DISSENTING VIEWS
H.R. 8, North American Energy Security and Infrastructure Act of 2015

We agree that America's energy picture is changing rapidly and that we need to update and modernize our energy infrastructure. The Obama Administration's common-sense energy policies have already started us on that road: our country is experiencing record energy surpluses, significant reductions in demand, and prices at the pump that have fallen nearly 50 percent from where they were a year ago.

Unfortunately, H.R. 8 fails to build on these successes. The bill does not include any meaningful language to advance clean and renewable energy and the energy efficiency title would actually result in a net increase in consumption and carbon emissions. The bill is opposed by environmental groups, efficiency and consumer advocates, and the clean energy sector.

The Majority cited a number of legislative hearings as part of the record behind the development of this legislation, but all of those hearings were held to examine draft legislative text that changed so significantly prior to markup as to be nearly irrelevant. Much of the language that now comprises H.R. 8 was available only hours before being voted on in the Committee. As a result of the Majority's rushed approach, Members did not have the benefit of hearings, the Administration's views, or any other means of understanding whether the legislation would benefit or harm consumers, the economy, energy security or the environment.

Natural Gas Pipeline Siting: Fixing Phantom Problems, Pushing Aside Public Scrutiny

Sec. 1101, entitled "FERC Process Coordination" makes dangerous and unnecessary changes to the FERC natural gas pipeline siting process, which the Majority declares is necessary to "reinforce the Federal Energy Regulatory Commission's (FERC) role as the lead agency for siting interstate natural gas pipelines."[1] Nothing in the legislative record over the course of recent Congresses suggest that that FERC's role is in doubt or hindered. Even recent industry publications provide strong evidence against the Majority's assertion that the certification process needs to be further reformed in favor of pipeline companies:

> The first quarter of 2015 proved busier than the first quarter of 2014 for the Federal Energy Regulatory Commission's Office of Energy Projects. Through April 30 of this year, the office certified and placed in service almost twice as many natural gas projects and more than doubled the miles of pipeline that were put in service and certified through the same date in 2014.[2]

[1] Memorandum from Majority Staff to Members of the Subcommittee on Energy and Power, Subcommittee Markup of a Committee Print (July 20, 2015).

[2] American Gas, Pipelines DIGEST at 6 (Oct. 2015).

In point of fact, the siting of natural gas pipelines is often controversial and requires detailed regulatory scrutiny by FERC, yet Section 1101 would require FERC to decide on a pipeline application within 90 days, regardless of the complexity of the application. Because FERC has previously testified that most pipelines already certificated within a one year period, the purpose of this section appears to have more to do with curtailing federal and state resource agencies and the public's ability to review and comment on a proposed pipeline than on actually speeding the delivery of energy to end users. This view is further supported by a major change in this section that would require the agency to consider environmental data from aerial or remote surveys, instead of onsite inspections. This policy change, added at the last minute without any public vetting, allows companies working to build natural gas pipelines the ability to circumvent property owners' rights when surveying land. In a number of cases, companies do not have the requisite permits to survey the land they are seeking to access and the language appears designed to allow them to sidestep that aspect of the application process. Rep. Tonko offered an amendment to strike this section to ensure federal and state regulators are given the time needed to carefully and thoughtfully review applications for the construction of natural gas pipelines and to ensure that the landowners and the general public at least have some ability to participate meaningfully in the siting process.

Electricity Regulation: A Win for Inefficient Utilities, a Loss for Consumers and Climate

The provisions of H.R.8 relating to the regulation of electric energy under Federal law represent a backward-looking, and anti-consumer approach that rewards inefficiency and penalizes innovation. Two of the provisions –Sections 1107 and 1110—mark a dramatic reversal of the pro-market and pro-consumer policies of the Energy Policy Acts of 1992 and 2005, while a third provision, Section 1108, would add unjustified regulatory and litigation burdens to the rulemaking process. All three of these provisions are being included by the Majority under the guise of enhancing the reliability of the grid. However, not a shred of hard evidence was provided to demonstrate that any of these sections would result in greater reliability or even that any portion of the nation's electrical system is in danger of becoming unreliable.

Sections 1107 and 1110 are two sides of the same harmful policy, one targeted at regulated states and the other at states participating in regional wholesale markets. Section 1107 amends Section 111 of the Public Utility Regulatory Policies Act (PURPA) to establish a new federal standard requiring electric utilities to consider adoption or modification of policies to assure reliable generation in utilities' integrated resources plans. However, what the provision actually looks to do is stack the generation deck in favor of above market coal and nuclear power. Language added by Democrats during the Energy and Power Subcommittee's consideration of the bill also require consideration of approaches that would improve resilience to severe weather events resulting from catastrophic climate change. However, on balance, the language in Section 1107 would result in unnecessary additional spending by states to consider adoption of policies that would benefit owners of non-economic generation to the detriment of ratepayers.

An amendment by Rep. Pompeo narrowly adopted during markup would require states to expend additional resources to consider the impacts of subsidizing the deployment, construction, maintenance, or operation of a customer-side technology; including costs and benefits, resource utilization, fuel diversity, and grid security. This provision appears to be squarely aimed at hindering the growing integration into the grid of distributed generation and other "customer-side" technology.

As bad as Section 1107 is, still worse is Section 1110, which would amend the Federal Power Act to require each regional transmission organization (RTO) and independent system operator (ISO) that operates a capacity market to provide to FERC an analysis of how: 1) such market utilizes competitive market forces in procuring capacity resources; and 2) the structure of such market includes resource-neutral performance criteria that ensure the procurement of sufficient capacity from physical generation facilities that have certain reliability attributes, such as fuel on-site, dual fuel capability, and contractual obligations that ensure adequate fuel supply to enable operation for an extended period of time. After such an analysis is submitted, FERC is required to submit to Congress a report containing an evaluation of whether the structure of such market, as detailed in the analysis, meets the required criteria and, if it does not, provide recommendations with respect to the procurement of sufficient capacity meeting the identified reliability attributes.

At its core, Section 1110 is designed to interfere with the competitive wholesale process established in EPAct 2005 in order to prop up generating facilities that would otherwise be rejected as economically noncompetitive by the market. The situation giving rise to this effort was described well by Chuck Jones, President and CEO of FirstEnergy on a recent earnings call:

> We are talking about trying to find ways to preserve major generating assets that have plenty of useful life left in them, and keep them from closing prematurely. Exelon is looking at doing that in Illinois and New York. Ohio utilities are looking at it doing that in Ohio…. These plants are at risk today, and we need to get a decision made, as to whether we're going to look at ways to protect them, so we let all of those debates and legislation in Washington, DC and everything else play out. [3]

The provision is both anti-consumer and anti-environment as it seeks to aid noneconomic nuclear and coal facilities at the expense of less costly, cleaner and equally reliable generation sources such as wind and solar power. And, the provision is as unnecessary as it is harmful, since FERC already has authority to address these matters and is doing so –a fact readily acknowledged by the Chairmen in their July 8, 2015 letter with Senator Murkowski to FERC Chairman Bay on this subject.

Although described by the majority as merely requiring a report, it is critical to understand that the language clearly requires ongoing reporting by RTOs and FERC and, with

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[3] *FirstEnergy (FE) Earnings Report: Q2 2015 Conference Call Transcript* at 9, The Street (Aug. 3, 2015) (online at www.thestreet.com/story/13240841/9/firstenergy-fe-earnings-report-q2-2015-conference-call-transcript.html).

each report, another opportunity for owners of noneconomic generation to litigate their rejection from the market on the basis of inadequate adherence to the skewed language of this provision. If there is any doubt as to whether the Majority intends Section 1110 to be more than just a study, one need only look to subsection 1110(c). That subsection specifically exempts a discrete set of enumerated dockets from the provision's application. It further goes on to state that the section shall not "provide grounds for the Commission to grant rehearing or otherwise modify orders issued in those dockets." Yet, by specifically exempting those enumerated dockets from rehearing or modification, the provision clearly invites the Commission to grant rehearing and modifications with regard to any other relevant docket, now or in the future. It is hard to imagine a more open invitation to litigation on behalf of those who own coal and nuclear plants that were previously unable to compete in the marketplace.

Ultimately, there appears to be a fairly broad skepticism of capacity markets on both sides of the aisle. Rep. Kennedy, in his opening statement referred to "a broken, backwards forward-capacity market system" and called for oversight and "reform of the system that sets rates for our constituents so they are not left paying for shortcomings." So, what is perhaps most tragic about the inclusion of Section 1110 is that the Majority has wasted an opportunity to unite both sides of the aisle in an effort to better understand and comprehensively address problems in the market affecting all suppliers and all consumers. Instead of working with Democrats to assess and repair problems with capacity markets, the Majority chose instead to include a provision that helps only a select few providers at the expense of consumers, the environment, and the market itself. Rep. Kennedy offered an amendment to improve the AINS by striking Section 1110 that was opposed by the Majority. The subsequent rejection by the Majority of Rep. Tonko's amendment to exempt an RTO that prepared a comprehensive reliability plan from the requirements of Section 1110 casts serious doubt on the claim that Section 1110 is designed to address reliability.

The third provision the Majority included in the name of reliability, Section 1108, would impose an unprecedented requirement for FERC to complete a "reliability analysis" of covered rules that cost over a billion dollars. Ranking Member Pallone offered an amendment to strike this provision, which would not only be extremely burdensome, but also is completely unnecessary in light of the reliability requirements and authorities contained in Section 215 of the Federal Power Act added by Congress in EPAct2005.

Clearly, Section 1108 appears directed less at bolstering reliability and more toward undercutting environmental regulation, specifically the Clean Power Plan and the actions of the Obama Administration to address the threat of climate change.

Even on these terms this provision is completely unnecessary as FERC certainly has the ability to comment on EPA rules if it so chooses. In fact, FERC already coordinates routinely with other federal agencies whose proposed or final rules affect the electric power sector. It is unclear whether FERC would have either the resources or the ability to conduct an analysis within the short timeframes in this section. Moreover, state plans are the actual vehicles for implementation of the Clean Power Plan, so requiring FERC to analyze the final rule would be completely without purpose. Furthermore, the final rule already requires each state to consider

reliability concerns when developing a compliance plan, and EPA and FERC are coordinating their efforts to "preserve continued reliable electricity generation and transmission." Even if FERC were somehow able to put together the reliability in this section, the rule contains extended multi-year compliance timeframes that would limit the usefulness and accuracy of such predictions.

Ultimately, Section 1108 raises the specter of reliability failure where none exists. As EPA recently said: "Over the past 45 years, EPA has never issued a rule that has threatened the delivery of affordable and reliable electricity to American families, and the Clean Power Plan will not change that." In fact, the final Clean Power Plan provides states with a valuable tool to guarantee the reliability of the electric grid, and will help to ensure a smooth transition to cleaner energy future. Unfortunately, rather than address climate change and its challenges to reliability, the Majority has again chosen to instead erect legislative roadblocks to prevent Congress from doing anything about it.

Another un-vetted and unjustified addition to the Majority's bill appears in Section 4222, entitled "Clarification of Facility Merger Authorization." In point of fact, the section does not clarify anything, but rather raises the financial threshold for FERC to consider acquisitions of electric transmission facilities. No justification for this provision was provided at any of the legislative hearings cited by the Majority in this report and, in truth, no mention of any aspect of this provisions appeared in those hearings. Further, the Majority's statement that "[t]his amendment would require FERC to restore a previous and long-standing, minimum monetary threshold applied to public utilities' acquisitions and dispositions of FERC-jurisdictional electric transmission facilities, would correct an apparent oversight that resulted in Congress's intent in EPAct 2005 not being completely enacted by the Commission" is factually inaccurate.

The committee-reported version of EPAct 2005, as authored by former Chairman Barton, did not contain a monetary threshold for this provision and no mention of such a threshold appears in the H.Report 109-215 or the Conference Report accompanying EPAct 2005. So, while establishing a statutory monetary threshold in Section 203 of the Federal Power Act may or may not be sound policy, nothing in the record supports the view that Congress intended to include a monetary threshold for FERC merger reviews in Section 203 either before or as a result of the enactment of EPAct 2005.

On a final note with regard to the electricity provisions is that they sorely reflect the fact that, at the time of writing these views, the Majority has yet to hold or even schedule a hearing with the FERC Commissioners. And, this situation has been allowed to continue, despite the appointment of a new Chairman and a new Commissioner since the beginning of this Congress and the inclusion of many provisions that impact areas overseen by FERC. The same is true with regard to bill's natural gas and hydroelectric provisions. Taken as a whole this amounts to nothing less than legislative malpractice of the highest order.

Energy Efficiency Provisions: More Consumption than Conservation

In previous omnibus energy legislation, energy efficiency was generally an area of bipartisan accord. Unfortunately, that is no longer the case as the Majority has opposed the

inclusion of any meaningful language in this bill to increase the conservation of our nation's energy resources and manage demand.

H.R. 8 actually goes the opposite direction and, according to American Council for an Energy-Efficient Economy (ACEEE), the "Energy Efficiency" title would actually result in a net increase in consumption and greenhouse gas emissions relative to current law. In fact, ACEEE roughly estimates that collectively the title would result in a staggering $20 billion in net cost to consumers, an additional 10 quads of energy use, and additional emissions of around 500 million metric tons of CO2.[4]

The most damaging of these provisions from an energy efficiency standpoint are the changes to the Department of Energy's authorities with regard to building codes contained in section 4151. Of particular concern is the language preventing DOE from providing any assistance -- whether technical or financial -- if it finds that a proposed code does not meet a simple payback period of ten years or less. This sets a dangerous federal precedent of determining what is and is not an acceptable return on investment and does not fit with the reality of mortgage durations and home ownership. Dictating a single, federally-determined simple payback model does not account for the widely varying market and climate circumstances across our vast country.

Building codes are the most-effective tool to ensure that efficiency is implemented when it is cheapest and easiest: when a building is first constructed. Building codes are particularly important because they protect homeowners by lowering the overall cost of home ownership. Unlike upgrades such as granite counter tops, efficiency is hard to see at the time of purchase and so a builder looking to cut costs may skimp on this important measure to reduce their first costs. This is short sighted and ultimately will result in greater cost to the home owner who sees the combined cost of their mortgage and utility bills each month. Skimping on efficiency probably doesn't do much to lower a mortgage payment, but it certainly will result in a higher utility bill, increasing overall monthly costs and reducing affordability.

The language included in the bill as reported takes a short-sighted view of affordability, by requiring DOE to analyze simple payback of measures over three, five and seven year periods and not allowing them to propose any measure that has a longer payback than ten years. Given that a mortgage will run from 15-30 years and a home will be around for many decades, limiting DOE to such short payback periods does not make sense.

ACEEE recently estimated that enactment of the building codes language included in H.R. 8 would result in a net loss in efficiency of 12.53 quads at a cost of $23 billion to consumers. That is one of many reasons why Ranking Member Pallone offered an amendment to strike the building code provisions from the AINS.

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[4] American Council for and Energy Efficient Economy, *2015 Federal Energy Efficiency Legislation and Projected Impacts* (Sept. 8, 2015) (online at aceee.org/sites/default/files/ee-legislation-9-15-15.pdf).

It is also important to note that the Committee had another option beyond just either maintaining current law or adopting the language included in the AINS. In negotiations with the Majority Democrats declared their willingness to support bipartisan compromise language authored by Rep. McKinley (R-WV) and Rep. Welch (D-VT) and introduced in this Congress as part of H.R. 2177. Unfortunately, the Majority chose neither current law nor compromise.

Of course, merely eviscerating DOE's authority with regard to building code efficiency was not enough for the Majority. The Majority has continuously shown itself unable to resist any opportunity to attack any program or provision of law that would reduce greenhouse gas emissions and their impact on climate change and H.R. 8 is no exception.

H.R. 8 repeals a key portion of section 433 of the Energy Independence and Security Act, signed into law by President George W. Bush, which established energy efficiency performance standards for the design of new federal buildings and those federal buildings undergoing major renovations. The provision strikes language in current law that requires federal buildings to be designed to result in decreased consumption of fossil fuels, including a 100 percent reduction by 2030 compared to a similar building in 2003.

Sec. 433 established groundbreaking energy efficiency performance standards for the design of new Federal buildings and those Federal buildings undergoing major renovations. But H.R.8, as reported, strikes the requirement that new federal buildings to be designed to result in decreased consumption of fossil fuels, a move that ACEEE estimates will deprive consumers of $700 million in savings over the next 25 years.

According to the American Institute of Architects, not only are Section 433's current targets achievable, but some buildings are already meeting the 2030 target of a 100 percent reduction in fossil fuel use now. This includes, the Wayne N. Aspinall federal building in Colorado --the first net zero energy building on the National Register of Historic Places.

Maintaining Section 433 and the progress toward its goals is critical because the federal government is the largest property owner and energy consumer in the United States. Requiring federal buildings to meet aggressive energy targets not only reduces taxpayer costs through energy savings and reduces our dependence on foreign oil; it also leverages the government's large purchasing power to bring new technologies and materials to the marketplace.

Some in the Majority have gone so far as to characterize Section 433 as "a ban on the federal government using energy from fossil fuel," but the law does not ban fossil fuels. In fact, at no point does this provision in current law require zero fossil fuel use for any building designed or renovated before 2030. And, despite testimony by the American Gas Association that "the Section 433 fossil fuel ban is deeply flawed." Its implementation will severely limit – and ultimately prohibit – adoption of highly efficient technologies using natural gas at federal facilities, such as combined heat and power… DOE has actually proposed carve-outs for on-site natural gas usage in highly efficient combined heat and power systems.

Hydroelectric Provisions: Watering Down Protections and Rights

Maintaining and expanding our nation's hydroelectric capacity to generate electricity without carbon emissions is crucial to our ability to combat climate change and increase economic prosperity.

Ironically, climate change has increased the need to license new capacity of this carbon-free generating technology at the same time it has caused record drought that has made it more difficult to site new capacity or provide long-term relicensing of existing facilities. Climate-induced changes in hydrology – including the record drought in the west – is calling into question the reliability of existing facilities, upending the economics of siting new hydropower capacity, and increasing the challenges associated with addressing hydropower's environmental issues. Hydroelectric power potentially poses a major source of harm to fish and wildlife populations, water quality, and other important resources if poorly operated or sited. This is a crucial point, because hydroelectric power depends on rivers for fuel and those rivers belong to all Americans, not just those who sell or buy the power generated from it. There are also numerous examples of hydroelectric dams devastating lands and waters sacred to Native American tribes. Accordingly, the Federal Power Act requires FERC to balance these competing interests in issuing a license because no single use of a river—power, drinking water, irrigation, commercial fishery support, recreation, or other use—should automatically take precedence.

Unfortunately, H.R. 8, as reported, would upend that balance, placing power generation above all other uses of the river.

The Federal Power Act authorizes States and federal natural resource agencies to place conditions on hydroelectric licenses to preserve water quality, protect public lands and Native American reservations, and ensure proper fish passage to preserve healthy ecosystems and fisheries. If, for instance, the license might impact a protected resource, such as dewatering a Wild and Scenic River or National Wildlife Refuge, releasing toxic sediment, flooding a Native American reservation, or extirpating a keystone species, the State or federal agency responsible for managing that resource can place conditions on the license to ensure the resource is protected.

Hydroelectric licenses have fixed conditions that generally remain unchanged during the 30 to 50 years they are in force. Licensees also benefit from unlimited, automatic, annual extensions after their license has expired if a new license has not been issued. As a result, the impacts of these hydropower dams often go unaddressed for more than half a century. Particularly for those facilities first licensed before enactment of the Electricity Consumers Protection Act (1986) and major environmental statutes such as National Environmental Policy Act (1970), the Clean Water Act (1972), and the Endangered Species Act (1973), the process of developing new license conditions necessarily will require upgrades to facilities to bring them in line with modern environmental laws and attendant regulations. Rightfully, this makes the licensing process rigorous. Sometimes, the necessity of addressing these complex issues also makes the process time-consuming, frustrating, and expensive.

In order to address some of the frustration with the relicensing process, EPAct05 saw the enactment of the most significant changes to federal hydroelectric licensing law since enactment

of the Electric Power Consumers Act. EPAct05 included new provisions that permit licensees to propose less costly alternatives to agency-imposed conditions and gives parties access to trial-type hearings to resolve disputed factual issues underpinning those conditions. Both of these changes represented bipartisan efforts to reduce the cost and timing associated with relicensing. In addition, FERC worked with state and federal agencies, industry, and non-governmental organizations to develop the Integrated Licensing Process (ILP), which was intended to address similar issues of cost and timing. Despite the fact that both the ILP and the EPAct05 rules have been in place for more than a decade, the Committee has never conducted meaningful oversight on the effectiveness of either change.

We repeatedly expressed our interest in working with the Majority to enact commonsense, environmentally sound reforms to speed the hydroelectric licensing process and make investments in new projects economically attractive while balancing the needs of all stakeholders. However, instead of working with Democrats to accomplish these important goals, the Majority chose to repeat the mistakes of the past, paying exclusive attention to the interests of hydroelectric developers and licensees. In the name of ''reform'' the provisions included in H.R. 8 give preferential treatment to electric utilities at the expense of other legitimate parties to licensing proceedings including states, Indian tribes, conservationists, irrigators, ranchers, and sportsmen.

The hydroelectric provisions included in Subtitle C of Title I, in many ways, represent all the worst shortcomings of the Majority's approach to legislating. While Sections 1301-1303 were provided only 24 hours in advance of the markup, the 21-page amendment offered by Ms. McMorris-Rodgers which formed the basis for bulk of Subtitle C, wasn't made public until after the markup formally commenced. Within those 21 pages are significant changes to provisions of hydroelectric statute and case law that have developed and endured over the course of nearly a century and effectively constitute an unprecedented undermining of federal, state and tribal authorities and many of our nation's critical environmental laws. Yet, despite the massive scope and impact of these provisions on existing law and policy, not one of these changes had been subject to a hearing or review by the Committee prior to inclusion in H.R. 8. As such, Members were left with a matter of minutes to attempt to discern the impact of these changes on literally decades of policy touching on everything from state authority under the Clean Water Act to Native American tribal rights to fish, wildlife and water resource management, to the Endangered Species Act and the National Environmental Policy Act.

Renewable Energy: Charting A Path Backward

H.R. 8 has one central theme binding its titles: a steadfast devotion to the energy of days gone by. It is legislation that looks to the rearview mirror for its vision of the future.

If there is any doubt that this is the case, one need only look to the provisions of the bill designed to facilitate the integration of clean and renewable generation technologies into the grid. There are none.

In fact, Republicans opposed nearly every effort to include any provision that would have advanced the adoption of clean and renewable energy generation including:

- An amendment by Rep. Loebsack to establish a program to promote the development of distributed wind energy systems;
- An amendment by Rep. Cardenas establishing a new loan and grant program to make solar power more accessible to low income households;
- An amendment by Rep. Castor to promote distributed energy and a resilient electrical system.

SECTION BY SECTION ANALYSIS OF PROVISIONS ADDED DURING FULL COMMITTEE CONSIDERATION

Section 1101: FERC Process Coordination

This section is intended to reform the siting review process for natural gas pipelines at the Federal Energy Regulatory Commission (FERC). The previous version of this section directed FERC to select which agencies are to participate in the review process, and establish deadlines for them in completing their consideration of pipeline applications.

Changes made by the Committee include:

- Directing FERC to notify, rather than formally invite, any agency that may consider an aspect of a natural gas pipeline application;
- Directing FERC to make recommendations on the appropriate scope of environmental review;
- Removing the provision related to issue resolution meetings; and
- Removing the provision allowing applicants to provide additional funding to aid FERC in the review of permit applications.

This section also included troubling language that would require other federal and state agencies to defer to the scope of environmental review determined by FERC to be appropriate for the project. Representatives of the environmental community note that the inclusion of this deference language "is an inappropriate restraint on the important work that other agencies perform to ensure that pipelines are sited responsibly."[5]

Finally, the Amendment in the Nature of a Substitute (AINS), included the addition of language related to aerial or remote surveys. The language would require FERC to consider environmental data from aerial or remote surveys, instead of onsite inspections. This policy

[5] Letter from Center for Biological Diversity, Clean Water Action, Earthjustice, Friends of the Earth , GreenLatinos, League of Conservation Voters, Natural Resources Defense Council, Public Citizen Sierra Club, and the Southern Environmental Law Center to Members of the Committee on Energy and Commerce (July 21, 2015).

change allows companies working to build natural gas pipelines the ability to circumvent property owners' rights when surveying land.

Rep. Tonko offered an amendment to strike this section during the full Committee markup. The Amendment failed by a vote of 20 yeas to 29 nays.

Section 1107: State Coverage and Consideration of PURPA Standards for Electric Utilities

Section 1107 amends section 111 of the Public Utility Regulatory Policies Act (PURPA), which generally directs states to consider and make a determination whether or not to adopt certain federal standards.

Section 1107 establishes a new federal standard requiring each electric utility to develop plans for increased use of resiliency-related technologies and other approaches that would improve resilience and maintain the flow of power to facilities critical to public health, safety, and welfare. These plans should use "the most current data, metric, and frameworks related to current and future threats, including physical and cyber-attacks, electromagnetic pulse attacks, geomagnetic disturbances, seismic events, and severe weather and other environmental stressors." Also, "all types of distributed" generation has been added to the list of resiliency-related technologies. Each electric utility would be required to commence such consideration within one year of enactment and to complete the consideration within two years. Additionally, state regulatory authorities are directed to consider allowing rate recovery for procurement and deployment of resiliency related technologies.

Section 1107 also establishes a second federal standard requiring each electric utility to develop and implement a plan for deployment of advanced energy analytics technology. State regulatory authorities are directed to consider allowing rate recovery for the procurement, deployment, or the use of advanced energy analytics technology. Electric utilities shall commence such consideration within six months of enactment and complete the consideration within one year.

Under a third federal standard included in section 1107, electric utilities are directed to consider adoption or modification of policies to assure reliable generation in integrated resources plans of utilities. Operational characteristics of "reliable generation" include: "possession of adequate fuel onsite, the operational ability to generate electric energy from more than one fuel source or fuel certainty that ensures adequate fuel supply." Electric utilities shall commence consideration within one year of enactment and complete consideration within two years.

Section 1108: Reliability Analysis for Certain Rules that Affect Electric Generating Facilities

Section 1108 would impose a requirement for FERC to complete a "reliability analysis" of covered rules that cost over a billion dollars, and could impact just one electric generating unit. This section appears to be aimed at the Clean Power Plan, and actions of the Administration to address the threat of climate change.

FERC already has the ability to comment on EPA rules if it so chooses, so at a minimum, this provision is unnecessary. In fact, FERC already coordinates routinely with other federal agencies whose proposed or final rules affect the electric power sector. It is unclear whether FERC would have either the resources or the ability to conduct an analysis within the short timeframes in this section.

State plans are the actual vehicles for implementation of the Clean Power Plan, so requiring FERC to analyze the final rule would not serve any purpose. In fact, it would be very difficult for FERC to develop an accurate reliability analysis prior to the submission of the state plans.

EPA's final rule already requires each state to consider reliability concerns when developing a compliance plan, and EPA is coordinating its efforts with FERC to "preserve continued reliable electricity generation and transmission."[6]

Ranking Member Pallone offered an amendment to strike this section during the full Committee markup. The amendment failed by a vote of 22 yeas to 27 nays.

Section 1109: Carbon Capture, Utilization, and Sequestration Technologies

Section 1109 was added by the AINS and had not been considered by the Committee prior to the markup. The provision was based on legislative language submitted for consideration by Reps. Doyle and McKinley. Section 1109 directs the Department of Energy (DOE) to perform an evaluation every two years on all clean coal technology awards to ensure the funds being allocated for clean coal projects are meeting the goals set forth in the grant.

This provision further encourages DOE to recognize the most promising clean coal projects and research as well as those technologies that have reached their full potential. It also encourages DOE to recommend new funding levels for projects and areas of research to ensure funds are being granted to projects that are truly advancing clean coal technology.

DOE is to make the evaluation findings public, publish them on the website, and present the findings and funding recommendations to Congress every three years. Finally, DOE is directed to annually identify and report cost and performance goals for coal-based technologies that would allow for large scale demonstration and permit the continued cost-competitive use of coal for commercial use.

Section 1110: Reliability and Performance Assurance in Regional Transmission Organizations

Section 1110 would effectively limit market forces from awarding the most efficient technologies and create an uneven system that only benefits certain power generators. While the language in Section 1110 purports to be "resource neutral," the set of requirements for

[6] U.S. Environmental Protection Agency, *The Clean Power Plan: Key Topics and Issues* (Aug. 3, 2015) (online at www3.epa.gov/airquality/cpp/cpp-key-topics.pdf).

participation in capacity markets has the potential to disqualify both distributed energy and renewable energy resources.

Many states are already including aggregated resources into capacity markets. This expands market participation and increases competition which benefits both businesses and consumers. If enacted, Section 1110 would undo these benefits by preventing cost savings that could be created through distributed energy resources, including efficiency and load shifting resources. States and regional entities already take reliability into account through existing mechanisms. Federal intervention in these determinations is both unnecessary and problematic.

Rep. Kennedy offered an amendment to strike this section during the full Committee markup. The amendment failed by a vote of 22 yeas to 26 nays.

Section 1201: Energy Security and Infrastructure Modernization Fund

Section 1201 established an Energy Security and Infrastructure Modernization Fund in the Treasury of the United States. This fund is intended (1) to provide for the construction, maintenance, repair, and replacement of Strategic Petroleum Reserve (SPR) facilities; and (2) for carrying out non-SPR projects needed to enhance the energy security of the United States.

This section is not problematic in principle. However, the amounts authorized in this section are less than those agreed to by the Chairman in order to secure Democratic support at the subcommittee markup.

During the full Committee markup, a number of members offered amendments to restore the funding levels to what was originally agreed upon. Rep. Rush offered an amendment to include $1.5 billion for a program to help offset the costs of replacing and repairing leaky natural gas distribution pipelines for low income households. The amendment failed by a vote of 23 yeas to 25 nays. Ranking Member Pallone also offered an amendment to increase funding for the SPR modernization to $2 billion, and the competitive grant program for grid resiliency efforts to $1.5 billion. The amendment failed by a vote of 23 yeas to 25 nays.

Section 1301: Hydroelectric Production and Efficiency Incentives

Section 1301 would amend the the Energy Policy Act of 2005 (EPAct05) to reauthorize through fiscal year 2025 the program of hydroelectric production incentives and incentive payments to the owners or operators of hydroelectric facilities at existing dams to make capital improvements directly related to improving efficiency.

Section 1302: Protection of Private Property Rights in Hydropower Licensing

Section 1302 amends Sections 4 and 10 of the Federal Power Act to require FERC to consider and minimize infringement on "the useful exercise and enjoyment of property rights held by nonlicensees" in issuing hydropower licenses. Further, it requires a licensee developing any recreational resource within the project boundary to consider private landownership as a means to "encourage and facilitate" private investment as well as increased tourism and recreational use.

Section 1303: Extension of Time for FERC Project Involving W. Kerr Scott Dam

Sec. 1303 would authorize FERC to extend the construction date of the W. Kerr Scott Dam in North Carolina for six years.

Section 1304: Hydropower Licensing and Process Improvements

Section 1304 would add a new Section 34 to the Federal Power Act entitled Hydropower Licensing and Process Improvements and contains elements similar to the pipeline siting process changes in Section 1101. The section changes existing law to empower FERC to set the schedule for all federal authorizations, including those issued pursuant to the Endangered Species Act, The Federal Land Policy and Management Act and the Wild and Scenic Rivers Act, among others. FERC's new authority would also apply to federal authorizations that have been delegated to Native American tribes and the states, including water quality certification under Section 401 of the Clean Water Act. All federal and state agencies and tribes are required to comply with FERC's schedule and give due consideration or deference to FERC's proposed scope of environmental review, setting up a new potential avenue for litigation and reversing standards in current law requiring FERC to give "due weight" to the recommendations, expertise, and statutory responsibilities" of those agencies. FERC is also required to promulgate regulations governing the procedures for developing the schedule for Federal authorizations in each individual proceeding. Federal, state and local agencies, as well as tribes, are directed to identify and bring to FERC's attention issues of concern that may delay or prevent the grant of an authorization or adherence to FERC's schedule. The provision places FERC in charge of the process for resolving disputes involving such agencies or tribes and requires those entities to enter into a memorandum of understanding with FERC to facilitate dispute resolution. The section also authorizes license applicants to directly fund third party contractors to assist agencies and tribes in their review of license applications. The new section also allows an agency or tribe that is unable to comply with FERC's schedule to file a request for extension through a court-based process set out in Section 1305 and requires FERC, together with agencies and tribes, to compile a consolidated record of decisions to serve as the basis for the court's review of a request.

Section 1305: Judicial Review of Delayed Federal Authorizations

Section 1305 would add a new paragraph (2) to Section 313(b) of the Federal Power Act requiring federal, state, or local government agencies or a tribe that is unable to meet a FERC schedule deadline to file a request for extension in the US courts of appeal not later than 30 days before such deadline. The court is only permitted to grant an extension if, based on the consolidated record, the agency or tribe demonstrates that it otherwise complied with the requirements of new Section 34 and that complying with FERC's schedule would have prevented the agency or tribe from complying with applicable federal or state law. Any extension is limited to 90 days or less. If the court denies the extension or the agency or tribe fails to meet a deadline, the agency or tribe loses its ability to condition the license, effectively waiving application of the Endangered Species Act, the Clean Water Act and other key environmental statutes. It should be noted that the provision does not require FERC to provide

agencies and tribes with the information necessary to make decisions within the timeframe set by FERC.

Section 1306: Licensing Study Improvements

Section 1306 creates a new section 35 to the Federal Power Act directing FERC to compile best practices for studies used in licensing as well as a collection of studies that could inform license proceedings. It further encourages stakeholders to use "a limited number of open-source methodologies and tools applicable across a wide array of projects" to optimize the licensing process. Additionally, the section requires FERC, tribes, other federal agencies, states, and local governments to use "current, accepted science in support of their actions" and that parties requesting studies or information demonstrate that such study is "not duplicative of current, existing studies that are applicable to the project." The section also requires FERC to create a program to develop regional or basin-scale comprehensive plans and studies in support of multiple projects, but only may use such tools at the request of a license applicant, and only with regard to projects in which the license applicants choose to participate.

Section 1307: Closed-Loop Pumped Storage Projects

Section 1307 would add a new section 36 to the Federal Power Act to create a new, less stringent and more limited licensing regime for closed-loop pumped storage defined as projects "in which the upper and lower reservoirs do not impound or directly withdraw water from navigable waters" or "not continuously connected to a naturally flowing water feature." Specifically, this section removes the Commission's licensing and conditioning authority, comprehensive planning and equal consideration responsibilities, as well as requirements for working with federal and state agencies to protect fish and wildlife under sections 4(e), 10(a), 10(g), and 10(j) of the underlying Act. This section limits license conditions to those necessary to protect public safety or, with respect to addressing natural resource impacts, to those on fish and wildlife resources directly caused by the construction and operation of the project. It introduces a new precedent by which conditions or requirements imposed pursuant to federal authorizations such as the Endangered Species Act and the Clean Water Act must be "reasonable, economically feasible, and essential" setting up a novel and unknown legal test for conditions and dramatically altering application of numerous critical environmental laws. Finally, the section would allow private companies to partner with municipalities in order to claim the preference afforded municipal systems under current law to gain application priority over other private companies, regardless of whether or not the municipality would construct or operate the project.

Section 1308: License Amendment Improvements

Section 1308 adds a new section 37 to the Federal Power Act to create a new class of license amendments that are exempt from the Federal Power Act's licensing requirements. It sets timeframes for processing amendment applications FERC determines are unlikely to harm the environment and would either increase capacity, improve environmental protection, or enhance public recreation. For a qualifying upgrade, this section imposes limits on conditions similar to those described for Section 1307, limiting conditions to those necessary to protect

public safety or, with respect to addressing natural resource impacts, to those on fish and wildlife resources directly caused by the construction and operation of the project, including the requirement that such conditions be "reasonable, economically feasible, and essential." Those limits would not apply to an upgrade determined not to qualify by FERC, however all mandatory deadlines and other provisions of new Section 34—as added by Sections 1304 and 1305 of H.R. 8—would continue to apply.

Section 1309: Promoting Hydropower Development at Existing Nonpowered Dams

Section 1309 would add a new section 38 to the Federal Power Act that authorizing FERC to exempt from licensing requirements qualifying hydropower facilities added to existing non-powered dams. Qualifying facilities must not be currently licensed or exempt; they must not be associated with a non-power dam that was constructed before the date of enactment and operated for purposes other than power production, and they must not currently have a FERC license or an exemption from licensing. Additionally, the project must be constructed for electricity generation; it must generate power using existing releases, flows, or diversions from underlying water infrastructure; and it must leave operation, storage and control of the underlying infrastructure unchanged. Exemptions are permanent: responsibility for ensuring dam safety would fall to the states. As in new Sections 36 and 37, it limits conditions to those necessary to protect public safety or, with respect to addressing natural resource impacts, to those on fish and wildlife resources directly caused by the construction and operation of the project, including the requirement that such conditions be "reasonable, economically feasible, and essential." This section prohibits FERC from preparing an Environmental Impact Statement, limiting options to either an Environmental Assessment or a Categorical Exclusion. The section also limits FERC's jurisdiction over project works to include only the powerhouse and primary transmission line, leaving conduits, dams, impoundments, shoreline, lands, or project works associated with the underlying facility exempt from Federal environmental or safety oversight. The provision also adds a requirement that owners or operators of exempted facilities pay annual charges to the general treasury to fund watershed enhancement projects within the same watershed.

Section 3002: Energy Security Valuation

Section 3002 directs the Secretary of Energy, in consultation with the Secretary of State, to develop a report on a new valuation of energy security, taking into account a number of recommendations outlined in the Quadrennial Energy Review.

This section encourages energy trading between countries to promote energy security and economic development. This language reflects the agreement reached by the G7 countries in Germany this past May, but leaves out that agreement's critical focus on combating climate change as a major threat to energy security.[7]

[7] German Federal Ministry for Economic Affairs and Energy, *G7 Energy Ministerial in Hamburg COMMUNIQUÉ: G7 Hamburg Initiative for Sustainable Energy Security* (May 2015)

The Natural Resources Defense Council (NRDC) opposes the omission of climate change in the new valuation of energy security. According to NRDC, "[p]romoting energy security and economic interests at the expense of environmental considerations (which [Title III] barely addresses) is highly problematic."[8]

Section 3005: Strategic Petroleum Reserve Mission Readiness Plan

Section 3005 requires the Secretary of Energy, within 180 days of enactment, to conduct a strategic review of the strategic petroleum reserve (SPR), including identification of near and long-term roles for the SPR. Among other things, the Secretary is also required to develop and submit a plan to "achieve the optimal": 1) capacity, location and composition of petroleum products in the SPR; and, 2) storage and distributional capabilities of the SPR. This section also requires the plan to estimate the (financial) resources necessary for the SPR's "long-term sustainability and operational effectiveness."

Section 3006: Authorization to Export Natural Gas

Subsection (a) requires DOE to issue a decision on any pending or future application for authorization to export natural gas under section 3 of the Natural Gas Act within 30 days of (1) the conclusion of the environmental review required by NEPA or (2) the date of enactment of the bill. Subsection (c) amends the Natural Gas Act to direct DOE, as a condition of approval of any authorization to export LNG, to require the applicant to publicly disclose the specific destinations of any such exports.

As a result of low domestic natural gas prices in the United States, companies have filed more than 40 applications with DOE to export LNG. To date, DOE has granted final authorizations for LNG exports to non-Free Trade Agreement (FTA) countries on nine applications, and conditional authorizations on four applications.[9] The approved applications authorize the export of over 14.05 billion cubic feet per day of LNG to non-FTA countries,[10] and the pending applications collectively seek an additional 29.40 billion cubic feet per day of LNG.

DOE is required to grant an application to export natural gas to a country without a free trade agreement with the United States unless it finds that the proposed export is not consistent

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(online at www.bmwi.de/BMWi/Redaktion/PDF/E/energieministertreffen-hambug-kommunique-englische-sprachversion,property=pdf,bereich=bmwi2012,sprache=de,rwb=true.pdf).

[8] Natural Resources Defense Council, *Oppose H.R. 8 – North American Energy Security and Infrastructure Act of 2015* (Sept. 2015).

[9] U.S. Department of Energy, *Long Term Applications Received by DOE/FE to Export Domestically Produced LNG from Lower-48 States* (Oct. 14, 2015) (online atenergy.gov/sites/prod/files/2015/10/f27/Summary%20of%20LNG%20Export%20Applications.pdf).

[10] DOE has granted final export authorization for 9.998 billion cubic feet per day of LNG, and conditional authorization for 4.05 billion cubic feet per day of LNG.

with the public interest.[11] DOE evaluates a range of factors when performing a public interest review of a non-FTA application, including economic impacts, international considerations, U.S. energy security, and environmental considerations. FERC is responsible for issuing permits for specific LNG export facilities. DOE relies on FERC's environmental review to inform the DOE process. DOE prioritizes the review of applications for which FERC has completed the necessary environmental review.

Section 3006 mandates that DOE issue final decisions on the pending LNG export applications in 30 days. This will disrupt the functioning approval process for pending and future LNG export applications by arbitrarily limiting the time that DOE has to review the applications. When faced with these time limits, DOE will do one of two things: 1) DOE will approve projects without an adequate public interest review, or 2) DOE will deny applications when time constraints prevent it from creating an adequate record.

Section 3006 will not accelerate the actual export of LNG. And, because this section does not affect FERC's separate permitting process for export terminals, the truncated DOE process will not speed up the export of LNG. Further, the first LNG export terminal in the U.S. (Sabine Pass) is expected to begin partial operations in late 2015; other approved export terminals are not expected to begin operations until 2017 or 2018.

Rep. Pallone offered an amendment to strike this section during the full Committee markup. The amendment was defeated by a voice vote.

Section 4115: Energy Performance Requirement for Federal Buildings & Section 4116 Federal Building Energy Efficiency Performance Standards; Certification System and Level for Federal Buildings

Section 4115 & 4116 repeal a key portion of section 433 of the Energy Independence and Security Act, signed into law by President George W. Bush. This section established energy efficiency performance standards for the design of new federal buildings and those federal buildings undergoing major renovations. The provision strikes language in current law that requires federal buildings to be designed to result in decreased consumption of fossil fuels, including a 100 percent reduction by 2030 compared to a similar building in 2003.

Sec. 433 established groundbreaking energy efficiency performance standards for the design of new Federal buildings and those Federal buildings undergoing major renovations. But H.R.8, as reported, strikes the requirement that new federal buildings be designed to result in

[11] For export to the 20 countries with a FTA with the United States, the Natural Gas Act requires DOE to deem such applications consistent with the public interest and grant them without modification or delay.

decreased consumption of fossil fuels, a move that ACEEE estimates will deprive consumers of $700 million in savings over the next 25 years.[12]

According to the American Institute of Architects, not only are section 433's current targets achievable, but some buildings are already meeting the 2030 target of a 100 percent reduction in fossil fuel use now.[13]

Section 4125: No Warranty for Certain Certified Energy Star Products

Section 4125 would prevent the creation of an express or implied warranty based on a product's participation in the Energy Star program. This provision eliminates consumers' ability to seek restitution when they purchase Energy Star products that do not deliver the associated energy savings.

Rep. Schakowsky offered an amendment to strike this section during the full Committee markup. The amendment failed by a vote of 21 yeas to 30 nays.

The American Association for Justice (AAJ) strongly opposes this section. According to AAJ, "Whirlpool and other large corporations want a bailout for their Energy Star designated appliances that do not actually save energy."[14] This is because both consumers and manufacturers receive certain tax code benefits, including credits and rebates, from purchasing and manufacturing energy saving appliances.

AAJ also notes that threats of companies pulling out of the Energy Star program if warranty claims continue are not credible.[15] There are manufacturers who produce Energy Star products that are compliant and do provide energy savings to consumers.

Section 4126: Clarification to Effective Date for Regional Standards

Section 4126 amends Section 325 of the Energy Policy and Conservation Act by changing the effective date of regional standards from the date installed to the date "manufactured or imported into the United States." These changes severely limit DOE's ability to enforce regional standards.

Sections 4151-4152: Building Energy Codes

Sections 4151 and 4152, comprising all of Chapter 5 of Subtitle A, contain the provisions of H.R. 1273, The "Energy Savings and Building Efficiency Act," introduced by Reps.

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[12] American Council for and Energy Efficient Economy, *2015 Federal Energy Efficiency Legislation and Projected Impacts* (Sept. 8, 2015) (online at aceee.org/sites/default/files/ee-legislation-9-15-15.pdf).

[13] The American Institute of Architects, *EISA Section 433: Myth vs. Fact* (online at www.aia.org/aiaucmp/groups/aia/documents/pdf/aiab098644.pdf).

[14] American Association for Justice, *Oppose Sec. 4125 of HR 8 – Energy Star Immunity* (Sept. 2015).

[15] *Id.*

Blackburn and Schrader. Proponents of these provisions say they are intended to increase transparency and cost-effectiveness in the development of model energy codes, which set the baseline for energy efficiency in buildings by ensuring that DOE code change proposals: 1) are made available to the public, including calculations on costs and savings; 2) are subject to the official rulemaking process, allowing for public comment; and 3) take into account small business concerns. This section also prohibits DOE from advocating for certain technologies, building materials or construction practices and requires that any code or proposal supported by the DOE has a payback of ten years or less.

Rep. Pallone offered an amendment to strike this chapter during the full Committee markup. The amendment failed by a vote of 20 yeas to 28 nays.

The Alliance to Save Energy sent a letter to Chairman Upton and the members of the Energy and Commerce Committee urging opposition to the Blackburn-Schrader language on the grounds that it would (1) "weaken the already modest process of states merely reporting on state building energy code programs;" (2) "severely limit DOE's authority to support the development and adoption of building energy codes that boost the efficiency of America's largest energy consuming sector; and" (3) "establish a federal 'simple payback' that is confusing, flawed, and strongly opposed by a broad coalition of stakeholders."[16]

The Sierra Club also opposes Sections 4151 and 4152 of H.R. 8, noting that this non-consensus proposal would "weaken the opportunity that building energy codes presents to advance energy efficiency[.]"[17]

Section 4161: Modifying Product Definitions

Section 4161 would add a new Subsection (c) to Section 322 of the Energy Policy and Conservation Act (EPCA) to permit DOE to revise prospectively product definitions relating to appliance energy conservation standards for residential and commercial products in order to address significant changes in the product or market and "enable efficiency of the product as part of an energy using system." Under current law, certain definitions cannot be revised absent a statutory change. The provision would create a new process for modifying covered product definitions that requires obtaining consensus through either a negotiated rulemaking or submission to the Secretary of a joint statement of stakeholders including manufacturers, States and efficiency advocates. The revised product definitions would be used for standards, test procedures, labeling and preemption purposes. The new language would also exempt such revised definitions from the anti-backsliding provisions of the law contained in Section 325. This section would also create a similar process for altering prospectively the definitions for industrial equipment efficiency standards in Sec. 340 of EPCA. Finally, the section makes conforming

[16] Letter from the Alliance to Save Energy to Chairman Upton and Members of the Energy and Commerce Committee (Sept. 16, 2015).

[17] Letter from the Sierra Club to Ranking Member Pallone (Sept. 16, 2015).

changes to the EPCA Sec. 336 (judicial review) and Sec. 345 (regarding administration and enforcement).

Section 4162: Clarifying Rulemaking Procedures

Section 4162 would amend EPCA Section 325(p) to make a number of changes to the procedures for prescribing a new or amended efficiency standard that would provide more input and leverage to manufacturers of covered products. First, the section would require the Secretary to provide for public input prior to issuing a proposed rule establishing a new efficiency standard seeking information regarding "design options," the potential for "voluntary non-regulatory actions" and identifying consumer and manufacturer subgroups "that merit analysis." Next, the proposal would add two additional requirements to be taken into account during the comment period of the proposed rule: that the technical "assumptions, methods and models" used are justified and available for public review, and that the total regulatory impact on manufacturers is considered in light of other energy use standards and other standards impacting those manufacturers. The section also requires all standards be based upon a final revised test procedure, if any, and that the public shall have at least 180 days between the publication of a final revised test procedure and the end of the public comment period for a proposed product standard to analyze, test and comment on its implications. The provision would allow for an exception for consensus-revised test procedures reached between manufacturers, States and efficiency advocates.

Section 4171: Smart Energy and Water Efficiency Pilot Program

Section 4171 establishes a Smart Energy and Water Efficiency Pilot Program at DOE to provide grants to eligible entities to demonstrate advanced and innovative technology-based solutions that will: (1) increase and improve the energy efficiency of water, wastewater, and water reuse systems to help communities make significant progress in conserving water, saving energy, and reducing costs; (2) support the implementation of innovative processes and the installation of advanced automated systems that provide real-time data on energy and water; and (3) improve energy and water conservation, water quality, and predictive maintenance of energy and water systems, through the use of Internet-connected technologies, including sensors, intelligent gateways, and security embedded in hardware..

This section was added to the bill by the AINS, and was sponsored by Reps. McNerney and Kinzinger. While not objectionable in principle, this section had not been considered by committee members prior to the markup.

Section 4172: WaterSense

Section 4172 creates a voluntary program within EPA to identify water efficient products, buildings, landscapes, facilities, processes, and services that reduces water use, reduce strain on public and community water systems, conserve energy associated with water use, and preserve water resources through product labeling.

This section was added to the bill by the AINS, and while not objectionable in principle, this section had not been considered by committee members prior to the markup.

Section 4222: Clarification of Facility Merger Authorization

Section 4222 amends the Federal Power Act to permit without FERC review, the merger or consolidation of public utility facilities or parts thereof with a value $10,000,000 or less.

Sections 4231-4251: Code Maintenance

These sections, comprising all of Chapter 3 of Subtitle B was added by the majority in the AINS. During the full committee markup, members were put in a position of voting for over 20 additional provisions to repeal energy related reports, studies, plans, surveys, and programs, without any previous consideration or discussion.

Amendments Offered by Democratic Members

The Democratic Members of the Committee on Energy and Commerce offered substantive amendments to H.R. 8 intended to refocus the legislation on real deficiencies in America's energy security and infrastructure.

Rep. Tonko offered an amendment to the Regional Transmission Organization (RTO) and Independent System Operator (ISO) reliability language in Section 1110 that would permit RTOs and ISOs to have more flexibility in meeting reliability requirements through planning. This amendment failed by a vote of 22 yeas to 27 nays.

Ranking Member Pallone offered an amendment to restore the funding levels and dates agreed to during negotiations with the majority. The amendment failed by a vote of 23 yeas to 25 nays.

Rep. Rush offered an amendment to restore funding to natural gas distribution system pipe repair and replacement. The amendment also included language to insure that the program remains focused on improving infrastructure and mitigating rate increases for low-income consumers. This amendment failed by a vote of 23 yeas to 25 nays.

Rep. Eshoo offered an amendment designed to improve FERC transparency. The amendment was adopted by voice vote.

Rep. Green offered an amendment to provide funding to offset rate increases paid by households as a result of infrastructure maintenance, repair and replacement of natural gas distribution systems. This language was similar to the above amendment offered by Rep. Rush, but without the focus on low-income consumers. The amendment was adopted voice vote.

Rep. Tonko offered an amendment to reauthorize the weatherization assistance and state energy programs. This amendment failed by a vote of 22 yeas to 24 nays.

Rep. Schakowsky offered an amendment to establish within FERC an Offices of Consumer Advocacy and Compliance Assistance. This amendment failed by a vote of 22 yeas to 25 nays.

Mr. Loebsack offered an amendment to promote the development of distributed wind energy systems within DOE. This amendment would make grants available for research and development and provide technical assistance for entities seeking alternative means of producing energy. This amendment failed by a vote of 23 yeas to 25 nays.

Mr. Cárdenas offered an amendment to create a loan and grant program for solar installations in low-income and under-served areas. This amendment failed by a vote of 23 yeas to 28 nays.

Mr. Butterfield offered an amendment to establish a grant program for energy efficient homes. This amendment failed by a vote of 22 yeas to 27 nays.

Ms. Castor offered an amendment to promote local energy supply and resiliency through the use of distributed solar power. This amendment failed by a vote of 22 yeas to 27 nays.

Ms. Eshoo offered an amendment to authorize federal agencies to install electric vehicle charging stations or plug-in points. The amendment is cost-neutral because it requires the costs of installation to be paid for by the revenues collected from the charging stations. It is identical to the bipartisan H.R. 3509. This amendment was adopted by a voice vote.

Ranking Member Pallone offered an amendment would prevent Titles I through IV of this Act from taking effecting until the Energy Information Administration analyzed and published a report on the carbon impacts of the Act's provisions. This amendment failed by a vote of 23 yeas to 29 nays.

Conclusion

It is truly unfortunate that, what began as good faith negotiations between Democrats and Republicans to develop energy legislation in the first part of this year, and bore enough promise in July to merit discharge by the subcommittee without partisan rancor, has ultimately produced one of the most backward, unbalanced and partisan pieces of energy legislation we have seen during our tenure on the Committee. At every turn the legislation favors suppliers over consumers, consumption over efficiency, energy interests over the environment and the fossil fuels of the past over the clean energy economy of the present and future.

Most importantly, H.R. 8 ignores the impact of climate change – which remains the biggest threat to our energy security, our economy and human health.

In fact, at nearly every turn, H.R. 8 goes to great length to lock in fossil fuel generation and consumption well into the future. The legislation creates new subsidies for above market coal power in Sections 1107 and 1108. It also further tilts the already lopsided natural gas pipeline siting process further toward the gas industry at the expense of land owners, states, the environment and less impactful carbon-free energy sources. H.R. 8 also helps prop up fossil fuels by actively working for greater consumption by repealing current law that is working to reduce the federal government's carbon footprint and by putting in place rollbacks and barriers to energy efficiency standards for buildings and appliances. Not only does the legislation reverse

course on energy efficiency, but it erects barriers to the increasingly successful integration of clean, renewable and distributed energy technologies at almost every turn. Amazingly, the one renewable technology that receives any real boost in H.R. 8 is hydroelectric power, a 100 year old technology, which has ironically become less reliable due to the impact of climate change and will increase its negative impacts on the environment as a result of this legislation.

H.R. 8 also fails to take any meaningful steps to repair or revitalize our energy infrastructure for the future. Democrats and Republicans appeared to find common ground in the infrastructure recommendations of the Quadrennial Energy Review and yet the legislation fails to capitalize on those areas of agreement in any meaningful way. Language proposed by Democrats, backed with meaningful funding, could have been the basis for a bipartisan energy bill that incentivized repairs of leaking natural gas distribution pipelines while protecting low-income consumers; provided funding to help communities make the grid more resilient to the effects of climate change and more responsive to the technologies that will help address its causes; and modernize both the infrastructure and operation of the Strategic Petroleum Reserve. At the end of the day, Republicans rejected the $5.0 billion carefully targeted and paid for investment in our infrastructure which they worked with us to develop, to pursue little more than pale, meaningless copies of what had appeared to be a grand, shared vision.

Ultimately, H.R. 8 presents a vision of energy policy that is narrow, outdated, economically and environmentally unsustainable and myopically focused on producers at the expense of consumers. For those reasons and the many others we have enumerated here, we respectfully dissent from the views of the Majority on H.R. 8.

Frank Pallone, Jr.
Ranking Member

Bobby L. Rush
Ranking Member
Subcommittee on Energy and Power