



September 17, 2013

The Honorable Anthony Foxx, Secretary
U.S. Department of Transportation
1200 New Jersey Ave, SE
Washington, DC 20590

Re: Application of Buy America Requirements to Utility Relocations

Dear Secretary Foxx:

We are writing to follow up on our letter of June 28, 2013, in which we requested your leadership to resolve the uncertainty that has resulted from the decision by the Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) to begin applying Buy America requirements to utility relocation agreements. In our letter, we requested that FHWA and FTA provide a transition period during which Buy America requirements for utility relocations can be clarified, waivers can be issued where appropriate, and education and training of affected industries can occur.

We were pleased that FHWA issued a memorandum on July 11, 2013, providing a transition period. The memorandum acknowledged that “the broadened application of Buy America has created implementation issues for the utility industry.” To avoid project delays, FHWA stated that it will not require Buy America compliance for “project-specific utility agreements for non-federally funded utility relocations executed on or before December 31, 2013.”

FHWA’s decision to allow a transition period is a welcome step, but it does not fully address the concerns raised in our letter of June 28. We look forward to working with you to address the remaining issues, as described below.

Regulatory Certainty. FHWA and FTA have not yet issued the regulations and guidance documents that will be needed to clarify the application of Buy America requirements to utilities, nor have they announced a timeline for doing so. Moreover, FHWA recently issued a Federal Register notice inviting

comment on whether to continue its long-standing exemption for manufactured products. It is challenging for utilities to establish a compliance program when they continue to face uncertainty about what the requirements will be and when new regulations or guidance will be issued.

Training and Technical Assistance. There is not yet any program in place to provide training and technical assistance about the new Buy America requirements – for example, which specific products must comply and how compliance should be documented. To date, these issues are being worked out on a State-by-State basis. States and utilities – many of which operate in multiple states – are understandably concerned that inconsistent interpretations will make it difficult to establish adequate compliance programs.

Applicability to FTA Projects. While the FHWA memorandum provides needed flexibility for highway projects, it does not address transit projects. We urge FTA to follow FHWA's lead and provide a transition period that extends, at a minimum, through December 31, 2013. The same rules should apply to utilities, regardless of the type of project made possible by the utility relocation.

In short, we believe additional actions are needed to (1) issue regulations, guidance, or other policy documents that clarify the application of Buy America requirements for utility relocations; (2) provide training and technical assistance regarding these new requirements; and (3) apply the transition period to transit projects as well as highway projects. We appreciate your attention to this matter, and we look forward to working with you and with the leadership of FHWA and FTA to resolve these concerns while fulfilling the goals of the Buy America program.

Sincerely,

American Association of State Highway and Transportation Officials
American Gas Association
American Public Power Association
American Public Transportation Association
Community Streetcar Coalition
Edison Electric Institute
Interstate Natural Gas Association of America
National Association of Water Companies
National Rural Electric Cooperative Association
New Starts Working Group
NTCA-The Rural Broadband Association
United States Telecom Association

cc: Administrator Victor M. Mendez, Federal Highway Administration
cc: Administrator Peter M. Rogoff, Federal Transit Administration