

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

recently finalized Environmental Protection Agency (EPA) regulations applicable to that industry sector. The North American Electric Reliability Corporation estimates that over 70,000 Megawatts of fossil-fired generating capacity will retire over the next ten years; nearly ninety percent of this occurring within the next five years. Therefore, it is not unreasonable to conclude that this unprecedented transformation of the electric generation fleet could lead to numerous local and regional reliability challenges that will prompt the increased usage of the DOE's Section 202(c) authority. Given these impending circumstances, now is the time to ensure that a conflict in laws does not impair the ability to maintain electric reliability.

H.R. 271 would fairly protect generation operators from liability for bypassing Federal, State, or local environmental laws or regulations that conflict with a concurrent Federal directive to operate consistent with the public interest to maintain health and safety. This legislation continues to enjoy strong bipartisan support; it passed *via* voice vote in the House during the 112<sup>th</sup> Congress. The bill's focus enjoys the support of all five commissioners of the Federal Energy Regulatory Commission.

The Chamber strongly supports H.R. 271, and applauds the committee for its leadership on this important issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce Josten", written in a cursive style.

Bruce Josten

cc: The Members of the House Committee on Energy and Commerce