



COMMITTEE ON DEMOCRATS
ENERGY & COMMERCE
RANKING MEMBER FRANK PALLONE, JR.

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Opening Statement of Ranking Member Frank Pallone, Jr.
Committee on Energy and Commerce
Markup of H.R. 906, a bill to Modify the Efficiency Standards for Grid-Enabled Water Heaters; H.R. ____, Improving Coal Combustion Residuals Regulation Act of 2015; and, H.R. ____, Data Security and Breach Notification Act of 2015

April 14, 2015

Thank you Chairman Upton. Today we will markup three bills in the Energy and Commerce Committee that address the areas of energy efficiency standards, coal ash clean up and data security.

First, I want to voice my support for H.R. 906, which would amend the Department of Energy's (DOE) efficiency standards for water heaters to allow the continued use of large tank electric resistance water heaters under limited circumstances. This bipartisan bill, cosponsored by a number of Democrats including Mr. Welch, Mr. Loeb sack and Mr. Doyle, would ensure that these so-called "grid-enabled water heaters" can continue to be employed in demand response programs sponsored by rural co-ops and other electric providers.

Although versions of this bill have passed the House on a number of occasions, and it is also currently pending before the House as part of S. 535, the Portman-Shaheen efficiency bill that recently passed the Senate, this is actually the first time our Committee is marking up the legislation. I think we all want to see this legislation move through Congress to the President for signature prior to the April 16th effective date of the new DOE standards. I want to thank Chairman Whitfield –the bill’s lead sponsor-- and Chairman Upton for working with us to pursue an expedited version of regular order and I know our side is prepared to work with you to move this quickly through the House.

Second we will consider the Improving Coal Combustion Residuals Regulation Act of 2015. As I’ve stated during our legislative hearing on this topic and our recent Subcommittee markup, I think that this legislation is unnecessary, and dangerous for public health and the environment. EPA’s final rule reflects a tremendous effort, and it will, for the first time, provide the framework for addressing this serious environmental problem. But this bill would undermine that rule, putting in place weaker requirements for groundwater monitoring and protection, cleanup of pollution, closure of unsafe sites, and more. The bill would also create a new model of delegation to states with a sharply curtailed role for EPA. It is a bad solution for coal ash, and bad precedent, and I will urge my colleagues on both sides of the aisle to oppose it.

Today we also markup a draft data security and breach notification bill. As I’ve said repeatedly, I want this Committee to take action to reduce data breaches and their adverse effects. Unfortunately, the bill before us does not do that. And worse, it weakens existing consumer protections.

Many of the 51 state and territorial breach notification laws provide greater protections for consumers. On just the trigger for notice to consumers, 38 state laws are stronger than this bill – providing notice in more circumstances, thereby allowing consumers to mitigate harms.

Rather than addressing some of the major problems raised at the legislative hearing and Subcommittee markup, we've heard rumors from stakeholders that we will likely see various amendments tomorrow that make substantive changes but do not address the fundamental problems with the bill. These include changes to the data security obligations imposed on cable and satellite providers; the right to notice of a breach of health information in certain states; and the Federal Trade Commission's ability to seek adequate penalties.

For example, one stakeholder expressed concern that the vague security standard leaves companies unsure of what is required of them. But I believe that the solution is to clarify the security requirements through more robust language or rulemaking, not to limit FTC fining authority.

Another stakeholder, who provides communication services, explained that his company would rather take its chances with after-the-fact FTC enforcement instead of before-the-fact obligations under Federal Communications Commission's regulations. That is not how we should legislate. No one questions the FTC's expertise in data security, but as primarily an enforcement agency, the FTC currently lacks the tools to effectively handle the unique data security, breach notification, and privacy issues of communications services.

In closing, I again must raise a procedural issue. The base text we are marking-up today is significantly different than the draft forwarded by the Subcommittee. The work of the Subcommittee at the markup last week has been almost completely overridden. And we hear we will have significant new language tomorrow morning. This is not a good reflection of our Committee and I hope that we can correct this for future action. I think I've proven over the last three months that I stand ready to work with my Republican colleagues if we truly work together, not just make that claim.

I urge my colleagues to reject the draft data security bill and instead support the substitute that will be offered that I believe can garner the support of the whole House.

Thank you.