

This is an unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker.

RPTR BAKER

EDTR ROSEN

MARKUP OF:

H.R. 4596, SMALL BUSINESS BROADBAND DEPLOYMENT ACT;

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

This is an unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker.

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. 4412, A BILL TO EXTEND THE DEADLINE FOR COMMENCEMENT OF
CONSTRUCTION OF A HYDROELECTRIC PROJECT INVOLVING THE FLANNAGAN DAM;
H.R. 4434, A BILL TO EXTEND THE DEADLINE FOR COMMENCEMENT OF
CONSTRUCTION OF A HYDROELECTRIC PROJECT INVOLVING THE CANNONSVILLE
DAM; AND
H.R. 4583, TO PROMOTE A 21ST CENTURY ENERGY AND MANUFACTURING WORKFORCE
WEDNESDAY, FEBRUARY 24, 2016
House of Representatives,
Committee on Energy and Commerce,
Washington, D.C.

The committee met, pursuant to call, at 5:06 p.m., in Room 2123,
Rayburn House Office Building, Hon. Fred Upton [chairman of the
committee] presiding.

Present: Representatives Upton, Whitfield, Latta, Pallone, and
Kennedy.

Staff Present: Gary Andres, Staff Director; Will Batson,
Legislative Clerk, Energy and Power, Environment and the Economy; Ray
Baum, Senior Policy Advisor/Director of Coalitions; Mike Bloomquist,

This is an unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker.

General Counsel; Allison Busbee, Policy Coordinator, Energy & Power; Karen Christian, General Counsel; Patrick Currier, Senior Counsel, Energy & Power; Gene Fullano, Detailee, Telecom; Kelsey Guyselman, Counsel, Telecom; Tom Hassenboehler, Chief Counsel, Energy & Power; Grace Koh, Counsel, Telecom; Ben Lieberman, Counsel, Energy & Power; Mary Neumayr, Senior Energy Counsel; Tim Pataki, Professional Staff Member; Graham Pittman, Legislative Clerk; Annelise Rickert, Legislative Associate; Charlotte Savercool, Professional Staff, C&T; Dan Schneider, Press Secretary; Dylan Vorbach, Legislative Clerk, CMT; Jen Berenholz, Minority Chief Clerk; Christine Brennan, Minority Press Secretary; Jeff Carroll, Minority Staff Director; Tiffany Guarascio, Minority Deputy Staff Director and Chief Health Advisor; Rick Kessler, Minority Senior Advisor and Staff Director, Energy and Environment; Jerry Leverich, Minority Counsel; John Marshall, Minority Policy Coordinator; Alexander Ratner, Minority Policy Analyst; Tim Robinson, Minority Chief Counsel; Ryan Skukowski, Minority Policy Analyst; Andrew Souvall, Minority Director of Communications, Outreach and Member Services; and Tuley Wright, Minority Energy and Environment Policy Advisor.

This is an unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker.

The Chairman. The committee will come to order, and the chair recognizes himself for an opening statement. Today we commence the markup of 16 bills related to energy and the environment, and one communications bill as we look to build upon our proud record of success. Collectively, these bills advance our ongoing efforts to create jobs, boost America's small businesses and manufacturers, keep energy accessible and affordable, and strengthen energy security. The majority of these bills have, indeed, been bipartisan from the very start, and the rest have become more so as we have had the chance to talk about it.

I hope the trend continues through this markup and that we can take a significant step toward advancing commonsense policies to benefit folks in Michigan and across the country.

Perhaps least controversial are the seven bills to extend the licenses for hydropower projects. Renewable hydropower is a critical component of our all-of-the-above energy strategy. These projects have been held up by red tape for so long that their FERC licenses will expire before construction can even begin.

The bills extend their licenses and allow these projects to go forward, which will create jobs constructing and operating these hydropower facilities and provide affordable and reliable electricity to the communities that they serve.

We also have two bills that will help contribute to a more effective and efficient FERC process and a better service for electric

This is an unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker.

ratepayers. A bill from Mr. Rush and Mr. Hudson focuses on energy workforce training and would redirect the Federal Government's energy job training programs to include more women and minorities that have been historically underrepresented in that sector. Mr. Pompeo's AIR Survey Act, provides for the long overdue use of aerial survey data in the natural gas pipeline approval process as well.

We will also consider Mr. Johnson's BRICK Act to protect the brick-making industry from costly EPA regs that are the subject of legal challenges that may not survive judicial review. And as a matter of fairness and common sense, brick makers should not have to undertake costly and potentially irreversible compliance measures, or possibly even have to shut their doors and lay off workers to comply with a rule that will not withstand judicial scrutiny. And the SENSE Act would make minor changes to EPA regs that would enable coal refuse-to-energy plants to stay in business. Our work continues to protect the environment, jobs, and affordable energy.

Last but not least, we will consider a bill from the C&T Subcommittee that will protect small businesses from the burdensome enhanced transparency requirements that were a part of the FCC's open Internet order. This bipartisan bill extends the FCC's temporary exemption from these requirements and increases the threshold for defining a small business to better reflect the realities of the marketplace.

I particularly want to thank Chairmen Walden and Loeb sack for

This is an unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker.

their work to protect small businesses, ensuring that these companies are able to use their resources to provide service to consumers instead of dealing with Washington red tape.

The bills we will consider today exemplify the hard work of our members on both sides of the aisle who have put forth thoughtful, legislative solutions that advance our work on jobs, affordable energy, and make a difference at the local level.

I now recognize the gentleman from New Jersey, my friend, Mr. Pallone, for 5 minutes for an opening statement.

Mr. Pallone. Thank you, Mr. Chairman. Tomorrow, the committee will consider 17 bills addressing a range of energy, environment, and telecommunications issues. I support the majority of these bills, but I do have serious concerns and will oppose three of them.

The Satisfying Energy Needs and Saving the Environment Act, or SENSE Act, would allow coal refuse plants to have more than their fair share of pollution by giving them special treatment under EPA's Mercury and Air Toxics, or MATS rule, and the Cross-State Air Pollution Rule, or CSAPR Rule. This bill gives facilities that burn coal refuse a free pass on complying with EPA rules to reduce certain air pollutants. That is absurd. Coal refuse plants are no different than other coal plants, and should be held to the same emission standards.

The SENSE Act picks winners and losers, tipping the scales in favor of coal refuse plants at the expense of all other plants within the State, and, therefore, it should also be rejected.

This is an unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker.

I also oppose the BRICK Act, which extends compliance deadlines for EPA's brick and clay rules until all legal challenges are resolved by the courts. Delaying a rule should not be taken lightly, and the blanket extension in the BRICK Act would only serve to incentivize frivolous litigation in an effort to stall and avoid compliance with the EPA's rules.

That said, I do recognize that the brick industry has made good faith efforts to work with the EPA and to reduce its emissions. However, the litigation delay in the BRICK Act creates a very bad precedent. I believe this issue can and should be resolved by the courts.

I also oppose the Air Survey Act of 2015, which requires that data collected by air for use in gas pipeline certificating activities be given the same weight as data collected on the ground. There are critical reasons why on-the-ground data is needed in the gas pipeline review process. I do not have confidence that aerial surveys can effectively identify the full range of critical natural, environmental and cultural resources on the ground from such a distance. I am also concerned that this is an effort to sidestep the rights of private landowners and communities who, in certain cases, have legitimately barred companies from surveying on their land.

I have reservations about, but will not oppose a bill sponsored by Mr. Pompeo that would add a \$10 million threshold to trigger FERC review of a merger and consolidation since under current law, no such

This is an unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker.

threshold exists. I am sympathetic to the idea that there should be a threshold to trigger a FERC merger review, though I believe that FERC should be notified of significant transactions below any new threshold.

I am more optimistic about the other bills before us and am particularly pleased that the majority agreed to include two additional bipartisan bills in today's markup: Mr. Rush's bill to promote a 21st century energy and manufacturing workforce, establishes a DOE program to help deploy minorities, women, veterans, and displaced workers into the energy sector.

The Energy Efficient Government Technology Act, offered by Ms. Eshoo, promotes the use of energy-efficient and energy-saving information technologies and practices across the Federal Government, especially in data centers. Both of these bills deserve our strong support, and I hope the House will consider them favorably in the near future.

I also strongly support a bill sponsored by my friend Representative Grace Meng which strikes outdated and offensive racial terms in Department of Energy statutory language, and replaces them with more culturally appropriate language. And, likewise, I fully support the Fair Rates Act introduced by Mr. Kennedy. This bill would ensure that in the event a FERC vote results in a tie, parties would still have recourse to seek a review of the rates that result from a de facto decision of the commission. We should not deprive stakeholders of any recourse when a nondecision by FERC has very real

This is an unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker.

consequences for consumers, producers, and many others.

In addition, I am pleased to support the EPS Improvement Act of 2016 offered by Representatives Ellmers and DeGette. This bill would exempt external power supply units designed to power LEDs, organic LEDs, and ceiling fans using direct-current motors for new mandatory efficiency standards for external power supplies.

Mr. Chairman, the committee will also consider seven noncontroversial hydroelectric construction license extension bills that I support. Finally, I would also like to thank Representative Loeb sack for his leadership in improving the Small Business Broadband Deployment Act. His hard work and the tireless efforts of the staff are the reason we have bipartisan compromise today.

Thank you, Mr. Chairman. I yield back.

The Chairman. The gentleman yields back. The chair would remind members pursuant to the committee rules, that all members' opening statements will be made part of the record.

Are there further opening statements? The chair would recognize the chairman of the Energy and Power Subcommittee, Mr. Whitfield, for 3 minutes.

Mr. Whitfield. Chairman Upton, thank you very much. I am delighted with this process to begin the markup of 17 bills, 16 of which came from the Energy and Power Subcommittee. As has already been said, seven of these bills relate to extending the license for new hydropower projects. We also have bills that improve the FERC process on

This is an unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker.

everything from natural gas pipeline permitting to utility electric merger approvals, to Mr. Kennedy's bill relating to challenging electric rate challenges.

We have also included Mr. Rush and Mr. Hudson's bill, which takes step to help make training for energy and manufacturing jobs available to women, minorities, as well as veterans and out-of-work coal miners.

Two bills I would like to deal with a little bit more, the BRICK Act, which is introduced by Democrats and Republicans. This bill takes the reasonable and commonsense step of extending the deadline for EPA's recent Brick MACT Standard until after judicial review. We need to do this because we have a lot of small companies in the brick industry. It is going to be quite damaging to them to have to meet these deadlines, and they have already been burned by the EPA's original 2003 Brick MACT Standard, which was vacated a by Federal court in 2007. But the decision came too late. The industry had already been forced to take costly and irreversible compliance steps, and we don't want to see that happen again.

The same thing, I might indicate, occurred with the EPA's Utility MACT, which was found to be unlawful and remanded by the Supreme Court after the compliance deadline had already passed. I might note that EPA noted that the Supreme Court decision was of little practical consequence, because the regulated utilities had already spent the money and complied. And the same thing, we were delighted that the Supreme Court stayed the Clean Power Plan, because the EPA regulations

This is an unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker.

can do damage before they have been adjudicated.

I would also just like to briefly mention the SENSE Act. This is a bill that is a plus for jobs for energy production and for protecting the environment. Those from coal mining regions know about the problems with coal refuse. This legislation provides a commonsense way that refuse piles can be eliminated, further protect the environment, create some electricity at low costs, and accomplish the goals that we want to accomplish. And with that, I yield back.

The Chairman. The gentleman yields back. The chair would recognize the gentleman from Massachusetts, Mr. Kennedy, for 3 minutes.

Mr. Kennedy. Thank you, Mr. Chairman. I appreciate the recognition, and I want to thank you for agreeing to bring up the Fair RATES Act, H.R. 2984, for a full committee markup. I would also like to thank Chairman Whitfield, Ranking Member Rush, and Ranking Member Pallone. Thank you, Chairman. I appreciate that, and Ranking Member Pallone, as well as the committee staff on both sides of the aisle for working with our office to move this bill forward.

Anyone who has had the misfortune of hearing my elevator pitch on this bill knows that a simple fix to a very complex issue takes me far too deep into the weeds of energy capacity markets and FERC. Let me try to keep this brief as you decide how to vote tomorrow.

Two years ago this month, a substantial piece of my constituents' energy bill tripled. When the energy capacity auctions experienced

This is an unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker.

a shortfall, the New England region's capacity rates skyrocketed from about \$1 billion to over \$3 billion. Those rates won't even show up on our bills until next June, so our constituents haven't even felt the full impact of the increase as yet. When I joined consumer protection groups raising concerns about the rate increases, FERC was down one commissioner, and deadlocked 2-2 as to whether the rates were just and reasonable. With no formal action taken by the Commission, despite two commissioners raising concerns about the rate increase, our constituents were left with no avenue to appeal. They are held completely voiceless in a process that will impact how they save and what they spend every month.

Earlier this month, our region's energy capacity market completed its most recent auction. Though the rates decreased from last year's record high from \$4 billion, the resulting rates are still three times higher than they are currently today. And once again, FERC is down to four commissioners as they review those rates.

I have already called on the President to quickly nominate a fifth commissioner, and urged Senator McConnell to consider that nominee. But in the meantime, we should pass this bill to ensure that this situation never happens again.

With bipartisan support, endorsements from the American Power Association, New England Public Power Association, and the National Rural Electric Cooperative Association, this bill simply ensures that avenues of good governance remain open. It provides that if, at any

This is an unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker.

time, rate changes take effect by operation of law without Commission action, aggrieved parties retain the right to protest those rates through a process designed by the Federal Power Act, first at FERC, and then in the courts.

It protects ratepayers to ensure that their voices are heard in this important process. And to be clear, this isn't a situation that can only occur when FERC deadlocks. It could happen in any region across the country. When there is a flaw in existing law that has a profound impact on the lives of our constituents, we in Congress have an obligation to address it. This bill is an opportunity to do just that. I hope my colleagues in the committee will support it.

Again, I want to thank the chairman and the ranking member and the chairman and ranking member of the subcommittees for their help and their support and the staff as well. Thank you, and I yield back.

The Chairman. The gentleman yields back. The chair would recognize Mr. Latta of Ohio for 3 minutes.

Mr. Latta. Well, thank you very much, Mr. Chairman, for holding today's markup of 16 energy bills and one communication bill. I would like to focus on a few of these bills in my statement. I look forward to their consideration by this committee.

I would first like to mention the legislation regarding a 21st century energy and manufacturing workforce. I know we have considered similar legislation in the past, and I applaud the committee for working towards a bipartisan solution to help our Nation's workforce continue

This is an unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker.

to advance. Manufacturing is vital to the American economy, and I am proud to have over 60,000 manufacturing jobs in my district. We must keep working to enable our manufacturing community to be the best and the brightest in the world. Additionally, the lighting industry represents approximately 2,500 jobs in Ohio, and having talked with several of these manufacturers, I have serious concerns with the external supply energy conservation standard, including LED and OLED technologies. I am pleased that our committee is considering the EPS Improvement Act of 2016 today to provide clarity to the external power supply definition, and exclude these technologies that Congress never intended to regulate.

Lastly, I urge my colleagues to support the Small Business Broadband Development Act. This bill seeks to alleviate regulatory burdens of small Internet service providers by establishing a permanent exemption from enhanced transparency requirements set forth by the FCC's open Internet order.

Again, Mr. Chairman, thank you very much for holding today's markup, and I look forward to tomorrow's committee hearing. I yield back.

The Chairman. The gentleman yields back. Are there further members wishing to give an opening statement? Seeing none, the chair will call up H.R. 4596 and ask the clerk to report.

The Clerk. H.R. 4596, to ensure that small business providers of broadband Internet access service can devote resources to broadband

This is an unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker.

deployment rather than compliance with cumbersome regulatory requirements.

[The bill follows:]

***** INSERT 1-1 *****

This is an unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker.

The Chairman. And without objection, the first reading of the bill is dispensed with. The bill will be open for amendment at any point. So ordered. So we are now on H.R. 4596, and the committee will reconvene at 10 o'clock tomorrow morning. I remind members that chair will give priority recognition to bipartisan amendments. I look forward to seeing all of you tomorrow. Without objection, the committee stands in recess.

[Whereupon, at 5:22 p.m., the committee recessed to reconvene at 10:00 a.m., Thursday, February 25, 2016.]