting mandates currently under discussion would burden electric utilities – especially smaller public power and cooperative utilities – with increased administrative tasks that will not materially increase their, or the country’s, cybersecurity posture, but would likely divert limited resources away from securing and defending systems. That said, if Congress chooses to enact broad mandatory cyber incident reporting legislation for critical infrastructure, we agree with the principles laid out in the August 27 letter lead by the Information Technology Industry Council (ITI) and endorsed by numerous other critical infrastructure sector entities and associations.

APPA is the voice of not-for-profit, community-owned utilities that power 2,000 towns and cities nationwide. APPA represents public power before the federal government to protect the interests of the more than 49 million people that public power utilities serve, and the 96,000 people they employ. Public power utilities range in size, from very large to very small; approximately 67 percent of public power utilities serve communities of 10,000 people or less. They own, operate, or use generation and transmission infrastructure, as well as distribution infrastructure directly serving homes and businesses.

NRECA is the national trade association representing nearly 900 local electric cooperatives and other rural electric utilities. America's electric cooperatives are owned by the people that they serve and comprise a unique sector of the electric industry. From growing regions to remote farming communities, electric cooperatives power one in eight Americans and serve as engines of economic development for 42 million Americans across 56 percent of the nation's landscape. Electric cooperatives operate at cost and without a profit incentive. NRECA's member cooperatives include 62 generation and transmission (G&T) cooperatives and 831 distribution cooperatives. Both distribution and G&T cooperatives share an obligation to serve their members by providing safe, secure, reliable, and affordable electric service.

Combined, the members of our two groups serve close to 30 percent of the American population, which is equivalent to more than twice the population of Canada. Having provisioned such electric service for decades, our members know that a reliable energy grid is the lifeblood of the nation's economic and national security, as well as vital to the health and safety of all Americans. Electric utilities take very seriously their responsibility to maintain a secure and reliable electric grid. It is the only critical infrastructure sector that has mandatory and enforceable federal regulatory standards in place for cyber and physical security (collectively known as grid security). These standards include mandatory reporting of specific cyber incidents to the Department of Energy (DOE) via an Electric Emergency Incident and Disturbance Report (OE-417) and to the North American Electric Reliability Corporation (NERC) and the Federal Energy Regulatory Commission (FERC).

Outside of these mandatory reporting standards, all electric utilities, including public power utilities and rural electric cooperatives, participate in robust voluntary information sharing systems such as the Electric Subsector Coordinating Council (ESCC) and the Electricity Information Sharing and Analysis Center (E-ISAC), as well as the Multi-State Information and Sharing Analysis Center (MS-ISAC) for public power. Most recently, electric utilities have worked closely with the National Security Council, DOE, and DHS on the "100 Day Electric Sector Industrial Control Systems Cybersecurity Sprint" to encourage and support utilities' visibility and monitoring of their industrial control system and operational technology networks, as well as automated sharing into government. It is not clear how these bills would impact these existing voluntary channels or existing or planned machine-to-machine sharing.

Our biggest concerns with the various versions of incident reporting legislation currently under discussion can be grouped into two broad categories. The legislation: (1) treats all critical infrastructure entities as equally impactful to national security – there is no accounting for the wildly differing risk profiles of an electric utility serving millions of customers and a small distribution electric utility without an industrial control system [a type of operational technology] serving 250 customers; and (2) puts the onus on the critical infrastructure entity to share information with multiple government agencies, instead of encouraging and facilitating the sharing of information between and among agencies. While those are the two most significant concerns, we are also concerned that some proposals include heavy financial fines for failure to report within a very short time period. All of our members must be able to focus on the matter at hand in the event of a breach and should be given the flexibility to report once the crisis is understood and being managed. There has also been little discussion on how mandatory reporting requirements would impact long existing and robust voluntary information sharing systems nor on what the government's responsibility is in terms of actionable information sharing and support.

Given the concerns enumerated above, APPA and NRECA do not support including electric utilities in the mandatory cyber incident reporting legislation currently under discussion. However, if Congress chooses to move ahead with the legislation, we urge a careful and deliberative process that takes into account existing reporting mandates, appropriately tailors the mandate commensurate with the risk to national security, and adheres to the principles laid out in ITI's letter. We appreciate the openness that your staff has shown in discussions with our teams and we look forward to continuing our dialogue.

Sincerely,

A handwritten signature in black ink, appearing to read "Joy Ditto". The signature is stylized with a large initial "J" and "D".

Joy Ditto, President & CEO  
American Public Power Association

A handwritten signature in black ink, appearing to read "Jim Matheson". The signature is written in a cursive style with a long horizontal stroke at the end.

Jim Matheson, CEO  
National Rural Electric Cooperative Association