



U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON ENERGY AND COMMERCE

January 29, 2016

TO: Members, Subcommittee on Energy and Power
FROM: Committee Majority Staff
RE: Hearing entitled “A Legislative Hearing on Eight Energy Infrastructure Bills”

I. INTRODUCTION

On Tuesday, February 2, 2016, at 10:00 a.m. in 2123 Rayburn House Office Building, the Subcommittee on Energy & Power will hold a hearing entitled “A Legislative Hearing on Eight Energy Infrastructure Bills.” Specifically, the hearing will review the following bills:

- H.R. 3021, AIR Survey Act of 2015;
- H.R. 2984, Fair RATES Act;
- H.R. ____, a bill to amend section 203 of the Federal Power Act;
- H.R. 2080, a bill to reinstate and 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. ____, a bill to extend the deadline for commencement of construction of a hydroelectric project involving the Jennings Randolph Dam; and
- H.R. ____, a bill to extend the deadline for commencement of construction of a hydroelectric project involving the Cannonsville Dam.

II. WITNESSES

Panel 1

- **Ann F. Miles**, Director, Office of Energy Projects, Federal Energy Regulatory Commission; and,
- **Max Minzner**, General Counsel, Office of the General Counsel, Federal Energy Regulatory Commission.

Panel 2

- **Timothy L. Powell, CEP**, Director of Land, GIS and Permits, Williams Company;
- **Edward Lloyd**, Evan M. Frankel Clinical Professor of Environmental Law, Columbia University School of Law, *on behalf of the New Jersey Conservation Foundation and Stonybrook Millstone Watershed Association*;
- **Bill Bottiggi**, General Manager, Braintree Light and Electric Department;
- **Bill Marsan**, Executive Vice President, General Counsel and Corporate Secretary, American Transmission Company;
- **Tyson Slocum**, Energy Program Director, Public Citizen, Inc.; and,
- **Jeffrey A. Leahey, Esq.**, Deputy Executive Director, National Hydropower Association.

III. BACKGROUND AND LEGISLATION

A. H.R. 3021, AIR Survey Act of 2015

The Natural Gas Act (NGA) requires the Federal Energy Regulatory Commission (FERC or Commission) to coordinate the environmental review and processing of all Federal authorizations relating to proposals for natural gas infrastructure under FERC's jurisdiction. Section 15 of the NGA designates FERC as the lead agency and directs the Commission to set an expeditious schedule for all Federal agencies, and State agencies acting under federally delegated authority, to reach a final decision on a request for Federal authorization.

H.R. 3021 amends 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. H.R. 3021 provides 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.

B. H.R. 2984, Fair RATES Act

The Federal Power Act (FPA) sets forth specific processes to set rates for electricity, including opportunities for the public to protest a rate change filed with FERC. Pursuant to the FPA, new rates take effect if FERC approves them or if FERC fails to issue an order approving or denying the filed rates by the time statutorily required by the FPA. The failure to approve or deny a rate may result from agency delay or, in some limited cases, a vote that results in a

deadlocked Commission, for example a 2-2 vote.¹ In such cases, the rates become effective by operation of law, even when these rates were not approved by a majority of commissioners.

The FPA provides administrative redress for members of the public to protest Commission rate decisions. However, if rates become effective by operation of law – for example, as a result of a deadlocked Commission – the administrative processes are not available to the public because FERC did not technically issue an order for the public to protest. In such cases, there is no legal or administrative avenue for ratepayers to remedy or protest the rate change. This scenario has occurred on at least five occasions in the past fourteen years.

To resolve this procedural discrepancy, H.R. 2984 amends the requirement under section 205 of the FPA that a public utility provide FERC and the public sixty days' notice before making changes to its rate, charge, or classification structure. If a lack of action by FERC allows such a change to take effect, including if FERC allows the 60-day notice period to expire without taking action, FERC's lack of action will be treated as though FERC had issued an order accepting the change for purposes of the right of any party affected by a FERC order to apply for a rehearing within 30 days. Therefore, the bill would provide opportunities for rehearing of orders affecting rates, even in instances where the Commission is deadlocked.

C. H.R. _____, a bill to amend section 203 of the Federal Power Act

Section 203 of the FPA establishes, in part, requirements for the sale, disposition, merger, purchase and acquisition of certain utility assets and facilities.² The Energy Policy Act of 2005 (EPAAct 2005) amended section 203 by dividing the section into separate statutory sub-sections, adding a new sub-section granting FERC jurisdiction to review sales of certain generating facilities, and increasing the minimum monetary threshold from \$50,000 to \$10,000,000 for three of the four statutory sub-sections.³ This monetary threshold serves as a “floor” to ensure that public utilities would only be required to file, and FERC to review, proposed transactions of a minimum material significance.

As amended by EPAAct 2005, subsection 203(a)(1)(B) pertaining to mergers and consolidations (*i.e.*, “acquisitions”) of FERC-jurisdictional facilities did not include an express minimum monetary threshold of \$10,000,000 (or any other amount). The discussion draft would amend section 203 to address this discrepancy by expressly including a minimum monetary threshold of \$10,000,000 for 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).

¹ FERC is generally comprised of 5 commissioners, each of whom is appointed by the President and confirmed by the U.S. Senate for a 5-year term. In some circumstances, FERC may operate with less than 5 commissioners. Presently, FERC has only 4 sitting commissioners resulting from Commissioner Moeller's recent departure.

² Pursuant to Section 203(a)(4) of the FPA, the Commission is required to approve proposed transactions that are determined to “be consistent with the public interest,” which the Commission determines through the evaluation of three factors: (1) the effect of a proposed transaction on competition; (2) the effect of a proposed transaction on rates; and (3) the effect of a proposed transaction on regulation.

³ See EPAAct 2005, §1289.

D. H.R. 2080, a bill to reinstate and extend the deadline for commencement of construction of a hydroelectric project involving Clark Canyon Dam

On August 26, 2009, FERC licensed the Clark Canyon Dam Project (FERC Project No. 12429). The project is to be located at the Bureau of Reclamation's Clark Canyon Dam on the Beaverhead River in Beaverhead County, Montana. Section 13 of the FPA requires a project licensee to begin construction within two years of license issuance, which FERC may extend once for an additional two-year period. If the licensee still cannot begin construction by the extended deadline, the license expires and is terminated. After granting an initial extension to commence construction, FERC issued an order terminating the project license in March 2015, as a result of continued delays by the project applicant and the agency. H.R. 2080 requires FERC to reinstate the license and extend the start time for construction of the Clark Canyon Dam project for six years.

E. H.R. 2081, a bill to extend the deadline for commencement of construction of a hydroelectric project involving the Gibson Dam

In January 2012, Gibson Dam Hydroelectric Company (Gibson Hydro) secured a FERC license (FERC Project No. 12478-003) to construct a hydroelectric facility on Gibson Dam, a non-powered federal Bureau of Reclamation dam in Montana, capable of generating 15 MW of power. Section 13 of the FPA requires a project licensee to begin construction within two years of license issuance, which FERC may extend once for an additional two-year period. If the licensee still cannot begin construction by the extended deadline, the license expires and is terminated. Gibson Hydro was unable to meet the necessary deadlines due to ongoing issues with the U.S. Fish and Wildlife Service, requiring the company to obtain a license extension from FERC, which expired on January 12, 2016. H.R. 2081 authorizes FERC to extend the start time for construction of the Gibson Dam project for six years.

F. H.R. 3447, a bill to extend the deadline for commencement of construction of a hydroelectric project involving the W. Kerr Scott Dam

On July 17, 2012, FERC granted Wilkesboro Hydroelectric Company, LLC an original license for its W. Kerr Scott Hydropower Project (FERC Project No. 12642) to be located at the existing U.S. Army Corps of Engineers' (Corps) W. Kerr Scott Dam, located on the Yadkin River, in Wilkes County, North Carolina. Section 13 of the FPA requires a project licensee to begin construction within two years of license issuance, which FERC may extend once for an additional two-year period. If the licensee still cannot begin construction by the extended deadline, the license expires and is terminated. Because this project requires extensive coordination with the Corps, a statutory extension of the commencement of construction deadline is needed. H.R. 3447 authorizes FERC to extend the start time for construction of the W. Kerr Scott Dam project for six years.

G. H.R. _____, a bill to extend the deadline for commencement of construction of a hydroelectric project involving the Jennings Randolph Dam

On March 29, 2012, FERC granted Advanced Hydro Solutions, LLC (AHS) a license (FERC Project No. 12715) to construct a 15 MW hydroelectric facility at the Corps' existing Jennings Randolph Dam, which is located on the North Branch of the Potomac River in Maryland and West Virginia. Section 13 of the FPA requires a project licensee to begin construction within two years of license issuance, which FERC may extend once for an additional two-year period. If the licensee still cannot begin construction by the extended deadline, the license expires and is terminated. The license, as extended, expires in April 2016. Due to unforeseen circumstances and ongoing regulatory delays, a statutory extension of the commencement of construction deadline is needed. The legislation authorizes FERC to reinstate the license and extend the start time for construction of the Jennings Randolph Dam project for six years.

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

On May 13, 2014, FERC granted the City of New York a license (FERC Project No. 13287-004) to construct a 14 MW hydroelectric facility at the existing Cannonsville Reservoir, on the West Branch of the Delaware River, near the Town of Deposit, Delaware County, New York. Section 13 of the FPA requires a project licensee to begin construction within two years of license issuance, which FERC may extend once for an additional two-year period. If the licensee still cannot begin construction by the extended deadline, the license expires and is terminated. The original license for this project expires in May 2016. Preliminary work at Cannonsville Dam in 2015 led to the discovery of significant unforeseen subsurface conditions, a prolonged discharge of sediment into the West Branch Delaware River, and needed emergency repairs at the dam. These circumstances necessitate new analyses of the dam and the planned hydroelectric project, as well as the completion of identified repairs. These additional reviews and repairs will delay commencement of project construction well past the expiration date of the original license, and likely past a two year extension, if granted. The legislation would authorize FERC to reinstate the license and extend the start time for construction of the Cannonsville Dam project for eight years.

IV. STAFF CONTACTS

If you have any questions regarding this hearing, please contact Patrick Currier or Brandon Mooney of the Committee staff at (202) 225-2927.