



February 8, 2016

TO: Members, Subcommittee on Energy and Power
FROM: Committee Majority Staff
RE: Subcommittee Markup on Energy Legislation

I. INTRODUCTION

The Subcommittee on Energy and Power will meet in open markup session on February 10 and 11, 2016, in 2123 Rayburn House Office Building.

On Wednesday, February 10, 2016, at 5:00 p.m., the Subcommittee will convene for opening statements only. The Subcommittee will reconvene on Thursday, February 11, 2016, 15 minutes after the conclusion of the Subcommittee on Communications and Technology markup or 11:00 a.m., whichever is later, to consider the following:

- H.R. 3021, AIR Survey Act of 2015;
- H.R. 3797, Satisfying Energy Needs and Saving the Environment (SENSE) Act;
- H.R. ____, Blocking Regulatory Interference from Closing Kilns (BRICK) Act;
- H.R. 4444, EPS Improvement Act;
- H.R. 2984, Fair RATES Act;
- H.R. 4427, a bill to amend section 203 of the Federal Power 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. 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. 4416, a bill to extend the deadline for commencement of construction of a hydroelectric project involving the Jennings Randolph 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. Any information with respect to an amendment's parliamentary standing (e.g., its germaneness) should be submitted at this time as well.

II. EXPLANATION OF LEGISLATION

A. 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 bill amends 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 amends 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 provides 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.

B. 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. This bill makes 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) provides 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) provides less restrictive sulfur dioxide emissions allocations under CSAPR as they apply to coal refuse electric utility steam generating units.

Section 2(c) provides an alternative compliance means for HCl and SO₂ under MATS.

C. H.R. ____, Blocking Regulatory Interference from Closing Kilns Act

On January 19, 2016, the Committee released a discussion draft of H.R. ____, 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 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 extends 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) provides 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) provides 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 Environmental Protection Agency (EPA) final rule published at 80 Fed. Reg. 65469 (October 26, 2015) and 80 Fed. Reg. 75817 (December 4, 2015).

Section 2(c) provides 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.

D. 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. Reps. Ellmers and DeGette formally introduced the legislation on February 3, 2016. The bill would exclude certain lighting technologies and ceiling fans from the definition of external power supply (EPS), as included in the Department of Energy’s (DOE) 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 amends and clarifies 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) revises 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 establishes 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 requires 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) makes a number of technical corrections to EPCA.

E. 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 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 amends 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 will be treated as if FERC had issued an order accepting the change, thereby allowing any affected party to apply for rehearing within 30 days.

F. 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 FPA, and the Subcommittee on Energy and Power held a hearing on the bill. The legislation includes the following provisions:

Section 1:

Section 1 amends section 203 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).

G. 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 legislation includes the following provisions:

Section 1:

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

H. 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 requires 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).

III. STAFF CONTACTS

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