

Calendar No. 356116TH CONGRESS
1ST SESSION**S. 2556**

To amend the Federal Power Act to provide energy cybersecurity investment incentives, to establish a grant and technical assistance program for cybersecurity investments, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 26, 2019

Ms. MURKOWSKI (for herself, Mr. MANCHIN, Mr. RISCH, Ms. CANTWELL, and Mr. KING) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

DECEMBER 17, 2019

Reported by Ms. MURKOWSKI, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To amend the Federal Power Act to provide energy cybersecurity investment incentives, to establish a grant and technical assistance program for cybersecurity investments, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Protecting Resources
3 On The Electric grid with Cybersecurity Technology Act
4 of 2019” or the “PROTECT Act of 2019”.

5 **SEC. 2. INCENTIVES FOR ADVANCED CYBERSECURITY**
6 **TECHNOLOGY INVESTMENT.**

7 Part II of the Federal Power Act is amended by in-
8 serting after section 219 (16 U.S.C. 824s) the following:

9 **“SEC. 219A. INCENTIVES FOR CYBERSECURITY INVEST-**
10 **MENTS.**

11 “(a) **DEFINITIONS.**—In this section:

12 “(1) **ADVANCED CYBERSECURITY TECH-**
13 **NOLOGY.**—The term ‘advanced cybersecurity tech-
14 nology’ means any technology, operational capability,
15 or service, including computer hardware, software,
16 or a related asset, that enhances the security posture
17 of public utilities through improvements in the abil-
18 ity to protect against, detect, respond to, or recover
19 from a cybersecurity threat (as defined in section
20 102 of the Cybersecurity Act of 2015 (6 U.S.C.
21 1501)).

22 “(2) **ADVANCED CYBERSECURITY TECHNOLOGY**
23 **INFORMATION.**—The term ‘advanced cybersecurity
24 technology information’ means information relating
25 to advanced cybersecurity technology or proposed
26 advanced cybersecurity technology that is generated

1 by or provided to the Commission or another Fed-
 2 eral agency.

3 “(b) STUDY.—Not later than 180 days after the date
 4 of enactment of this section, the Commission, in consulta-
 5 tion with the Secretary of Energy, the North American
 6 Electric Reliability Corporation, the Electricity Subsector
 7 Coordinating Council, and the National Association of
 8 Regulatory Utility Commissioners, shall conduct a study
 9 to identify incentive-based, including performance-based,
 10 rate treatments for the transmission of electric energy
 11 subject to the jurisdiction of the Commission that could
 12 be used to encourage—

13 “(1) investment by public utilities in advanced
 14 cybersecurity technology; and

15 “(2) participation by public utilities in cyberse-
 16 curity threat information sharing programs.

17 “(c) INCENTIVE-BASED RATE TREATMENT.—Not
 18 later than 1 year after the completion of the study under
 19 subsection (b), the Commission shall establish, by rule, in-
 20 centive-based, including performance-based, rate treat-
 21 ments for the transmission of electric energy in interstate
 22 commerce by public utilities for the purpose of benefitting
 23 consumers by encouraging—

24 “(1) investments by public utilities in advanced
 25 cybersecurity technology; and

1 ~~“(2) participation by public utilities in cyberse-~~
 2 ~~curity threat information sharing programs.~~

3 ~~“(d) FACTORS FOR CONSIDERATION.—In issuing the~~
 4 ~~rule pursuant to this section, the Commission may provide~~
 5 ~~additional incentives beyond those identified in subsection~~
 6 ~~(e) in any case in which the Commission determines that~~
 7 ~~an investment in advanced cybersecurity technology or in-~~
 8 ~~formation sharing program costs will reduce cybersecurity~~
 9 ~~risks to—~~

10 ~~“(1) defense critical electric infrastructure (as~~
 11 ~~defined in section 215A(a)) and other facilities sub-~~
 12 ~~ject to the jurisdiction of the Commission that are~~
 13 ~~critical to public safety, national defense, or home-~~
 14 ~~land security, as determined by the Commission in~~
 15 ~~consultation with—~~

16 ~~“(A) the Secretary of Energy; and~~

17 ~~“(B) appropriate Federal agencies; and~~

18 ~~“(2) facilities of small- or medium-sized public~~
 19 ~~utilities with limited cybersecurity resources, as de-~~
 20 ~~termined by the Commission.~~

21 ~~“(e) RATEPAYER PROTECTION.—Any rate approved~~
 22 ~~under the rule issued pursuant to this section, including~~
 23 ~~any revisions to that rule, shall be subject to the require-~~
 24 ~~ments of sections 205 and 206 that all rates, charges,~~
 25 ~~terms, and conditions—~~

1 “(1) shall be just and reasonable; and

2 “(2) shall not be unduly discriminatory or pref-
3 erential.

4 “(f) ~~SINGLE-ISSUE RATE FILINGS.~~—The Commis-
5 sion shall permit public utilities to apply for incentive-
6 based rate treatment under the rule issued under this sec-
7 tion on a single-issue basis by submitting to the Commis-
8 sion a tariff schedule under section 205 that permits re-
9 covery of costs and incentives over the depreciable life of
10 the applicable assets, without regard to changes in receipts
11 or other costs of the public utility.

12 “(g) ~~PROTECTION OF INFORMATION.~~—Advanced cy-
13 bersecurity technology information that is provided to,
14 generated by, or collected by the Federal Government
15 under subsection (b), (c), or (f) shall be considered to be
16 critical electric infrastructure information under section
17 215A.”.

18 **SEC. 3. RURAL AND MUNICIPAL UTILITY ADVANCED CY-**
19 **BERSECURITY GRANT AND TECHNICAL AS-**
20 **SISTANCE PROGRAM.**

21 (a) ~~DEFINITIONS.~~—In this section:

22 (1) ~~ADVANCED CYBERSECURITY TECH-~~
23 NOLOGY.—The term “advanced cybersecurity tech-
24 nology” means any technology, operational capa-
25 bility, or service, including computer hardware, soft-

1 ware, or a related asset, that enhances the security
 2 posture of electric utilities through improvements in
 3 the ability to protect against, detect, respond to, or
 4 recover from a cybersecurity threat (as defined in
 5 section 102 of the Cybersecurity Act of 2015 (6
 6 U.S.C. 1501)).

7 (2) ELIGIBLE ENTITY.—The term “eligible enti-
 8 ty” means—

9 (A) a rural electric cooperative;

10 (B) a utility owned by a political subdivi-
 11 sion of a State, such as a municipally owned
 12 electric utility;

13 (C) a utility owned by any agency, author-
 14 ity, corporation, or instrumentality of one or
 15 more political subdivisions of a State; and

16 (D) a not-for-profit entity that is in a part-
 17 nership with not fewer than 6 entities described
 18 in subparagraph (A), (B), or (C).

19 (3) PROGRAM.—The term “Program” means
 20 the Rural and Municipal Utility Advanced Cyberse-
 21 curity Grant and Technical Assistance Program es-
 22 tablished under subsection (b).

23 (4) SECRETARY.—The term “Secretary” means
 24 the Secretary of Energy.

1 (b) ESTABLISHMENT.—Not later than 180 days after
 2 the date of enactment of this Act, the Secretary, in con-
 3 sultation with the Federal Energy Regulatory Commis-
 4 sion, the North American Electric Reliability Corporation,
 5 and the Electricity Subsector Coordinating Council, shall
 6 establish a program, to be known as the “Rural and Mu-
 7 nicipal Utility Advanced Cybersecurity Grant and Tech-
 8 nical Assistance Program”, to provide grants and tech-
 9 nical assistance to, and enter into cooperative agreements
 10 with, eligible entities to protect against, detect, respond
 11 to, and recover from cybersecurity threats.

12 (c) OBJECTIVES.—The objectives of the Program
 13 shall be—

14 (1) to deploy advanced cybersecurity tech-
 15 nologies for electric utility systems; and

16 (2) to increase the participation of eligible enti-
 17 ties in cybersecurity threat information sharing pro-
 18 grams.

19 (d) AWARDS.—

20 (1) IN GENERAL.—The Secretary—

21 (A) shall award grants and provide tech-
 22 nical assistance under the Program to eligible
 23 entities on a competitive basis;

1 (B) shall develop criteria and a formula for
2 awarding grants and providing technical assist-
3 ance under the Program;

4 (C) may enter into cooperative agreements
5 with eligible entities that can facilitate the ob-
6 jectives described in subsection (e); and

7 (D) shall establish a process to ensure that
8 all eligible entities are informed about and can
9 become aware of opportunities to receive grants
10 or technical assistance under the Program.

11 (2) ~~PRIORITY FOR GRANTS AND TECHNICAL AS-~~
12 ~~SISTANCE.~~—In awarding grants and providing techni-
13 cal assistance under the Program, the Secretary
14 shall give priority to an eligible entity that, as deter-
15 mined by the Secretary—

16 (A) has limited cybersecurity resources;

17 (B) owns assets critical to the reliability of
18 the bulk power system; or

19 (C) owns defense critical electric infra-
20 structure (as defined in section 215A(a) of the
21 Federal Power Act (16 U.S.C. 824o-1(a))).

22 (e) ~~PROTECTION OF INFORMATION.~~—Information
23 provided to, or collected by, the Federal Government
24 under this section—

1 (1) shall be exempt from disclosure under sec-
2 tion 552(b)(3) of title 5, United States Code; and

3 (2) shall not be made available by any Federal
4 agency, State, political subdivision of a State, or
5 Tribal authority under any applicable law requiring
6 public disclosure of information or records.

7 (f) FUNDING.—There is authorized to be appro-
8 priated to carry out this section \$50,000,000 for each of
9 fiscal years 2020 through 2024, to remain available until
10 expended.

11 **SECTION 1. SHORT TITLE.**

12 *This Act may be cited as the “Protecting Resources On*
13 *The Electric grid with Cybersecurity Technology Act of*
14 *2019” or the “PROTECT Act of 2019”.*

15 **SEC. 2. INCENTIVES FOR ADVANCED CYBERSECURITY**
16 **TECHNOLOGY INVESTMENT.**

17 *Part II of the Federal Power Act is amended by insert-*
18 *ing after section 219 (16 U.S.C. 824s) the following:*

19 **“SEC. 219A. INCENTIVES FOR CYBERSECURITY INVEST-**
20 **MENTS.**

21 “(a) DEFINITIONS.—*In this section:*

22 “(1) ADVANCED CYBERSECURITY TECHNOLOGY.—
23 *The term ‘advanced cybersecurity technology’ means*
24 *any technology, operational capability, or service, in-*
25 *cluding computer hardware, software, or a related*

1 *asset, that enhances the security posture of public*
2 *utilities through improvements in the ability to pro-*
3 *tect against, detect, respond to, or recover from a cy-*
4 *bersecurity threat (as defined in section 102 of the*
5 *Cybersecurity Act of 2015 (6 U.S.C. 1501)).*

6 *“(2) ADVANCED CYBERSECURITY TECHNOLOGY*
7 *INFORMATION.—The term ‘advanced cybersecurity*
8 *technology information’ means information relating*
9 *to advanced cybersecurity technology or proposed ad-*
10 *vanced cybersecurity technology that is generated by*
11 *or provided to the Commission or another Federal*
12 *agency.*

13 *“(b) STUDY.—Not later than 180 days after the date*
14 *of enactment of this section, the Commission, in consulta-*
15 *tion with the Secretary of Energy, the North American*
16 *Electric Reliability Corporation, the Electricity Subsector*
17 *Coordinating Council, and the National Association of Reg-*
18 *ulatory Utility Commissioners, shall conduct a study to*
19 *identify incentive-based, including performance-based, rate*
20 *treatments for the transmission and sale of electric energy*
21 *subject to the jurisdiction of the Commission that could be*
22 *used to encourage—*

23 *“(1) investment by public utilities in advanced*
24 *cybersecurity technology; and*

1 “(2) participation by public utilities in cyberse-
2 curity threat information sharing programs.

3 “(c) *INCENTIVE-BASED RATE TREATMENT.*—Not later
4 than 1 year after the completion of the study under sub-
5 section (b), the Commission shall establish, by rule, incen-
6 tive-based, including performance-based, rate treatments for
7 the transmission of electric energy in interstate commerce
8 and the sale of electric energy at wholesale in interstate
9 commerce by public utilities for the purpose of benefitting
10 consumers by encouraging—

11 “(1) investments by public utilities in advanced
12 cybersecurity technology; and

13 “(2) participation by public utilities in cyberse-
14 curity threat information sharing programs.

15 “(d) *FACTORS FOR CONSIDERATION.*—In issuing a
16 rule pursuant to this section, the Commission may provide
17 additional incentives beyond those identified in subsection
18 (c) in any case in which the Commission determines that
19 an investment in advanced cybersecurity technology or in-
20 formation sharing program costs will reduce cybersecurity
21 risks to—

22 “(1) defense critical electric infrastructure (as
23 defined in section 215A(a)) and other facilities subject
24 to the jurisdiction of the Commission that are critical
25 to public safety, national defense, or homeland secu-

1 *riety, as determined by the Commission in consulta-*
 2 *tion with—*

3 *“(A) the Secretary of Energy; and*

4 *“(B) appropriate Federal agencies; and*

5 *“(2) facilities of small or medium-sized public*
 6 *utilities with limited cybersecurity resources, as deter-*
 7 *mined by the Commission.*

8 *“(e) RATEPAYER PROTECTION.—*

9 *“(1) IN GENERAL.—Any rate approved under a*
 10 *rule issued pursuant to this section, including any re-*
 11 *visions to that rule, shall be subject to the require-*
 12 *ments of sections 205 and 206 that all rates, charges,*
 13 *terms, and conditions—*

14 *“(A) shall be just and reasonable; and*

15 *“(B) shall not be unduly discriminatory or*
 16 *preferential.*

17 *“(2) PROHIBITION OF DUPLICATE RECOVERY.—*

18 *Any rule issued pursuant to this section shall pre-*
 19 *clude rate treatments that allow unjust and unreason-*
 20 *able double recovery for advanced cybersecurity tech-*
 21 *nology.*

22 *“(f) SINGLE-ISSUE RATE FILINGS.—The Commission*
 23 *shall permit public utilities to apply for incentive-based*
 24 *rate treatment under a rule issued under this section on*
 25 *a single-issue basis by submitting to the Commission a tar-*

1 *iff schedule under section 205 that permits recovery of costs*
 2 *and incentives over the depreciable life of the applicable as-*
 3 *sets, without regard to changes in receipts or other costs*
 4 *of the public utility.*

5 “(g) *PROTECTION OF INFORMATION.*—*Advanced cyber-*
 6 *security technology information that is provided to, gen-*
 7 *erated by, or collected by the Federal Government under*
 8 *subsection (b), (c), or (f) shall be considered to be critical*
 9 *electric infrastructure information under section 215A.”.*

10 **SEC. 3. RURAL AND MUNICIPAL UTILITY ADVANCED CYBER-**
 11 **SECURITY GRANT AND TECHNICAL ASSIST-**
 12 **ANCE PROGRAM.**

13 (a) *DEFINITIONS.*—*In this section:*

14 (1) *ADVANCED CYBERSECURITY TECHNOLOGY.*—
 15 *The term “advanced cybersecurity technology” means*
 16 *any technology, operational capability, or service, in-*
 17 *cluding computer hardware, software, or a related*
 18 *asset, that enhances the security posture of electric*
 19 *utilities through improvements in the ability to pro-*
 20 *tect against, detect, respond to, or recover from a cy-*
 21 *bersecurity threat (as defined in section 102 of the*
 22 *Cybersecurity Act of 2015 (6 U.S.C. 1501)).*

23 (2) *ELIGIBLE ENTITY.*—*The term “eligible enti-*
 24 *ty” means—*

25 (A) *a rural electric cooperative;*

1 (B) a utility owned by a political subdivi-
2 sion of a State, such as a municipally owned
3 electric utility;

4 (C) a utility owned by any agency, author-
5 ity, corporation, or instrumentality of 1 or more
6 political subdivisions of a State;

7 (D) a not-for-profit entity that is in a part-
8 nership with not fewer than 6 entities described
9 in subparagraph (A), (B), or (C); and

10 (E) an investor-owned electric utility that
11 sells less than 4,000,000 megawatt hours of elec-
12 tricity per year.

13 (3) *PROGRAM.*—The term “Program” means the
14 Rural and Municipal Utility Advanced Cybersecurity
15 Grant and Technical Assistance Program established
16 under subsection (b).

17 (4) *SECRETARY.*—The term “Secretary” means
18 the Secretary of Energy.

19 (b) *ESTABLISHMENT.*—Not later than 180 days after
20 the date of enactment of this Act, the Secretary, in consulta-
21 tion with the Federal Energy Regulatory Commission, the
22 North American Electric Reliability Corporation, and the
23 Electricity Subsector Coordinating Council, shall establish
24 a program, to be known as the “Rural and Municipal Util-
25 ity Advanced Cybersecurity Grant and Technical Assist-

1 *ance Program”, to provide grants and technical assistance*
2 *to, and enter into cooperative agreements with, eligible enti-*
3 *ties to protect against, detect, respond to, and recover from*
4 *cybersecurity threats.*

5 *(c) OBJECTIVES.—The objectives of the Program shall*
6 *be—*

7 *(1) to deploy advanced cybersecurity technologies*
8 *for electric utility systems; and*

9 *(2) to increase the participation of eligible enti-*
10 *ties in cybersecurity threat information sharing pro-*
11 *grams.*

12 *(d) AWARDS.—*

13 *(1) IN GENERAL.—The Secretary—*

14 *(A) shall award grants and provide tech-*
15 *nical assistance under the Program to eligible*
16 *entities on a competitive basis;*

17 *(B) shall develop criteria and a formula for*
18 *awarding grants and providing technical assist-*
19 *ance under the Program;*

20 *(C) may enter into cooperative agreements*
21 *with eligible entities that can facilitate the objec-*
22 *tives described in subsection (c); and*

23 *(D) shall establish a process to ensure that*
24 *all eligible entities are informed about and can*

1 *become aware of opportunities to receive grants*
2 *or technical assistance under the Program.*

3 (2) *PRIORITY FOR GRANTS AND TECHNICAL AS-*
4 *SISTANCE.—In awarding grants and providing tech-*
5 *nical assistance under the Program, the Secretary*
6 *shall give priority to an eligible entity that, as deter-*
7 *mined by the Secretary—*

8 (A) *has limited cybersecurity resources;*

9 (B) *owns assets critical to the reliability of*
10 *the bulk power system; or*

11 (C) *owns defense critical electric infrastruc-*
12 *ture (as defined in section 215A(a) of the Fed-*
13 *eral Power Act (16 U.S.C. 8240–1(a))).*

14 (e) *PROTECTION OF INFORMATION.—Information pro-*
15 *vided to, or collected by, the Federal Government under this*
16 *section—*

17 (1) *shall be exempt from disclosure under section*
18 *552(b)(3) of title 5, United States Code; and*

19 (2) *shall not be made available by any Federal*
20 *agency, State, political subdivision of a State, or*
21 *Tribal authority under any applicable law requiring*
22 *public disclosure of information or records.*

23 (f) *FUNDING.—There is authorized to be appropriated*
24 *to carry out this section \$50,000,000 for each of fiscal years*
25 *2020 through 2024, to remain available until expended.*

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