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MARKUP OF:

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 REINSTATE AND EXTEND

THE DEADLINE FOR COMMENCEMENT OF

CONSTRUCTION OF A HYDROELECTRIC PROJECT

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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;

H.R. 4416, A BILL TO EXTEND THE DEADLINE

FOR COMMENCEMENT OF CONSTRUCTION OF A

HYDROELECTRIC PROJECT; AND

H.R. 4434, A BILL TO EXTEND THE DEADLINE

FOR COMMENCEMENT OF CONSTRUCTION OF A

HYDROELECTRIC PROJECT

THURSDAY, FEBRUARY 11, 2016

House of Representatives

Subcommittee on Energy and Power

Committee on Energy and Commerce

Washington, D.C.

The subcommittee met, pursuant to call, at 11:00 a.m., in
Room 2123 Rayburn House Office Building, Hon. Ed Whitfield

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[chairman of the subcommittee] presiding.

Members present: Representatives Whitfield, Olson, Barton, Shimkus, Pitts, Latta, Harper, McKinley, Pompeo, Griffith, Johnson, Long, Ellmers, Flores, Upton (ex officio), Rush, Tonko, Engel, Capps, Doyle, and Loeb sack.

Staff present: Gary Andres, Staff Director; Will Batson, Legislative Clerk, Energy and Power and Environment and the Economy; Leighton Brown, Deputy Press Secretary; Allison Busbee, Policy Coordinator, Energy and Power; Rebecca Card, Assistant Press Secretary; Karen Christian, General Counsel; Patrick Currier, Senior Counsel, Energy and Power; A.T. Johnston, Senior Policy Advisor; Peter Kielty, Deputy General Counsel; Ben Lieberman, Counsel, Energy and Power; Brandon Mooney, Professional Staff Member, Energy and Power; Mary Neumayr, Senior Energy Counsel; Graham Pittman, Legislative Clerk; Annelise Rickert, Legislative Associate; Dan Schneider, Press Secretary; Dylan Vorbach, Legislative Clerk, Commerce, Manufacturing, and Trade; Gregory Watson, Legislative Clerk, Communications and Technology; Jen Berenholz, Minority Chief Clerk; Christine Brennan, Minority Press Secretary; Elizabeth Ertel, Minority Deputy Clerk; Jean Fruci, Minority Energy and Environment Policy Advisor; Tiffany Guarascio, Minority Deputy Staff Director and Chief Health Advisor; Caitlin Haberman, Minority Professional Staff Member; Josh Lewis, Minority EPA Detailee; John Marshall,

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Minority Policy Coordinator; Alexander Ratner, Minority Policy Analyst; Tim Robinson, Minority Chief Counsel; and Tuley Wright, Minority Energy and Environment Policy Advisor.

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1 Mr. Whitfield. The subcommittee will come to order. At the
2 conclusion of opening statements yesterday, the chair called up
3 H.R.3021, and the bill was opened for amendment at any point.

4 [The Bill H.R. 3021 follows:]

5
6 *****INSERT 1*****

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7 Mr. Whitfield. And so this morning, the first question is
8 are there any bipartisan amendments to the bill? Are there other
9 amendments to the bill?

10 Since there are no amendments, the question would now occur
11 on forwarding H.R.3021 to the full committee.

12 All those in favor will signify by saying aye.

13 All those opposed, nay.

14 The ayes appear to have it. The ayes have it, and the bill
15 is favorably reported.

16 Mr. Tonko. Mr. Chairman.

17 Mr. Whitfield. Yes.

18 Mr. Tonko. We are on the AIR Survey Act, right?

19 Mr. Whitfield. Yes.

20 Mr. Tonko. I move to strike the last word.

21 Mr. Whitfield. Yes, go ahead.

22 Mr. Doyle. Thank you, Mr. Chair. I move to strike the last
23 word. I have very strong concerns about the AIR Survey Act. This
24 bill would allow data collected by aerial survey to be given equal
25 weight to ground survey data in FERC's pipeline permitting
26 process. But as we heard at the legislative hearing, these data
27 are not equivalent to on the ground surveys. They have serious
28 shortcomings when identifying environmentally sensitive areas.

29 It also would allow companies to circumvent property owners'
30 rights and could allow the surveying of their land without

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notification, let alone permission. At our hearing, Mr. Powell, who testified on behalf of the Interstate Natural Gas Association of America, provided written testimony that stated often the first time an affected landowner has face-to-face contact with a company is when an agent knocks on their door and asks the landowner to sign a form giving the company permission to begin performing field surveys on their property in order to develop the information needed for the NEPA review and other permits.

Based on this, I find it likely that the shift toward aerial surveying would decrease public participation and awareness of potential projects. Property owners may not find out that they will be impacted until much later in the process. So FERC is already able to accept aerial survey data, but other federal and state agencies including those conducting critical environmental reviews do not.

This bill is not about FERC, it is really about the data that our other agencies are willing to accept as they work on their studies as part of the application process. This bill would circumvent their existing processes.

Professor Frankel provided detailed testimony characterizing the quality of data from aerial surveys. His research found that it does not adequately capture wetlands or threatened endangered plant and wildlife. When it comes to environmental protection and conservation issues it is clear that

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55 these surveys do not cut it, and yet the agencies that are
56 responsible for environmental reviews would need to accept these
57 data and treat it as equivalent. This bill is a solution, I
58 believe, in search of a problem.

59 We heard from FERC that they are not having problems
60 processing pipeline applications quickly. These pipeline
61 applications are moving forward on a relatively steady timeline.
62 Over 90 percent are completed within 12 months. Since 2005, FERC
63 has authorized a lot of natural gas pipeline infrastructure, over
64 10,000 miles worth of interstate transmission pipelines.

65 What evidence is there that we need to expedite the existing
66 process by skewing it further in favor of companies at the expense
67 of property owners and thorough environmental review? FERC is
68 able to process applications, currently, at an appropriate speed
69 while allowing for public discussion and thorough environmental
70 review.

71 I fear a transition to primarily aerial surveying would alter
72 that dynamic, promoting expediency at the expense of property
73 owners' rights and environmental protection. I understand there
74 are people that will not support any pipeline projects, but that
75 does not mean that we need to change data collection methods to
76 avoid interacting with impacted landowners. So these people have
77 rights and deserve to be engaged in a public dialogue about the
78 merits of these proposed projects.

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79 So again, Mr. Chair, I just want to reiterate my serious
80 concerns with this legislation, and with that I yield back the
81 balance of my time, and thank you.

82 Mr. Whitfield. Thank you, Mr. Tonko, and we favorably
83 reported the bill. Is there anyone on our side of the aisle that
84 would like to make any comment on it?

85 Okay. So 3021 has been favorably reported.

86 The chair will now call up H.R. 3797, and ask the clerk to
87 report.

88 [The Bill H.R. 3797 follows:]

89

90 *****INSERT 2*****

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91 The Clerk. H.R. 3797 -- To establish the basis by which the
92 administrator of the Environmental Protection Agency shall issue,
93 implement, and enforce certain emission limitations and
94 allocations for existing electric utility steam generating units
95 that convert coal refuse into energy.

96 Mr. Whitfield. Without objection, the first reading of the
97 bill is dispensed with and the bill will be open for amendment
98 at any point, so ordered. Are there any bipartisan amendments?
99 Are there other amendments? Seeing none, the question will now
100 occur on --

101 Mr. Doyle. Mr. Chairman.

102 Mr. Whitfield. For what purpose does the gentleman from
103 Pennsylvania seek recognition?

104 Mr. Doyle. I move to strike the last word.

105 Mr. Whitfield. The gentleman is recognized for five
106 minutes.

107 Mr. Doyle. Thank you, Mr. Chairman. The SENSE Act
108 introduced by Representative Rothfus is an effort to help coal
109 refuse plants, most of which are located in my home state of
110 Pennsylvania. For decades, these plants have processed coal
111 refuse left over from mining operations. Pennsylvania has
112 approximately 170,000 acres of coal refuse piles that threaten
113 local water sources and habitats with acid mine drainage. These
114 piles can burn unabated if sparked by, say, an ATV or lightning,

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115 releasing harmful toxins into the air in woods and neighborhoods
116 and playgrounds. Coal refuse plants then take this waste coal
117 and they process it for energy. They not only produce power but
118 they also clean up these sites.

119 I have seen the incredible environmental benefit of these
120 plants firsthand on a visit to a coal refuse site in my home
121 district. It is like night and day. Unfortunately, like many
122 power plants across the country, these coal refuse plants are
123 struggling to comply with new regulations like the Cross-state
124 Air Pollution Rule and the Mercury and Air Toxic Standards.

125 And I share Congressman Rothfus' support of these plants and
126 the industry, more generally, and the issue has a history of
127 bipartisan support in my home state. However, I have some aspects
128 of this bill that trouble me at this time. Carving out exemptions
129 or setting alternative standards for particular types of power
130 plants from regulation through legislation, I think, sets an
131 alarming precedent. This bill would also infringe on states'
132 rights to implement these regulations under the Clean Air Act as
133 they have done for decades.

134 And lastly, extending the Phase 1 SO2 emission allowance
135 under CSAPR for these particular plants, but not increasing the
136 total amount of emissions for the whole state, could actually make
137 it more difficult and more costly for other coal plants in my state
138 to comply with these regulations. This bill simply helps one

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139 small sector of the coal industry while potentially hurting the
140 rest. To put it another way, SENSE Act robs Peter to pay Paul.

141 I think the SENSE Act looks to keep coal refuse plants on
142 line and I think that is an important goal. And I want to work
143 with the committee, before we get the full committee, to see if
144 there is ways that we can address this issue in a way that doesn't
145 hurt the rest of the coal industry. And so at this time, Mr.
146 Chairman, I can't support the bill as currently drafted, but I
147 do look forward to working with you in the future on it. I yield
148 back.

149 Mr. Whitfield. Mr. Doyle, thank you very much for that
150 comment, and I know that our staffs and Mr. Upton and others look
151 forward to working with you as we go to the full committee with
152 this legislation. Does anyone else seek recognition to discuss
153 this bill?

154 Mr. Rush. Mr. Chairman.

155 Mr. Whitfield. For what purpose does the gentleman from
156 Illinois seek recognition?

157 Mr. Rush. I move to strike the last word.

158 Mr. Whitfield. The gentleman is recognized.

159 Mr. Rush. Mr. Chairman, I want to expand on what my
160 colleague Mr. Doyle said earlier about the SENSE Act and point
161 out some of the other reasons that I cannot support this bill.

162 Mr. Chairman, as we heard at last week's legislative hearing,

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163 coal refuse plants are not different from any other coal plants
164 and therefore should not be subject to a less stringent status
165 under the EPA's Mercury and Air Toxic Standards, or MATS rule,
166 or given special consideration on EPA's Cross-State Air Pollution
167 Rule, or the CSAPR rule. In fact, Mr. Chairman, EPA has observed
168 that coal refuse plants were already meeting the MATS standard.

169 Further, as one of the witness noted in last week's hearing,
170 when owners of a coal refuse facility tried to argue to the D.C.
171 Circuit that they couldn't meet the MATS air pollution reduction
172 requirements, the court unanimously rejected the industry's
173 argument and pointed to clear evidence that coal refuse plants
174 already were meeting MATS limit. The witness also pointed out
175 that if installed, currently available pollution control
176 technology will reduce air toxins from coal refuse plants enough
177 to ensure their compliance with the MATS standard.

178 Finally, Mr. Chairman, I don't support the SENSE Act's
179 provision related to the CSAPR rule. Put simply, the CSAPR
180 provisions are bad policy. They undermine a successful EPA
181 program that addresses pollution from power plants. They create
182 winners and they create losers and they infringe on state's right.
183 I cannot support this bill, Mr. Chairman, and I urge my colleagues
184 to vote against it.

185 Mr. Whitfield. Thank you, Mr. Rush. The gentleman from
186 Illinois is recognized for five minutes.

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187 Mr. Shimkus. Thank you, Mr. Chairman. And just to remind
188 people that these plants are different because they are either
189 remediating environmental hazards or they are going to help
190 remediate future environmental hazards. I am sure that my
191 colleague, Congressman Rothfus, would not bring this bill if it
192 wasn't needed to help incentivize and get the benefits of
193 generation while doing major environmental remediation in the
194 state of Pennsylvania.

195 So I am happy that he has this, I am glad we are moving it,
196 and I ask my colleagues to support it.

197 Mr. Whitfield. The gentleman yields back. The gentleman
198 from New York is recognized for five minutes.

199 Mr. Engel. Thank you, Mr. Chairman. Our hearing last week
200 on this bill, I believe, illuminated fatal flaws in H.R. 3797,
201 the SENSE Act. I think Mr. Rush mentioned some of those flaws,
202 and I am convinced that the bill should not be approved by the
203 subcommittee because of the flaws.

204 First of all, the legislation is unnecessary. Proponents
205 argue that waste coal plants cannot meet hydrogen chloride or
206 sulfur dioxide emission standards, but D.C. Circuit Court
207 unanimously rejected that argument in the case White Stallion
208 Energy Center v. EPA, pointing to clear evidence that some waste
209 coals are already meeting those limits.

210 Secondly, the legislation would remove economic incentives

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211 to reduce emissions at waste coal plants because emissions
212 allocations for those plants could not be traded under the
213 Cross-State Air Pollution Rule. That would result in less
214 efficient and more costly compliance with CSAPR.

215 And finally, there is the state's right argument that many
216 people on the other side of the aisle make from time to time,
217 Section 2(b) of this bill would interfere with a state's right
218 to determine how to best comply with the requirements of the EPA's
219 Cross-State Air Pollution Rule. It favors waste coal burning
220 plants over other in-state power plants.

221 So this bill takes longstanding state authority, transfers
222 it to the federal government and then uses that authority to pick
223 winners and losers. I don't think it is a good idea and I urge
224 a no vote. I yield back.

225 Mr. Whitfield. The gentleman from New York yields back.
226 Does anyone else seek recognition for a statement on this
227 legislation? Seeing none, the question will now occur on
228 forwarding H.R. 3797 to the full committee.

229 All those in favor will signify by saying aye.

230 All those opposed, nay.

231 The ayes appear to have it. The ayes have it, and the bill
232 is favorably forwarded.

233 The chair will now call up the discussion draft and ask the
234 clerk to report on the Kiln Act.

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235 [The Draft of the Kiln Act follows:]

236

237 *****INSERT 3*****

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238 The Clerk. Discussion draft to allow for judicial review
239 of any final rule addressing national emission standards for
240 hazardous air pollutants for brick and structural clay products
241 or for clay ceramics manufacturing before requiring compliance
242 with such rule.

243 Mr. Whitfield. Without objection, the first reading of the
244 draft is dispensed with and draft will be open for amendment at
245 any point, so ordered. Are there any bipartisan amendments? Are
246 there any amendments? Seeing none, the question will now occur
247 on forwarding the discussion draft to the full committee.

248 All those in favor will signify by --

249 Mr. Rush. Mr. Chairman.

250 Mr. Whitfield. The chair recognizes the gentleman from
251 Illinois, Mr. Rush, for five minutes.

252 Mr. Rush. Mr. Chairman, thank you so much. I am opposed
253 to this bill, Mr. Chairman. The BRICK Act extends compliance
254 deadline for the EPA's brick and clay rules until all the legal
255 challenges are resolved by the courts. The latter rule should
256 not be taken lightly, and so the blanket extension in the BRICK
257 Act warrants close scrutiny.

258 I understand, Mr. Chairman, that there are special
259 circumstances related to this particular EPA rule. This rule
260 dates back to 2003 and leading up to the most recent final rule
261 which was signed into law in September 2015.

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262 The brick industry has made good faith efforts to work with
263 EPA and to reduce their emissions. However, the litigation delay
264 in the BRICK Act creates a very bad precedent and I worry about
265 the impact a blanket extension could have, specifically more in
266 we would see frivolous litigation in an effort to merely stall
267 and avoid compliance. Moreover, the Brick MACT rule just became
268 effective on December the 28th, 2015, so we are not even two months
269 into a three-year compliance period which also has an option of
270 a year extension for installing necessary pollution control.

271 And at last week's hearing, Mr. Chairman, Mr. Henry discussed
272 how his company is approaching compliance with the rule and Mr.
273 Henry said we are still investigating our options to determine
274 the best course of action. Rather than hastily approving a bill
275 to indefinitely delay a Clean Air Act rule, something that I will
276 not take lightly, Mr. Chairman, I would suggest we encourage the
277 brick industry to continue investigating its options for
278 compliance.

279 If compliance issues remain, then I think the appropriate
280 course of action is through the courts, not through legislation.
281 So I oppose this bill and I urge my colleagues to do the same.

282 Mr. Whitfield. The gentleman yields back. The gentleman
283 from Illinois is recognized for five minutes.

284 Mr. Shimkus. Thank you, Mr. Chairman. I think this is a
285 good bill and I think it highlights things that have happened

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286 legislatively and judicially the last couple years. So the
287 MATS Act, which is Mercury Air Toxic Standard, was put into place;
288 industry had to comply only to get overruled by the courts. We
289 just had the Clean Power Plan get stayed by the Supreme Court.
290 They stayed it because they didn't want to force, have to force
291 the industry to all the capital investments to meet a standard
292 which may be ruled illegal.

293 So this act is doing exactly what we should do. If the courts
294 rule that this standard is legal and the brick industry should
295 comply, then they have to invest the capital to do it. But if
296 the courts rule that it is not legal and then say no, you don't
297 have to comply, then it saves them from the capital investment
298 and maybe the job losses that would have incurred. So if you just
299 follow what has happened on air and courts and legislation over
300 the past three years it speaks in support of this legislation and
301 I ask my colleagues to support it.

302 Mr. Whitfield. Would the gentleman yield?

303 Mr. Shimkus. I would yield.

304 Mr. Whitfield. I would just like to reiterate that that 2003
305 regulation in which the brick industry had to comply by 2006 was
306 vacated by the federal courts in 2007. And that was another
307 reason, I believe, that the Supreme Court, yesterday, on the Clean
308 Energy Plan, or two days ago, said let us hold up implementation
309 on some of these regulations until the courts have had an

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310 opportunity to make a decision, particularly when they are really
311 controversial. So with that I would yield back the balance of my
312 time.

313 Mr. Shimkus. And I yield back. Thank you, Mr. Chairman.

314 Mr. Whitfield. The gentleman yields back. The gentleman
315 from New York is recognized for five minutes.

316 Mr. Engel. Thank you. Thank you, Mr. Chairman. I would
317 like to say on your example that courts do have the power on their
318 own to stay the effectiveness of regulations under court
319 challenge, and as you pointed out, the Supreme Court just
320 presented a prime example by staying implementation of the Clean
321 Power Plan.

322 Now I don't agree with what the Supreme Court did, but the
323 fact is the Supreme Court can do that on their own, stay the
324 effectiveness of regulations under court challenge, so they could
325 have done it with this as well and they didn't. So I think
326 that the legislation delays implementation of the EPA's Brick and
327 Clay Rules until all legal challenges are resolved by the courts.
328 That in itself, in my opinion, creates powerful incentives for
329 frivolous litigation to stall and avoid compliance with EPA's
330 rules. And I don't think that is something I want to see.

331 And again I want to say that courts do have the power on their
332 own to stay the effectiveness of regulations under court
333 challenge. So if the court saw so it could have done so, but it

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334 didn't. So I just don't think that we should use this as a ruse
335 to stall and avoid compliance with EPA rules, and for that reason
336 I oppose the legislation.

337 I yield back, Mr. Chairman.

338 Mr. Whitfield. Thank you, Mr. Engel. Does anyone else seek
339 recognition? Seeing none, the question would now occur on
340 forwarding the discussion draft to the full committee.

341 All those in favor will signify by saying aye.

342 All those opposed, nay.

343 The ayes appear to have it. The ayes have it, and the bill
344 is favorably reported.

345 The chair will now call up H.R. 4444, and ask the clerk to
346 report.

347 [The Bill H.R. 4444 follows:]

348

349 *****INSERT 4*****

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350 The Clerk. H.R. 4444 -- To amend the Energy Policy and
351 Conservation Act to exclude power supply circuits, drivers, and
352 devices designed to be connected to, and power, light-emitting
353 diodes or organic light-emitting diodes providing illumination
354 from energy conservation standards for external power supplies
355 and for other purposes.

356 Mr. Whitfield. Without objection, the first reading of the
357 bill is dispensed with and the bill will be open for amendment
358 at any point, so ordered. Are there any bipartisan amendments
359 to this bill? Seeing none, are there any amendments to the bill?
360 Seeing none, the question would now occur on forwarding H.R. 4444
361 --

362 Mrs. Capps. Mr. Chairman, may I speak on the bill?

363 Mr. Whitfield. Yes. The gentlelady from California is
364 recognized for five minutes.

365 Mrs. Capps. I appreciate that. Thank you very much. I
366 move to strike the last word to say the technologies that embrace
367 energy efficiency are critical. On a daily basis, we must balance
368 the need for using energy and the need to ensure that our energy
369 consumption is not doing irreparable damage to our planet. And
370 while we need to continue striving to produce clean energy that
371 relies on renewable nonpolluting sources, we must also address
372 the need for increased energy efficiency.

373 The thinking behind this is simple. We need to be able to

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do more with less. This is where technology is incredibly important and we need to invest in and support the technologies that are striving to improve energy efficiency while maintaining and improving our way of life. When it comes to lighting, for example, LED technologies are doing just this.

In the hearing on this bill I spoke about the importance of LED technologies to my district. Research into LEDs is an ongoing pursuit at the University of California at Santa Barbara and Cree Lighting is championing, as a company that is championing the implementation of this research into employable technologies. Not only are LEDs benefiting residents of this country, these technologies are being exported to provide clean accessible lighting to people around the world including many who have never had this kind of access before.

However, it is our responsibility to ensure that we are creating a legislative landscape that supports the research, development and implementation of these cleaner and more efficient technologies. H.R. 4444 would do just this for LEDs, and I hope we can move quickly through the process of approving this legislation to ensure the continued development application of this technology.

Thank you, and I yield back.

Mr. Whitfield. Well, thank you very much. And we do thank Ms. DeGette and Mrs. Ellmers for introducing this legislation.

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398 And does the gentlelady from North Carolina seek recognition?

399 Mrs. Ellmers. Yes, and do I have to move to strike the last
400 word?

401 Mr. Whitfield. No, you are recognized for five minutes.

402 Mrs. Ellmers. Okay, thank you. And really I just want to
403 say, first, thank you to the gentlelady from California. This
404 is an important bill and obviously not easily understood. There
405 is a lot of technical components to this but one that I think we
406 can all work together on and move forward so that we can be
407 providing good, reliable sources of energy for our consumers, but
408 at the same time cognizant of the environment.

409 So again, thank you, Mr. Chairman, for understanding the
410 importance of this. And for those of you who may not be aware,
411 this particular rule change was scheduled to go into effect
412 yesterday. So the moving forward on this expeditiously is very,
413 very important so that we can ensure that this does not interrupt
414 any other processes. So thank you, and I yield back if anyone
415 else wants the remainder of my time.

416 Mr. Whitfield. The gentlelady yields back. Does anyone
417 else seek recognition? Seeing none, the question would now occur
418 on forwarding H.R. 4444 to the full committee.

419 All those in favor will signify by saying aye.

420 All those opposed, nay.

421 The ayes appear to have it. The ayes have it, and the bill

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422 is favorably reported.

423 The chair will now call up H.R. 2984 and ask the clerk to
424 report.

425 [The Bill H.R. 2984 follows:]

426

427 *****INSERT 5*****

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428 The Clerk. H.R. 2984 -- To amend the Federal Power Act to
429 provide that any inaction by the Federal Energy Regulatory
430 Commission that allows a rate change to go into effect shall be
431 treated as an order by the Commission for purposes of rehearing
432 and court review.

433 Mr. Whitfield. Without objection, the first reading of the
434 bill is dispensed with and the bill will be open for amendment
435 at any point, so ordered. This is Congressman Kennedy's bill that
436 will help clarify a problem over FERC. Are there any
437 bipartisan amendments to this bill? Are there other amendments
438 to the bill or any amendment to the bill?

439 Mr. Tonko. Mr. Chair, I move to strike the last word.

440 Mr. Whitfield. The chair recognizes the gentleman from New
441 York for five minutes.

442 Mr. Tonko. Thank you, Mr. Chair, and I will be brief. I
443 wanted to thank you for bringing the Fair RATES Act forward. Our
444 colleague, Representative Kennedy, has offered a small, but, I
445 believe, important change to the Federal Power Act. I do not
446 believe Congress intended to have decisions by FERC, or the
447 failure to make a decision, result in changes to electricity rates
448 that could not be reviewed. Utilities or consumers who
449 believe that new rates would not meet the fair and reasonable
450 standard should be able to seek a review of the rates. It is a
451 rare occurrence that FERC does not have its full complement of

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452 five commissioners in place and that the commissioners are unable
453 to come to a majority decision on an issue impacting rates, but
454 we know this has happened. Representative Kennedy's bill
455 anticipates this situation and ensures that everyone retains the
456 right to a review of changes in FERC's policies on wholesale
457 markets. With that I urge my colleagues to support this measure,
458 and with my explanation rendered here I yield back the balance
459 of my time, Mr. Chair.

460 Mr. Whitfield. So the gentleman yields back. Is there
461 anyone else to seek recognition to speak on this bill?

462 Mr. Rush. Mr. Chairman, I just want to ask for unanimous
463 consent to enter two letters into the record in support of this
464 bill. The first one is the APAA letter supporting the Fair RATES
465 Act, and the second bill is NEPPA's letter also. It is Northeast
466 Public Power letter, NEPPA, to support this.

467 Mr. Whitfield. The gentleman is asking unanimous consent.
468 Without objection, so ordered.

469 [The information follows:]

470
471 *****COMMITTEE INSERT*****

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472 Mr. Rush. All right.

473 Mr. Whitfield. Thank you.

474 So at this time the question now occurs on forwarding this
475 legislation to the full committee.

476 All those in favor will signify by saying aye.

477 All those opposed, no.

478 The ayes appear to have it. The ayes have it, and bill was
479 favorably reported.

480 The chair will now call up H.R. 4427, and ask the clerk to
481 report.

482 [The Bill H.R. 4427 follows:]

483

484 *****INSERT 6*****

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485 The Clerk. H.R. 4427 -- To amend Section 203 of the Federal
486 Power Act.

487 Mr. Whitfield. Without objection, the first reading of this
488 bill is dispensed with and the bill will be open for amendment
489 at any point, so ordered. Are there any bipartisan amendments?
490 Are there any amendments? The question will now occur on
491 forwarding H.R. 4427 to the full committee.

492 Mr. Rush. Mr. Chairman, I must ask for you to strike the
493 last word.

494 Mr. Whitfield. The gentleman is recognized for five
495 minutes.

496 Mr. Rush. Mr. Chairman, there are some concerns on this side
497 of the aisle regarding the bill to amend Section 203 of the Federal
498 Power Act. Last week, the subcommittee heard testimony from Mr.
499 Minzner, who is the general counsel for FERC, and he spoke
500 regarding serial mergers as a possible concern. Mr. Minzner
501 stated that the Commission would no longer have the authority to
502 review and approve mergers with value at less than \$10 million
503 even in situations where the merger took place as one of a series
504 of transactions that exceeded the limit in total.

505 While Mr. Minzner also stated that he believed that FERC had
506 other tools available to protect consumers and the public interest
507 if such circumstances arose, another witness if you recall, Mr.
508 Chairman, disagreed with this assessment. At that same hearing,

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509 Tyson Slocum, Energy Program Director for Public Citizens noted
510 that this bill has been portrayed as a very innocuous bill that
511 would simply correct a drafting error from the EPA Act 2005
512 language.

513 However, Mr. Chairman, Mr. Slocum took a decidedly different
514 view on this legislation and stated that even with mergers or
515 consolidation under \$10 million it is possible that a single
516 facility or contract has the ability to be a pivotal supplier in
517 a given market, providing the owner with an ability to
518 unilaterally charge unjust and unreasonable rates.

519 Mr. Slocum also testified that rather than setting a minimal
520 monetary threshold for mergers, there may be other factors that
521 should be taken into consideration when deciding what types of
522 consolidations should be exempt from FERC review and FERC renew
523 authority. Looking at some of the other factors can help ensure
524 that these smaller serial mergers or seemingly less consequential
525 monetary transactions do not provide an owner with the ability
526 to unilaterally charge unjust and unreasonable rates.

527 So again, Mr. Chairman, I urge the majority to continue to
528 work with our side to ensure that there aren't unintended
529 consequences that may result before we strip FERC of its review
530 authority. With that I yield back. Another colleague would like
531 the time remaining.

532 Mr. Whitfield. The gentleman yields back. So at this time

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I will recognize the author of this legislation, Mr. Pompeo of Kansas, for five minutes.

Mr. Pompeo. Great. Thank you, Mr. Chairman. I don't need five minutes. Look, this is an attempt to correct a drafting error with, I think it is three other subsections have the language one way; this one just missed it. But regardless of whether it is a drafting error or not, to require FERC to look at small transactions for its jurisdiction facilities makes no sense. It is not a good use of their time and we ought to clean this up and get it right.

And I am happy to continue to work with Mr. Rush if he is concerned about \$9,999,000 transactions being done repeatedly over and over again. Maybe we can fix that. But it seems to make good sense to bring this section, this part of Section 203 in line with the remainder of the legislation.

With that I yield back.

Mr. Whitfield. The gentleman yields back. Does anyone else seek recognition to speak on this bill? Seeing none, the question would now occur forwarding H.R. 4427 to the full committee.

All those in favor signify by saying aye. All those opposed, no.

The ayes appear to have it. The ayes have it, and the bill is favorably reported.

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557 The chair will call up H.R. 4238 and ask the clerk to report.

558 [The Bill H.R. 4238 follows:]

559

560 *****INSERT 7*****

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561 The Clerk. H.R. 4238 -- To amend the Department of Energy
562 Organization Act and the Local Public Works Capital Development
563 and Investment Act of 1976 to modernize terms relating to
564 minorities.

565 Mr. Whitfield. Without objection, the first reading of the
566 bill is dispensed with and the bill will be open for amendment
567 at any point, so ordered. Are there any bipartisan amendments?
568 Are there any amendments? Seeing none, the question would occur
569 on forwarding H.R. 4238 to the full committee.

570 At this time the chair recognizes the gentlelady from
571 California for five minutes.

572 Mrs. Capps. I don't seem to raise my hand at just the right
573 time, but I only have a brief minute, or a brief word. But I do
574 move to strike the last word in order to say that the language
575 we use clearly matters. The terms we use to identify individuals
576 and groups is vastly important. This bill highlights that we must
577 ensure that the terms used in our laws and our legislation reflect
578 the people they represent and do not remain relegated to a previous
579 era. In other words, we need to update and modernize. I applaud
580 my colleagues for introducing this legislation.

581 Thank you, and I do yield back now.

582 Mr. Whitfield. The gentlelady yields back. Is there
583 anyone else seeking recognition to discuss this legislation?
584 Seeing none, then the question would occur on forwarding this

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585 legislation of the committee.

586 All those in favor, signify by saying aye.

587 All those opposed, no.

588 The ayes appear to have it. The ayes have it, and the bill
589 is favorably reported.

590 The chair would now ask unanimous consent that the
591 subcommittee adopt and favorably forward the following bills as
592 described to the full committee. These are all the hydroelectric
593 bills. H.R. 2080.

594 [The Bill H.R. 2080 follows:]

595

596 *****INSERT 8*****

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597 Mr. Whitfield. H.R. 2081.

598 [The Bill H.R. 2081 follows:]

599

600 *****INSERT 9*****

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601 Mr. Whitfield. H.R. 3447.

602 [The Bill H.R. 3447 follows.]

603

604 *****INSERT 10*****

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605 Mr. Whitfield. H.R. 4416.

606 [The Bill H.R. 4416 follows:]

607

608 *****INSERT 11*****

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609 Mr. Whitfield. And H.R. 4434.

610 [The Bill H.R. 4434 follows:]

611

612 *****INSERT 12*****

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613 Mr. Whitfield. Does anyone object?

614 Seeing no objection, it is so ordered.

615 Without objection, the staff is authorized to make technical
616 and conforming changes to the legislation approved by the
617 subcommittee today, so ordered.

618 Yes, the gentleman is recognized for five minutes.

619 Mr. Engel. Thank you, Mr. Chairman. I just wanted to
620 comment on the last bill, H.R. 4434, which I support. I want to
621 say that I am pleased to be an original cosponsor of this bill,
622 Congressman Chris Gibson's bill, to extend the deadline for
623 construction of a hydroelectric project at the Cannonsville Dam
624 in Delaware County, New York. Our New York colleagues, Paul Tonko
625 and Chris Collins, are also original cosponsors as I am.

626 New York City has been exploring ways to extract energy from
627 the water that flows through the city's huge reservoir system.
628 The effort was started by Mayor Bloomberg and has been continued
629 by Mayor de Blasio. So far the city has constructed two
630 hydroelectric facilities that generate low cost clean energy and
631 produce revenue for the city.

632 In May of 2014, FERC licensed the construction of a third
633 project, a 14-megawatt hydroelectric facility at the Cannonsville
634 Dam. The deadline to begin construction is May of this year, May
635 2016, but the licensee needs to make repairs to the dam that will
636 delay the project beyond its deadline and beyond the two-year

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637 extension that FERC is authorized to grant. This bill would
638 authorize FERC to extend the construction deadline by eight years
639 so the licensee can make proper repairs to the dam before beginning
640 construction on the hydro facility.

641 It is important that we do this right. The entire New York
642 delegation that has spoken on this is for it and I urge a yes vote
643 as well. And I yield back the balance of my time. Thank you,
644 Mr. Chairman.

645 Mr. Whitfield. Thank you, Mr. Engel. And as I said, the
646 staff will make technical and conforming changes to the
647 legislation approved by the subcommittee today. And without
648 objection, these bills have been reported, so ordered, and the
649 subcommittee stands adjourned.

650 [Whereupon, at 12:19 p.m., the subcommittee was adjourned.]

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