

**Testimony of the Electric Power Supply Association
Regarding S. 2556
Protecting Resources On The Electric grid with Cybersecurity Technology Act of 2019
Senate Energy and Natural Resources Committee
November 6, 2019**

The Electric Power Supply Association (EPSA)¹ and its members thank you for addressing the critical issue of ensuring the cybersecurity of the nation’s electric grid. Cybersecurity is a top priority for EPSA and its members, and we appreciate the opportunity to contribute to this, and any other, initiative that strengthens the electric grid against cyber threats. Cyber (and physical) security are essential to electricity generation operations and represent a clear and extensive commitment by EPSA members, competitive power suppliers, to the delivery of safe and reliable power to customers across the U.S. The electric power supply sector recognizes that its operations are the targets of increasingly sophisticated cyberattacks executed by a variety of attackers including nation-states and organized international criminals and is taking broad-based action to confront and prevent known and emerging threats.²

The Protecting Resources On The Electric grid with Cybersecurity Technology Act of 2019 (PROTECT Act of 2019) is an important step forward in ensuring the nation’s electric grid remains protected and reliable in light of an ever-increasing threat of cyber-attacks. The PROTECT Act of 2019 amends the Federal Power Act by adding new section 219A. The immediately preceding section, section 219, is focused on transmission infrastructure investment.

¹ Launched over 20 years ago, EPSA is the national trade association representing leading competitive power suppliers and marketers. EPSA members provide reliable and competitively priced electricity from environmentally responsible facilities using a diverse mix of fuels and technologies. Power supplied on a competitive basis collectively accounts for 40 percent of the U.S. installed generating capacity. EPSA seeks to bring the benefits of competition to all power customers. This testimony represents the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue.

² Cybersecurity in the Electric Power Supply Sector, Electric Power Supply Association, available at: <https://epsa.org/wp-content/uploads/2019/09/EPSA-Cybersecurity-in-the-Electric-Power-Supply-Sector.pdf>

The Committee should be careful not to, either implicitly or explicitly, limit the PROTECT Act of 2019 to transmission investments or investments made only by public utilities that own transmission.

Electric generators are not transmission assets. However, electric generation is an integral component of the electric grid and requires significant expenditures to ensure protection against cybersecurity attacks and vulnerabilities. To date, EPSA members have made significant investments to ensure the cyber and physical security of their generation assets. Further, competitive power suppliers that own and operate generation assets in competitive wholesale power markets are public utilities as defined in the Federal Power Act.³ Therefore, investments made by competitive power suppliers in generation assets should be eligible for the type of cost recovery contemplated by the PROTECT Act of 2019. The PROTECT Act of 2019 should compensate competitive power suppliers for their investments no differently than regulated electric utilities.

Whereas regulated electric utilities receive guaranteed cost recovery from captive customers, competitive power suppliers are compensated entirely from the wholesale electricity markets, a fundamentally different approach. In most cases, competitive power suppliers must recover their costs through market-based payments, not single-issue rate filings before the Federal Energy Regulatory Commission (FERC) or a state public utility commission. However, competitive power suppliers routinely file via section 205 single-issue rate filings to receive compensation for providing reactive power to the grid. The Committee should allow competitive power suppliers to submit single-issue filings before FERC to receive cost recovery for investments made in advanced cybersecurity technologies or advanced cybersecurity technology

³ 16 U.S.C. § 824(e)

information. Such a mechanism will place competitive power suppliers on equal footing with traditionally regulated electric utilities for purposes of being compensated for investments that enhance the cybersecurity of the electric grid.

As an alternative to single-issue rate filings, performance-based ratemaking allows public utilities to profit from investments that enhance the protection of the electric grid against cybersecurity attacks as opposed to earning cost recovery for capital spent on advanced cyber security technologies. In general, performance-based ratemaking will encourage more effective investments by public utilities at a more reasonable cost to consumers. Since competitive power suppliers are not guaranteed a rate of return like regulated electric utilities, there is no mechanism to “tack on” an incentive like the one contemplated in the PROTECT Act of 2019. Any performance-based mechanism must also allow competitive power suppliers to receive compensation from their investments.

Finally, we encourage the Committee to ensure the PROTECT Act of 2019 does not allow for public utilities to “double dip” by earning returns through both incentive-based rate treatment and single-issue filings. A regulated electric utility could potentially receive two forms cost recovery and return from the same investment; one from the performance-based mechanism contemplated in the PROTECT Act of 2019, and one through a single-issue rate filing.

EPSA appreciates the attention given by the Committee to this critical issue and we look forward to working with the Committee going forward. This concludes our written testimony.