



February 22, 2016

TO: Members, Committee on Energy and Commerce  
FROM: Committee Majority Staff  
RE: Full Committee Markup

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## I. INTRODUCTION

The Committee on Energy and Commerce will meet in open markup session on February 24 and 25, 2016, in 2123 Rayburn House Office Building.

On Wednesday, February 24, 2016, at 5:00 p.m., the committee will convene for opening statements only. The committee will reconvene on Thursday, February 25, 2016, at 10:00 a.m. to consider the following:

- H.R. \_\_\_\_, Small Business Broadband Deployment Act;
- H.R. \_\_\_\_, to promote a 21st century energy and manufacturing workforce;
- H.R. 1268, Energy Efficient Government Technology Act;
- H.R. 2984, Fair RATES Act;
- H.R. 3021, AIR Survey Act of 2015;
- H.R. 3797, Satisfying Energy Needs and Saving the Environment (SENSE) Act;
- H.R. 4238, a bill to amend the Department of Energy Organization Act and the Local Public Works Capital Development and Investment Act of 1976 to modernize terms relating to minorities;
- H.R. 4427, a bill to amend section 203 of the Federal Power Act;
- H.R. 4444, EPS Improvement Act;
- H.R. 4557, Blocking Regulatory Interference from Closing Kilns (BRICK) Act;
- H.R. 2080, a bill to extend the deadline for commencement of construction of a hydroelectric project involving Clark Canyon Dam;
- H.R. 2081, a bill to extend the deadline for commencement of construction of a hydroelectric project involving the Gibson Dam;
- H.R. 3447, a bill to extend the deadline for commencement of construction of a hydroelectric project involving the W. Kerr Scott Dam;
- H.R. 4411, a bill to extend the deadline for commencement of construction of a hydroelectric project involving the Gathright Dam;
- H.R. 4416, a bill to extend the deadline for commencement of construction of a hydroelectric project involving the Jennings Randolph Dam;
- H.R. 4412, a bill to extend the deadline for commencement of construction of a hydroelectric project involving the Flannagan Dam; and,

- H.R. 4434, a bill to extend the deadline for commencement of construction of a hydroelectric project involving the Cannonsville Dam.

In keeping with Chairman Upton's announced policy, Members must submit any amendments they may have two hours before they are offered during this markup. Members may submit amendments by email to [peter.kielty@mail.house.gov](mailto:peter.kielty@mail.house.gov). Any information with respect to an amendment's parliamentary standing (e.g., its germaneness) should be submitted at this time as well.

## **II. TELECOMMUNICATIONS**

### **A. H.R. \_\_\_\_, Small Business Broadband Deployment Act**

The Federal Communications Commission's (FCC) 2015 Open Internet Order included enhanced transparency requirements for broadband Internet access service providers. Recognizing the burden that these enhanced disclosures could place on small businesses, the FCC temporarily exempted small ISPs with 100,000 or fewer subscribers from these disclosures. In November 2015, Republican members of the Subcommittee on Communications and Technology and Republican members of the Small Business Committee wrote a letter to Chairman Wheeler, urging him to make the exemption permanent and expand the definition of small business to better reflect the definitions adopted by the Small Business Administration (SBA) and those used by the FCC and approved by the SBA in the past. Specifically, the members urged the FCC to set the threshold at telecommunications carriers with fewer than 1,500 employees or 500,000 subscribers.

Shortly before the December 2015 expiration of the temporary exemption, the FCC extended it until December 2016. This legislation would make the exemption permanent, providing certainty and regulatory relief to small ISPs who lack the resources to comply with the enhanced disclosure requirements.

The Subcommittee on Communications and Technology favorably forwarded the discussion draft to the full Committee on February 11, 2016. During the markup, members agreed to continue to work toward a bipartisan compromise that would provide certainty to small businesses while protecting consumers. Negotiations are ongoing and further amendments to the discussion draft reflecting these discussions are possible.

The discussion draft will be introduced prior to the markup. However, any amendments should be drafted to the version distributed with the markup notice.

## **III. ENERGY**

### **A. H.R. \_\_\_\_, to promote a 21st century energy and manufacturing workforce**

Rep. Rush (D-IL) will introduce H.R. \_\_\_\_, to promote a 21st century energy and manufacturing workforce. The legislation directs the Secretary of Energy to:

- Prioritize education and training to increase the number of skilled workers trained to work in energy and manufacturing fields;
- Establish a clearinghouse to maintain and update information and resources on training and workforce development programs for energy and manufacturing-related jobs, including information to assist displaced and unemployed workers to transition to new jobs; and,
- Encourage collaboration among schools, workforce-training organizations, and the energy and manufacturing industry to improve opportunities for workers.

The bill will be introduced prior to the markup. However, any amendments should be drafted to the version distributed with the markup notice.

### **B. H.R. 1268, Energy Efficient Government Technology Act**

On March 6, 2015, Rep. Eshoo (D-CA) and Rep. Kinzinger (R-IL) introduced H.R. 1268, Energy Efficient Government Technology Act. The legislation includes the following provisions:

#### Section 1:

This section provides the short title of “Energy Efficient Government Technology Act.”

#### Section 2:

This section would require Federal agencies to coordinate with the Office of Management and Budget (OMB), Department of Energy (DOE), and the Environmental Protection Agency (EPA) to develop an implementation strategy – including best practices and measurement and verification techniques – for the maintenance, purchase, and use of energy-efficient and energy saving information technologies. OMB would be required to track and report on each agency’s progress.

#### Section 3:

This section would improve the energy efficiency of Federal data centers by, among other items, requiring DOE to update a 2007 report on data center energy efficiency and maintain a data center energy practitioner certification program. DOE also would establish an open data initiative to help share best practices and support further innovation, and develop a metric that measures data center energy efficiency.

### **C. H.R. 2984, Fair RATES Act**

On July 8, 2015, Rep. Kennedy (D-MA) introduced the “Fair Ratepayer Accountability, Transparency, and Efficiency Standards Act” or the “Fair RATES Act.” On February 2, 2016, the Subcommittee on Energy and Power held a hearing on the bill. The Subcommittee on Energy and Power favorably forwarded the bill to the full Committee on February 11, 2016.

The legislation includes the following provisions:

Section 1:

This section provides the short title of “Fair Ratepayer Accountability, Transparency, and Efficiency Standards Act” or the “Fair RATES Act.”

Section 2:

Section 2 would amend the requirement under section 205 of the Federal Power Act that a public utility provide FERC and the public 60 days’ notice before making changes to its rate, charge, or classification structure. Specifically, if a lack of action by FERC allows a change to take effect, including if FERC allows the 60-day notice period to expire, such lack of action would be treated as if FERC had issued an order accepting the change, thereby allowing any affected party to apply for rehearing within 30 days.

**D. H.R. 3021, AIR Survey Act of 2015**

On July 10, 2015, Rep. Pompeo (R-KS) introduced H.R. 3021, the “Aerial Infrastructure Route Survey Act of 2015” or the “AIR Survey Act of 2015.” On February 2, 2016, the Subcommittee on Energy and Power held a hearing on the bill. The Subcommittee on Energy and Power favorably forwarded the bill to the full Committee on February 11, 2016.

The bill would amend the Natural Gas Act (NGA) to allow the use of aerial survey data for certain applications. Specifically, the legislation includes the following provisions:

Section 1:

This section provides the short title of the “Aerial Infrastructure Route Survey Act of 2015” or the “AIR Survey Act of 2015.”

Section 2:

Section 2 would amend section 7 of the NGA to clarify that data collected by aerial survey is acceptable for the purposes of (1) completing any pre-filing process established to facilitate the formal application process for obtaining a certificate of public convenience and necessity for a natural gas transportation facility, or (2) an application associated with a Federal authorization concerning a certificate application. The section also would provide the Federal Energy Regulatory Commission (FERC) with the discretion to require, as a condition of approval, that data gathered by aerial survey be verified through the use of ground survey data before construction or extension of proposed facilities.

**E. H.R. 3797, Satisfying Energy Needs and Saving the Environment Act**

On October 22, 2015, Rep. Rothfus (R-PA) introduced H.R. 3797, the “Satisfying Energy Needs and Saving the Environment Act” or the “SENSE Act.” On February 3, 2016, the

Subcommittee on Energy and Power held a hearing on the bill. The Subcommittee on Energy and Power favorably forwarded the bill to the full Committee on February 11, 2016.

The bill would make targeted modifications to the Cross-State Air Pollution Rule (CSAPR) and Mercury and Air Toxics Standards for Power Plants (MATS) as they apply to coal refuse-to-energy facilities. The legislation includes the following provisions:

Section 1:

This section provides the short title of “Satisfying Energy Needs and Saving the Environment Act” or the “SENSE Act.”

Section 2:

This section would modify the standards as they apply to coal refuse power plants.

Section 2(a) would provide definitions for the following terms: administrator, boiler operating day, coal refuse, coal refuse electric utility steam generating unit, coal refuse-fired facility, cross-state air pollution rule, electric utility steam generating unit, and phase of CSAPR.

Section 2(b) would provide less restrictive sulfur dioxide emissions allocations under CSAPR as they apply to coal refuse electric utility steam generating units.

Section 2(c) would provide an alternative compliance means for HCl and SO<sub>2</sub> under MATS.

**F. H.R. 4238, a bill to amend the Department of Energy Organization Act and the Local Public Works Capital Development and Investment Act of 1976 to modernize terms relating to minorities**

On December 11, 2015, Rep. Meng (D-NY) introduced H.R. 4238, a bill to amend the Department of Energy Organization Act and the Local Public Works Capital Development and Investment Act of 1976 to modernize terms relating to minorities. The Subcommittee on Energy and Power favorably forwarded the bill to the full Committee on February 11, 2016.

The legislation includes the following provisions:

Section 1:

Section 1(a) would amend section 211(f)(1) of the Department of Energy Organization Act to modernize terms relating to minorities. Section 1(b) would amend section 106(f)(2) of the Local Public Works Capital Development and Investment Act of 1976 to modernize terms relating to minorities.

**G. H.R. 4427, a bill to amend section 203 of the Federal Power Act**

On February 2, 2016, Rep. Pompeo (R-KS) introduced H.R. 4427, a bill to amend section 203 of the Federal Power Act (FPA), and the Subcommittee on Energy and Power held a hearing on the bill. The Subcommittee on Energy and Power favorably forwarded the bill to the full Committee on February 11, 2016.

The legislation includes the following provisions:

Section 1:

Section 1 amends section 203 of the FPA to expressly include a minimum monetary threshold of \$10,000,000 for mergers and acquisitions of FERC-jurisdictional facilities, thereby mirroring the existing \$10,000,000 minimum monetary threshold set forth in the other three subsections of FPA section 203(a)(1).

**H. H.R. 4444, EPS Improvement Act**

On January 5, 2016, Rep. Ellmers (R-NC) and Rep. DeGette (D-CO) released a discussion draft of the “EPS Improvement Act of 2016.” The Subcommittee on Energy and Power held a hearing on the draft on January 12, 2016. Rep. Ellmers and Rep. DeGette formally introduced the legislation on February 3, 2016. The Subcommittee on Energy and Power favorably forwarded the bill to the full Committee on February 11, 2016.

The bill would exclude certain lighting technologies and ceiling fans from the definition of external power supply (EPS), as included in the DOE’s EPS efficiency standard finalized in 2014. It also establishes the circumstances by which DOE may prescribe standards in the future for certain solid state lighting drivers. The legislation includes the following provisions:

Section 1:

This section provides the short title of “EPS Improvement Act of 2016.”

Section 2:

Section 2(a) section would amend and clarify the statutory definition of “EPS” to exempt from the definition: 1) solid state lighting drivers that are designed to be connected to and power light emitting diodes (LEDs) or organic LEDs (OLEDs) providing illumination; and 2) ceiling fans using direct current motors.

Section 2(b) would revise the definition of “industrial equipment” under section 340 of the Energy Policy and Conservation Act (EPCA) to include lighting power supply circuits. This section also would establish the conditions by which DOE may undertake a rulemaking in the future, subject to current statutory regulatory requirements, to establish standards for certain consumer and industrial solid state lighting drivers and devices. This section also would require that DOE make public the testing procedure requirements for at least a year before the agency prescribes any energy conservation standard for these technologies.

Section 2(c) would make a number of technical corrections to EPCA.

#### **I. H.R. 4557, Blocking Regulatory Interference from Closing Kilns Act**

On January 19, 2016, the Committee released a discussion draft of H.R. 4557, the “Blocking Regulatory Interference from Closing Kilns (BRICK) Act.” On February 3, 2016, the Subcommittee on Energy and Power held a hearing on the bill. The Subcommittee on Energy and Power favorably forwarded the bill to the full Committee on February 11, 2016. On February 12, 2016, Rep. Johnson (R-OH) formally introduced the bill.

The legislation would allow for judicial review of any final rule addressing national emissions standards for hazardous air pollutants (NESHAP) for brick and structural clay products or for clay ceramics manufacturing before requiring compliance with the rule. The legislation includes the following provisions:

##### Section 1:

This section provides the short title of “Blocking Regulatory Interference from Closing Kilns (BRICK) Act of 2016.”

##### Section 2:

This section would extend compliance dates of any final rule addressing NESHAP for brick and structural clay products manufacturing or clay ceramics manufacturing issued under section 112 of the Clean Air Act (CAA).

Section 2(a) would provide that the term “compliance date” means the date by which any State, local, or tribal government or other person is first required to comply with the rule.

Section 2(b) would provide that the final rules subject to the Act include any final rule that addresses NESHAP for brick and structural clay products or for clay ceramics manufacturing under section 112 of the CAA, including any final rule that succeeds or amends the EPA’s final rule published at 80 Fed. Reg. 65469 (October 26, 2015) and 80 Fed. Reg. 75817 (December 4, 2015).

Section 2(c) would provide that the time period by which the compliance dates would be extended would be the period of time that begins 60 days after the final rule appears in the Federal Register, and ends on the date on which judgment becomes final, and no longer subject to further appeal or review, in all actions filed during the initial 60 days after the rule appears in the Federal Register seeking review of the rule, including actions pursuant to CAA section 307.

#### **J. Hydropower License Extensions under the Federal Power Act**

Section 13 of the FPA requires a hydropower licensee to begin construction on the licensed project within 2 years of license issuance, which FERC may extend once for an additional 2-year period. If the licensee is unable to begin construction by the extended deadline,

the license expires and is terminated. With respect to the following bills, each identified project has been unable to, or will unlikely be able to, commence construction by the respective deadline, resulting in a terminated or soon-to-be terminated license. Each of the following bills, which were favorably forwarded by the Subcommittee on Energy and Power to the full Committee on February 11, 2016, would require FERC to reinstate the license, as applicable, and extend the start time for construction of the respective project by at least 6 years.

- H.R. 2080, a bill to extend the deadline for commencement of construction of a hydroelectric project involving Clark Canyon Dam (introduced by Rep. Zinke (R-MT) on April 28, 2015);
- H.R. 2081, a bill to extend the deadline for commencement of construction of a hydroelectric project involving the Gibson Dam (introduced by Rep. Zinke (R-MT) on April 28, 2015);
- H.R. 3447, a bill to extend the deadline for commencement of construction of a hydroelectric project involving the W. Kerr Scott Dam (introduced by Rep. Foxx (R-NC) on September 8, 2015);
- H.R. 4416, a bill to extend the deadline for commencement of construction of a hydroelectric project involving the Jennings Randolph Dam (introduced by Rep. McKinley (R-WV) on February 1, 2016); and,
- H.R. 4434, a bill to extend the deadline for commencement of construction of a hydroelectric project involving the Cannonsville Dam (introduced by Rep. Gibson (R-NY) on February 2, 2016).

The following hydropower license extension bills were not considered in the previous markup but, similar to the above, each bill would require FERC to reinstate the license, as applicable, and extend the start time for construction of the respective project by 6 years.

- H.R. 4411, a bill to extend the deadline for commencement of construction of a hydroelectric project involving the Gathright Dam (introduced by Rep. Griffith (R-VA) on February 1, 2016); and,
- H.R. 4412, a bill to extend the deadline for commencement of construction of a hydroelectric project involving the Flannagan Dam (introduced by Rep. Griffith (R-VA) on February 1, 2016).

#### **IV. STAFF CONTACTS**

If you have any questions regarding the telecommunications bill, please contact David Redl or Kelsey Guyselman. If you have any questions regarding the energy bills please contact Patrick Currier, Ben Lieberman or Brandon Mooney of the Committee staff at (202) 225-2927.