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ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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MEMORANDUM

June 27, 2017

To: Committee on Energy and Commerce Democratic Members and Staff

Fr: Committee on Energy and Commerce Democratic Staff

Re: Full Committee Markup of H.R. 3043, the "Hydropower Policy Modernization Act of 2017;" H.R. 2786, the "Promoting Small Conduit Hydropower Facilities Act of 2017;" H.R. 3050, the "Enhancing State Energy Security Planning and Emergency Preparedness Act of 2017;" H.R. 2883, the "Promoting Cross-Border Energy Infrastructure Act;" H.R. 2910, the "Promoting Interagency Coordination for Review of Natural Gas Pipelines Act;" H.R. 3017, the "Brownfields Enhancement, Economic Redevelopment, Reauthorization Act of 2017;" H.R. 3053, the "Nuclear Waste Policy Amendments Act of 2017" ; and H.R. 806, the "Ozone Standards Implementation Act of 2017"

On **Wednesday, June 28, 2017, at 10:00 a.m. in room 2123 of the Rayburn House Office Building**, the Committee will hold a markup of eight bills: H.R. 3043, the "Hydropower Policy Modernization Act of 2017;" H.R. 2786, the "Promoting Small Conduit Hydropower Facilities Act of 2017;" H.R. 3050, the "Enhancing State Energy Security Planning and Emergency Preparedness Act of 2017;" H.R. 2883, the "Promoting Cross-Border Energy Infrastructure Act;" H.R. 2910, the "Promoting Interagency Coordination for Review of Natural Gas Pipelines Act;" H.R. 3017, the "Brownfields Enhancement, Economic Redevelopment, Reauthorization Act of 2017;" H.R. 3053, the "Nuclear Waste Policy Amendments Act of 2017" and; H.R. 806, the "Ozone Standards Implementation Act of 2017." With the exception of Federal Energy Regulatory Commission (FERC) staff, to date no Administration witnesses have appeared to answer Members' questions regarding any of these legislative proposals.[1] In the case of the State Energy Security Plans bill, no hearing was held. For further background

[1] On June 13, 2017, Ranking Members Pallone and Tonko sent a letter to the majority requesting that the markup be postponed, to give the appropriate federal agencies time to appear before the Subcommittee and provide feedback on the legislation.

information on the bills forwarded by the Subcommittee on the Environment, please see the memo from the June 15, 2017 markup. For further background information on the bills forwarded by the Subcommittee on Energy, please see the memo from the June 22, 2017 markup.

I. H.R. 806, THE OZONE STANDARDS IMPLEMENTATION ACT OF 2017

H.R. 806 was included in the Environment Subcommittee markup on June 15, 2017, and was the subject of a legislative hearing on March 22, 2017. At the Subcommittee markup, Rep. Ruiz (D-CA) offered an amendment to ensure vulnerable populations are not put at greater risk by the bill's delay of critical ozone standards. Rep. McNerney (D-CA) also offered an amendment to remove the bill's restriction on additional funds. Both amendments were defeated, and the bill was forwarded to the full Committee on a party-line vote.[2]

A. EPA's 2015 National Ambient Air Quality Standard For Ozone

The Clean Air Act (CAA) requires EPA to set national ambient air quality standards (NAAQS) for certain pollutants that endanger public health and the environment.[3] These health-based standards are the cornerstone of the CAA. EPA sets primary NAAQS at concentration levels sufficient to protect the public health with an "adequate margin of safety." For the six criteria pollutants – lead, particulate matter ($PM_{2.5}$ or PM_{10}), ozone, nitrogen dioxide (NO_2), sulfur dioxide (SO_2), and carbon monoxide – the primary NAAQS identifies the level of ambient air pollution that is "safe" to breathe. While costs are not considered in establishing these standards, costs can be considered in developing plans to achieve the necessary pollution reductions to meet the standards. EPA must review each NAAQS every five years and make revisions as appropriate.

On October 1, 2015, EPA issued a final rule strengthening the ozone NAAQS from 75 parts per billion (ppb) to 70 ppb.[4] This decision was based on the review of thousands of studies showing ozone's effects on public health and welfare. Ozone, also known as smog, has a number of health impacts, ranging from increased asthma attacks and cases of acute bronchitis in children to premature death. Ozone also damages vegetation, including crops and ecosystems. The revised standard is consistent with the recommendations of the independent Clean Air Scientific Advisory Committee (CASAC), which had concluded that the science supports a

[2] During the 114th Congress, the Committee held three hearings on EPA's ozone standard and H.R. 4775, legislation virtually identical to H.R. 806: June 16, 2015, June 12, 2015, and April 14, 2016. For further background information on EPA's ozone standard and the Committee's consideration of H.R. 4775, please see the memos from the previous hearings.

[3] Clean Air Act at § 109.

[4] U.S. Environmental Protection Agency (EPA), *National Ambient Air Quality Standards for Ozone*, 80 Fed. Reg. 65292 (Oct. 26, 2015) (final rule).

standard within a range of 70 ppb down to 60 ppb.[5] The estimated net benefits of the updated ozone NAAQS are up to $4.5 billion, excluding California where the estimated net benefits are up to $1.3 billion.

EPA Administrator Pruitt has been a vocal opponent of the 2015 ozone NAAQS, and has directed the Agency to review and potentially revise the final rule.[6] To that end, EPA recently announced a one-year delay of its statutory deadline to make final attainment area designations, citing the need for more time to complete its review of the standard.[7] Drastic cuts proposed by EPA's FY 2018 budget would also undermine the 2015 ozone NAAQS, especially for states that depend on critical grant funding to improve air quality and implement the CAA.[8]

B. Impacts of H.R. 806

H.R. 806 would drastically alter the CAA to weaken air quality protections, allow more pollution, and threaten public health. Most of the changes specifically target the 2015 ozone NAAQS; however, the bill also undercuts the NAAQS process for all other criteria pollutants. These proposed changes would significantly undermine the features of the CAA that have driven important progress in improving air quality and public health.

The overall effect of the proposed changes included in H.R. 806 will be to delay the implementation of health-based air quality standards, make achievement of more protective standards more difficult, and inject cost and technological feasibility considerations into the standards-setting process. The bill would also fundamentally alter those CAA provisions that ensure EPA's decisions to protect public health are informed by the most up-to-date scientific data, findings, and knowledge about air pollutants and their health and environmental impacts. For a more detailed section-by-section analysis of H.R. 806, please see the attached appendix.

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[5] *See* U.S. EPA, *Overview of EPA's Updates to the Air Quality Standards for Ground-Level Ozone* (Oct. 1, 2015) (www.epa.gov/sites/production/files/2015-10/documents/overview_of_2015_rule.pdf).

[6] *See Pruitt v. EPA: 14 Challenges of EPA Rules by the Oklahoma Attorney General*, New York Times (Jan. 14, 2017) (www.nytimes.com/interactive/2017/01/14/us/politics/document-Pruitt-v-EPA-a-Compilation-of-Oklahoma-14.html#document/p335/a334755); *Trump may change for scrap Obama ozone standard,* Greenwire (Apr. 10, 2017) (www.eenews.net/greenwire/stories/1060052869/).

[7] U.S. EPA, *EPA to Extend Deadlines for 2015 Ozone NAAQS Area Designations* (Jun. 6, 2017) (www.epa.gov/newsreleases/epa-extend-deadline-2015-ozone-naaqs-area-designations).

[8] *See* National Association of Clean Air Agencies, *Impacts of Proposed FY 2018 Budget Cuts on State and Local Air Quality Agencies* (May 22, 2017) (www.4cleanair.org/sites/default/files/Documents/NACAAFundingReport-FY2018.pdf).

II. H.R. 3053, THE NUCLEAR WASTE POLICY AMENDMENTS ACT OF 2017

A. Committee Procedural History Relating to H.R. 3053

On April 24, 2017 the Subcommittee on Environment held a legislative hearing on a draft version of H.R. 3053. The draft was subsequently marked up by the Environment Subcommittee on June 15, 2017, and forwarded by a voice vote based on a commitment by the majority to continue working toward a bipartisan agreement before a Full Committee markup.

On June 26, 2017, Chairman Shimkus introduced the Environment Subcommittee-approved committee print as H.R. 3053; however, a manager's amendment reflecting the bipartisan agreement is expected to be offered during the markup. A summary of the introduced bill is attached to this memorandum. A summary of the amendment will be circulated when it becomes available. For further background information, please see the memo from the legislative hearing.

B. Background on Nuclear Waste

Nuclear power reactors in the United States generate an average of 2,200 metric tons of spent nuclear fuel every year. The inventory of spent nuclear fuel in the United States is now over 72,000 metric tons and is expected to grow to 139,000 metric tons by 2067.[9] Most of the current inventory is stored onsite where it was generated, in wet pools or dry casks.[10] Spent fuel is generally stored in pools for five years, and then transferred to dry casks after it has cooled to within the heat limits of the casks.[11] However, capacity for storage in wet pools has been exhausted, requiring more fuel to be transferred to dry casks.

C. The Nuclear Waste Policy Act

In 1982, Congress passed the Nuclear Waste Policy Act (NWPA), directing the Department of Energy (DOE) to remove spent nuclear fuel from commercial nuclear power plants, in exchange for a fee, and transport it to a permanent geologic repository beginning no later than January 31, 1998.[12] The law also established an objective, scientifically-based process for selecting two repository sites. In the years following passage of the NWPA, DOE's efforts to identify potential sites were met with strong local opposition. In 1987, Congress amended the NWPA and designated Yucca Mountain, Nevada as the sole site to be considered for a permanent geologic repository.[13] As discussed in several hearings on this topic during the 114th

[9] Government Accountability Office, *Outreach Needed to Help Gain Public Acceptance for Federal Activities that Address Liability*, at 11 (Oct. 2014) (GAO-15-141).

[10] *Id.* at 14.

[11] *Id.* at 7.

[12] Nuclear Waste Policy Act of 1982, codified at 42 U.S.C. 10101 et seq.

[13] P.L. 100-203.

Congress, funding shortfalls, the state of Nevada's strong opposition, and other factors have prevented DOE from completing a nuclear waste repository at Yucca Mountain.

D. Nuclear Regulatory Commission Review

On January 29, 2015, the Nuclear Regulatory Commission (NRC) issued the final volumes of its Safety Evaluation Report summarizing the Yucca Mountain application, the technical staff's safety review, and staff findings and recommendations. The report noted that DOE's license application met regulatory requirements, except for certain requirements related to ownership of land and water rights. The report recommended that "the Commission should not authorize construction of the repository because DOE has not met certain land and water rights requirements…and a supplement to DOE's environmental impact statement (EIS) has not yet been completed."[14] In March 2015, NRC announced that its staff would prepare a supplement to DOE's EIS to address "the impacts of the proposed repository at Yucca Mountain on groundwater as well as the impacts from groundwater discharges to the surface."[15] In May 2016, NRC issued its supplement, finding that the estimated radiological doses in the groundwater surrounding the site are small because they are a small fraction of the background radiation dose.[16]

E. Fiscal Year 2018 Budget

In May, President Trump released his fiscal year 2018 budget. The DOE Budget Request includes $120 million to "resume the NRC licensing process for Yucca Mountain and initiate a robust interim storage program."[17] In addition, the NRC Budget Request includes $30 million for the continuation of the licensing proceeding for the potential construction authorization of a repository.[18] This is the first time since 2009 that licensing activities for the Yucca Mountain repository have been funded in a Presidential budget proposal.

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[14] U.S. Nuclear Regulatory Commission, *NRC Publishes Final Two Volumes of Yucca Mountain Safety Evaluation* (Jan. 29, 2015) (www.nrc.gov/reading-rm/doc-collections/news/2015/15-005.pdf).

[15] U.S. Nuclear Regulatory Commission Chairman Stephen G. Burns, *Prepared Remarks Before United States Energy Association Meeting, National Press Club* (Apr. 30, 2015) (pbadupws.nrc.gov/docs/ML1512/ML15121A048.pdf).

[16] U.S. Nuclear Regulatory Commission, *Supplement to the U.S. Department of Energy's Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada* (May 2016) (www.nrc.gov/docs/ML1612/ML16125A032.pdf).

[17] U.S. Department of Energy, *FY 2018 Congressional Budget Request* (May 2017).

[18] U.S. Nuclear Regulatory Commission, *Congressional Budget Justification Fiscal Year 2018* (NUREG-1100).

III. H.R. 3017, THE BROWNFIELDS ENHANCEMENT, ECONOMIC REDEVELOPMENT, AND REAUTHORIZATION ACT OF 2017

A. Background on the Brownfields Program

The Brownfields program was originally established by EPA in conjunction with the agency's work to implement the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund), and was formally authorized in 2002.[19] EPA and Congress created the program to assist communities with the cleanup of brownfields sites, defined as "real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant."[20] The program primarily focuses on properties that are abandoned or underutilized and are not addressed under other federal remediation authorities.[21]

Cleanup of brownfields sites encourages economic redevelopment and reduces exposure to harmful contaminants. Cleanup of brownfields properties can also increase nearby property values (between $500,000 and $1.5 million for properties within one mile), increase efficiency, and decrease pollution.[22] Every EPA brownfields dollar spent leverages $16.11, on average. As of May 1, 2017, the program has leveraged almost $24 billion and over 124,000 jobs.

At the time the Brownfields Act was adopted, there were an estimated 450,000 brownfields properties. According to EPA figures, more than 25,000 properties have been assessed and nearly 64,000 acres have been revitalized throughout the lifetime of the program. While the Brownfields program is widely popular because of its economic, public health, and environmental benefits,[23] it has never been reauthorized.

B. Committee Procedural History Relating to H.R. 3017

On April 4, 2017, the Subcommittee on Environment held a legislative hearing on a discussion draft for Brownfields Reauthorization. Witnesses at that hearing represented the U.S. Conference of Mayors, the National League of Cities, the Environmental Council of States, the Association of State and Territorial Solid Waste Management Officials, and the National Brownfields Coalition. The witnesses unanimously supported reauthorizing the Brownfields

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[19] The Small Business Liability Relief and Brownfields Revitalization Act, Pub. L. No. 107-118 (2002).

[20] *Id*.

[21] Congressional Research Service (CRS), *Comprehensive Environmental Response, Compensation, and Liability Act: A Summary of Superfund Cleanup Authorities and Related Provisions of the Act* (June 14, 2012) (R41039).

[22] U.S. EPA, *Brownfields Program Accomplishments and Benefits* (accessed June 13, 2017) (www.epa.gov/brownfields/brownfields-program-accomplishments-and-benefits).

[23] *Id.*

program. They also unanimously supported small changes to the program to increase flexibility in the program.

The committee print forwarded by the Environment Subcommittee on June 15, 2017 reauthorizes the program without changing the authorization levels and makes those small changes to increase flexibility. The print changed since the hearing based on technical assistance provided by the EPA, testimony at the hearing, and bipartisan discussions. The most significant alteration is the specification that authorization levels for the program would not change from current levels. On June 22, 2017, Reps. McKinley, Walden, Pallone, Shimkus and Tonko introduced the Environment Subcommittee-forwarded committee print as H.R. 3017. A detailed summary of H.R. 3017 is attached to this memo.

IV. H.R. 2910, THE PROMOTING INTERAGENCY COORDINATION FOR REVIEW OF NATURAL GAS PIPELINES ACT

H.R. 2910 was introduced on June 15, 2017, by Rep. Flores (R-TX), and is almost entirely different from the draft legislation that was the subject of the May 3, 2017 legislative hearing and any previously considered proposal on this subject. Proponents argue the purpose of the bill is to streamline the FERC process for approving natural gas pipelines by increasing transparency, predictability, accountability, and timeliness. However, these concerns are already being addressed by the Federal Permitting Improvement Steering Council, established in 2015 by the FAST Act.[24] This council is currently overseeing and coordinating the permitting process for 32 major infrastructure projects, including seven interstate natural gas pipelines. Further, at the legislative hearing, FERC's Director of the Office of Energy Projects noted that "on average it is 88 percent of the projects get issued within one year" and the single greatest factor in slowing down an application was the license applicant failing to provide FERC and other agencies with "timely and complete information necessary to perform Congressionally-mandated project reviews."[25] H.R. 2910 does not address any of the concerns raised by FERC at the legislative hearing.

H.R. 2910 indirectly attempts to re-write key aspects of sections 3, 7 and 15 of the Natural Gas Act (NGA). Among other things, the bill would require FERC to establish a schedule with deadlines for submission of information from other federal or state agencies, local governments or Indian tribes for a natural gas pipeline or liquefied natural gas project requiring FERC approval. Concurrent reviews by these federal or state agencies would be required, based on the scope of environmental review determined by FERC, to provide the Commission with timely information for the purpose of complying with the National Environmental Policy Act of 1969 (NEPA) and other environmental statutes such as the Clean Water Act (referred to as "federal authorizations"). FERC would be allowed to pursue remedies or implementation plans if a federal or state agency failed to meet the schedule established by FERC under this section.

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[24] P.L. 114-94.

[25] House Committee on Energy and Commerce, transcript not published, *Hearing on "Legislation Addressing Pipeline and Hydropower Infrastructure Modernization,"* Testimony of Terry Turpin, Director, Office of Energy Projects, Federal Energy Regulatory Commission, 115th Cong. (May 3, 2017).

Other agencies conducting environmental reviews for relevant projects would be further constrained since H.R. 2910 only provides for an agency to be designated as a "participating" agency, and not a cooperating agency. FERC's Director of the Office of Energy Projects noted that "some of the proposed NGA modifications would alter the Commission's role from one of collaboration with its fellow agencies to…monitoring other agency execution of their Congressionally-mandated duties. I am concerned that this…could lead to unproductive tension between the agencies involved in the review process."[26] H.R. 2910 also goes further to define a status for certain agencies called "non-designation" which prohibits such agencies from being able to "request or conduct a NEPA review that is supplemental to the project-related review conducted by the Commission…." The bill prohibits FERC from considering any comments or other information provided by a non-designated agency or including its comments or supplemental information in the record.

The bill also introduces a number of new definitions into federal law. For example "NEPA review" is defined as "the process of reviewing a proposed Federal action under section 102," of NEPA and "Project-related NEPA review" is defined as any NEPA review required to be conducted specifically "with respect to the issuance of an authorization under section 3…or a certificate of public convenience and necessity…." These definitions appear to mean the same thing, and itis unclear why they are necessary. Other new language introduced in H.R. 2910 requires agencies responsible for federal authorizations to deem applications "sufficiently complete" to begin consideration, regardless of whether the application is complete enough to fulfil their statutory obligations.

Finally, H.R. 2910 would require federal and state agencies to accept aerial survey data, and provides that such agencies may grant conditional approvals based on that data, conditioned further on data verification via subsequent onsite inspection.

V. H.R. 2883, THE PROMOTING CROSS-BORDER ENERGY INFRASTRUCTURE ACT

H.R. 2883 establishes a new permitting process for applicants seeking to construct, connect, operate, or maintain a border-crossing facility for importing or exporting oil, natural gas, or electricity from Canada or Mexico.[27] Under the new process, the relevant official must issue a "certificate of crossing" for a border-crossing facility within 120 days of final action under NEPA, unless the official finds that the project "is not in the public interest of the United States." This language replaces the existing federal approval process that requires oil and natural gas pipelines and electric transmission lines that cross the U.S. border to obtain a presidential permit. The relevant officials are FERC (for oil and natural gas pipelines) and the Secretary of Energy (for electric transmission lines). FERC currently has no authority over or experience

[26] Id.

[27] A similar proposal was considered as part of H.R. 8 in the 114th Congress. For further background information, please see this memo on section 3104. The Committee also considered H.R. 3301 during the 113th Congress. For further background information please see these memos from the related legislative hearing and markups on the bill.

with the siting of oil pipelines. Cross-border oil pipeline approval authority is currently delegated to the State Department.

The new process established by the bill effectively exempts such projects from environmental and safety review under NEPA by narrowing NEPA applicability to just the portion of the project actually crossing the border. The process created by the bill also tips the scale in favor of approving controversial projects by establishing a rebuttable presumption of approval. H.R. 2883 would allow a project that is found not to be in the public interest under the current permitting process to reapply under the new, weaker process. The bill would exempt all modifications to existing cross-border pipelines, including major expansions of pipelines, from any requirement for federal review or approval.

The effect of these changes would allow large and long-lived cross-border energy projects to be approved with no understanding or consideration of their environmental impacts, or to be exempted from any permitting requirement at all. The public, including communities and landowners directly affected by the projects, would have little or no information and no opportunity to object to or request mitigating action, except to the extent provided under limited state laws in some states.

For a detailed section-by-section analysis of this legislation, please see the attached appendix.

VI. HYDROELECTRIC POWER LEGISLATION

A. H.R. 3043, The Hydropower Policy Modernization Act of 2017

H.R. 3043 was introduced by Rep. McMorris Rodgers on June 23, 2017. It contains several wide-ranging hydropower policy initiatives. The most significant provisions address the process for licensing hydroelectric facilities under the Federal Power Act (FPA), including designating FERC as the lead agency to coordinate the licensing process. The measure grants FERC authority to set deadlines for decisions by federal agencies, states and tribes administering other applicable laws (e.g. the Endangered Species Act, the Clean Water Act, etc.) and limits deadline extensions to a 90-day period, regardless of whether the agency's decision timelines under these respective statutes are feasible for evaluating the project. The extension of FERC's authority conflicts with states' rights to manage water quality and quantity. The bill also provides both license applicants and other stakeholders a new ability to challenge a mandatory resource protection condition or prescription, opening the door for protracted litigation.

The bill contains a major change to the conditioning authority of the resource agencies. The bill requires the federal agency that is proposing a condition to protect water quality, endangered species, fisheries, or other natural or cultural resources to demonstrate that it gave equal consideration to energy supply, navigation, flood control, and air quality. The resource agencies have no direction or obligation in their respective statutes or in the FPA to consider any of these matters in making a recommendation on a condition for a hydropower license. This provision is in direct contrast with current law, and significantly undermines the ability of these agencies to protect natural and cultural resources. The bill also prevents the Secretaries of

Agriculture, Commerce, and Interior from delegating authority to their respective regional offices that now do much of the work to review hydropower licenses and develop proposed conditions for those licenses. This is more likely to slow the process of license approval than to speed it up.

Another major change involves alterations to the "trial-type hearing" process, established by the Energy Policy Act of 2005 (EPAct05) at industry's request. Significantly, the legislation would require such hearings – which address issues related to mandatory conditions imposed by federal resource agencies – to be conducted by a single FERC Administrative Law Judge (ALJ) rather than ALJs at the resource agency with the requisite legal expertise to render decisions on conditions open to challenge. The FERC ALJ is not empowered to determine whether the original or an alternative condition or prescription should be adopted. A decision by the FERC ALJ regarding challenges to a mandatory condition would be final and leave the Secretary originating that condition the choice to either adopt, modify, or withdraw the condition. Decisions of the ALJ under this section on disputed facts are not subject to further administrative review, but would be part of the consolidated record and subject to judicial review.

Other aspects of H.R. 3043 include provisions to expand the federal renewable energy purchase requirement established under EPAct05, and broaden the statutory definition of renewable energy to include all existing hydropower rather than just new hydropower capacity. The bill also provides FERC with the authority to grant longer periods for preliminary and construction permits and associated extensions under Sections 5 and 13 of the FPA. Additionally, the legislation provides FERC with new authority to approve qualifying project upgrades to an existing licensed project under a very streamlined process.

A section-by-section description of this legislation is attached as an addendum to this memorandum. A manager's or substitute amendment may be offered during the markup, and, if so, a summary will be circulated when it becomes available.

B. H.R. 2786, The Promoting Small Conduit Hydropower Facilities Act of 2017

This legislation further expands the exemptions from hydropower licensing for conduit hydropower facilities that were enacted by Congress in 2013. Current law exempts qualifying small conduit hydropower facilities of less than five megawatts capacity from the FERC licensing process. Under this process, FERC must determine within 15 days after receipt of a notice of intent to construct a small conduit project by the developer if the project meets the qualifying criteria for exemption under the law. If FERC makes an initial determination that the project meets that criteria, current law requires FERC to publish a public notice of that determination and provide the public 45 days for an opportunity to comment on or contest FERC's determination.

H.R. 2786 would amend section 30 of the FPA to lift the five megawatt cap on conduit projects that could qualify for exemption. As introduced, the bill would also reduce from 45 to 15 days the amount of time the public would have to comment on or contest FERC's determination of whether a project qualifies for exemption. An amendment offered by Ranking

Member Pallone, to change the public comment period from 15 days to 30 days was adopted during the Energy Subcommittee markup.

VII. H.R. 3050, THE ENHANCING STATE ENERGY SECURITY PLANNING AND EMERGENCY PREPAREDNESS ACT OF 2017"

H.R. 3050 was introduced on June 23, 2017, by Chairman Upton and Ranking Member Rush. This bill amends sections of the Energy Policy and Conservation Act pertaining to the State Energy Conservation Plans. It adds a new section that authorizes a state to use Federal financial assistance received through the State Energy Program (SEP) to implement, revise, and review a State Energy Security Plan. The bill sets out requirements for the contents of the State Energy Security Plan. To be eligible to receive assistance under the SEP, the bill requires the Governor of a state to submit a plan, a revision to the plan, or a certification that no revisions to the plan are necessary to the Secretary of Energy every year. The provision sunsets in 2022. The bill also reauthorizes the SEP from 2018 through 2022 at $90 million for each of the five fiscal years of the bill. In recent years, appropriations for the SEP have been $50 million.

The bill is supported by the National Association of State Energy Officials (NASEO) and the National Association of Regulatory Utility Commissioners (NARUC). It is bipartisan and non-controversial.

June 2017

Section-by-Section Analysis of H.R. 806
Committee on Energy and Commerce, Democratic Staff

Section 2(a) – Changes to Key NAAQS Implementation Deadlines

Section 2(a) would drastically extend statutory deadlines associated with implementing the 2015 ozone NAAQS by up to eight years.[1] This would ensure that the outdated ozone standard would remain in effect – a standard that was found to be insufficient to protect public health. Furthermore, the statutory deadline changed by section 2(a)(1) already passed, with every state submitting designations on time. Section 2(a)(3) also decreases the amount of time states have to develop and submit their state implementation plans (SIPs) from three to four years after EPA finalizes area designations, to only one year.

Section 2(b) – Grandfathering of Pending Preconstruction Permits

Section 2(b) includes an unnecessary provision to grandfather pending preconstruction permits under the old ozone standard. This section is not needed since EPA already included such a provision in its final rule for the 2015 ozone NAAQS to enable a smooth transition to the new standard. However, the language in section 2(b) would go far beyond the reasonable timeframes in the rule by exempting any (1) preconstruction permits completed before October 26, 2025; (2) any draft permits published before December 26, 2025; or (3) any preliminary determinations published before December 26, 2025.

Section 3(a) – Changes to NAAQS Review Cycle

Section 3(a) extends the review period for all criteria air pollutant NAAQS from every five years to every ten years. A NAAQS review cycle of ten years would subvert the purpose of these standards, which is to establish a level of emissions that adequately protects public health based on the latest scientific knowledge. The current five-year cycle provides a reasonable amount of time for the development and review of new studies, and EPA is only required to make changes to a NAAQS if the latest information supports doing so to protect public health with "an adequate margin of safety."

Section 3(b) – Changes to Criteria for Establishing an Air Quality Standard

Section 3(b) changes the long-standing criteria for establishing an air quality standard from one that is based solely on protecting public health to one that includes a consideration of the "technological feasibility" of the standard. This provision removes the important firewall separating the setting of the standards from their implementation, turning a NAAQS into a reflection of how much public health protection we can afford, not what is "safe" to breathe. This interpretation already has been debated and rejected by the courts.

Section 3(c) – Advice Precedent Required Before EPA May Establish or Revise the NAAQS

Section 3(c) requires that, before establishing or revising any NAAQS, the Administrator must request, and CASAC must provide, advice on any adverse public health, welfare, social, economic, or energy effects resulting from meeting that standard. This section is virtually identical to a provision in existing law, but notably the CAA does not make this information a prerequisite for a NAAQS revision. As noted earlier, NAAQS standards are based solely on protecting public health; however, other criteria (e.g. cost, technological feasibility, etc.) can be considered by states when developing a SIP.

[1] State recommendations on nonattainment areas would not be due to EPA until October 26, 2024, and EPA would have until October 26, 2025, to finalize designations. SIPs would then be due to EPA by October 26, 2026. The statutory deadlines under the CAA are October 1, 2016, October 1, 2017, and October 1, 2020 to October 1, 2021, respectively. EPA recently announced a one year delay of their October 2017 deadline for finalizing designations.

Section 3(d) – New Procedural Requirements on EPA Allowing Bypass of Current Preconstruction Permitting Processes

Section 3(d) would create a loophole in the preconstruction permitting process, by establishing arbitrary procedural requirements for EPA to follow when setting a new air quality standard. If EPA does not issue rules and guidance concurrently with an updated NAAQS, then a new or expanding facility can apply for a preconstruction permit based on the old air quality standard, which is not adequate to protect public health. As a practical matter, it is not always feasible or advisable for EPA to issue concurrent implementation regulations and guidance when revising a NAAQS, since most guidance develops organically as result of consultation with state and local air agencies and affected sources after they begin the process of implementing the NAAQS. Ultimately this section could give new sources of pollution "amnesty" from new air quality standards leaving existing facilities with a burden to do more to reduce their emissions if the area is near or in nonattainment –worsening air quality and raising the economy-wide cost of cleaning up pollution.

Section 3(e) – Contingency Measure Exemptions for Extreme Nonattainment Areas

Section 3(e) would exempt extreme nonattainment areas from having to establish contingency measures if they fail to make progress toward achieving the ozone standard. Without these contingency measures, there would be no incentive for extreme nonattainment areas to even attempt to control their emissions. This may result in the area not meeting the ozone standard indefinitely or having to make any progress toward achieving the standard.

Sections 3(f), 3(g) – New Justifications for Not Achieving Emission Reductions: "Economic Feasibility" and "Technological Achievability"

Section 3(f) would allow states to use assessments of economic feasibility as a reason to delay demonstration of reasonable progress toward meeting the standard in moderate and serious ozone nonattainment areas, to avoid including new or improved control technologies in their SIPs in extreme nonattainment areas.

Section 3(g) is similar to section 3(f) but applies to moderate and serious particulate matter nonattainment areas. The section would allow a state to consider technological achievability and economic feasibility in its SIP revision to demonstrate progress toward attainment of a NAAQS.

The changes in these sections would lower the bar for achieving reasonable progress toward meeting the standard, leading to fewer emissions reductions in nonattainment areas overall. As a result, states with nonattainment areas would be able to rule out using viable emissions reduction measures, make less progress on improving air quality, and still be in compliance with the requirements of the law.

Section 3(h) – Expansion of Definition for "Exceptional Events"

Section 3(h) removes the exclusion of stagnation of air masses that are not "ordinarily occurring," meteorological inversions, high temperatures or lack of precipitation from the definition of "exceptional events" for purposes of reviewing and handling air quality monitoring data, expanding the list of circumstances that are included in the definition to include common conditions and occurrences that are **not**, in fact, exceptional. Allowing states to seek relief by claiming additional exceptional events will artificially reduce reporting on the severity of air pollution in the area. It would also all but ensure that areas having stagnant air masses experiencing meteorological inversions, heat waves, or droughts; and that have poor air quality would remain in nonattainment. Further, changing air quality monitoring protocols in ways that lead to underreporting of poor air quality conditions will cause areas with poor air quality to appear much better under conditions of extreme heat and drought. Given that ozone levels are often higher on hotter days, such an expansion of the exceptional events definition would be a significant change.

Section 3(j) – Ozone Formation and Control Strategies

Section 3(j) would require that the Administrator conduct a study on the atmospheric formation of ozone and cost-effective control strategies, and incorporate the results in any 2015 ozone rules or guidance. The study must include the consideration of the contribution of manmade and naturally occurring NO_x, VOCs, and other pollutants in ozone formation in urban and rural areas including during wildfires; wintertime ozone; and it must be peer reviewed. Many of the aspects of the proposed study are already covered by EPA's rigorously peer reviewed Integrated Science Assessment. The duplicative nature of the study will draw the Agency's limited staff and resources away from the public health priorities of implementing and reviewing the NAAQS in the timely manner outlined in the Clean Air Act.

Section 4 – Definitions

Section 4 restates a number of definitions already found in the Clean Air Act.

Section 5 – No Additional Funds

Section 5 blocks any additional funds from being appropriated to carry out this act. Under the Clean Air Act, much of the permitting and implementing of air quality standards is done by the states, with the experts at EPA providing guidance and technical assistance. Without adequate funding and staff, it is difficult for EPA to do this in an efficient manner, and the additional requirements of this bill only make this situation worse. Taking into account the proposed draconian cuts to EPA's FY 2018 budget, section 5 would make it virtually impossible to ensure the American public is protected from dangerous air pollution.

June 2017

Summary of the "Nuclear Waste Policy Act Amendments of 2017"
Committee on Energy and Commerce, Democratic Staff

H.R. 3053, the Nuclear Waste Policy Act Amendments of 2017 is a bill introduced by Chairman John Shimkus on June 26, 2017. A discussion draft was examined at an April 26, 2017 legislative hearing and a committee print was forwarded by the Subcommittee on Environment on June 15, 2017. The bill makes a number of changes to the Nuclear Waste Policy Act (NWPA), which has not been amended since 1987. Following is a brief summary of the major provisions of the draft.

Title I deals with Monitored Retrievable Storage, also known as interim storage.

- Authorizes the Secretary of Energy to site, construct and operate one or more interim storage facilities, either operated by DOE or a private entity. Gives preference to a private entity unless it would be faster and less expensive for an interim storage facility to be publicly operated.
- Prohibits any interim storage project from moving forward until NRC makes a final decision on a construction authorization for a permanent repository.

Title II addresses issues related to a permanent repository and the current application for the Yucca Mountain site.

- Prohibits any interim storage project from moving forward until NRC makes a final decision on a construction authorization for a permanent repository.
- Transfers federal land rights at the site currently under the control of other federal agencies to DOE.
- Declares that construction of a nuclear waste repository constitutes a beneficial use of water, undercutting the basis for the Nevada State Engineer's denial of water rights for the project.
- Provides that the Energy Secretary may not move forward on a separate defense waste repository until NRC makes a final decision on a construction authorization for a permanent repository.
- Includes a Sense of Congress statement that advocates for avoiding Las Vegas when nuclear waste is transported by rail.

Title III allows the Secretary to negotiate modifications to existing contracts with nuclear waste generators.

Title IV makes certain changes to the section of the NWPA dealing with benefits to host communities.

- Leaves the benefits schedule blank, with amounts to be determined.
- Prohibits affected states and local governments from using benefits payments to directly or indirectly influence legislative action or for litigation.

Title V makes changes to the NWPA's funding mechanisms.

- No fees shall be collected and deposited into the waste fund until NRC issues a final decision on the construction authorization for a permanent repository.
- Makes certain amounts from the waste fund, to be determined, directly available to the Secretary.

Title VI contains two miscellaneous provisions.

- Two years after NRC makes a final decision on a permanent repository, the Administrator of the Environmental Protection Agency must determine if the Agency's radiation standards need updating.
- Reconstitutes DOE's Office of Civilian Radioactive Waste Management, which was disbanded under the Obama Administration.

Section-by-Section of H.R. 3017 the "Brownfields Enhancement, Economic Redevelopment, and Reauthorization Act of 2017"

Committee on Energy and Commerce, Democratic Staff

Section 1. Short Title
This section establishes the short title of the bill as the Brownfields Enhancement, Economic Redevelopment, and Reauthorization Act of 2017.

Section 2. Redevelopment Certainty for Governmental Entities
This section amends the definition of "owner or operator" under Superfund to clarify protections for state and local governments that acquire ownership or control of a property through foreclosures or eminent domain. Existing law protects municipalities that acquire property "involuntarily," but ambiguity in the application of that term has complicated some clean-up efforts. The Committee print does not include a change in the definition of "contractual relationship" included in the original discussion draft because of concerns about unintended consequences of that change.

Section 3. Petroleum Brownfields Enhancement
This section removes limits on clean-ups of petroleum-contaminated sites in current law. Specifically, the section removes a cap on the percentage of brownfields funding that can be used for petroleum sites and removes a requirement that the sites be found to be "relatively low risk."

Section 4. Clarification of Leaseholder Interest
This sections clarifies the definition of "bona fide prospective purchaser" under Superfund to allow leaseholders to qualify independent of site owners. Technical changes have been made in this section to avoid unintended consequences of language in the original discussion draft; the bill now preserves existing language on ownership.

Section 5. Expanded Eligibility for Nonprofit Organizations
This section clarifies the eligibility of nonprofit organizations for brownfields revitalization funds.

Section 6. Treatment of Publically-Owned Brownfields Sites
This section allows eligible entities to access brownfields revitalization grants for publicly-owned brownfields sites acquired before the establishment of the Brownfields program even if they do not qualify as bona fide prospective purchasers.

Section 7. Remediation Grant Enhancement
This section raises the limit on funding for cleanup grants from $200,000 to $500,000 per site. It also allows the Administrator to raise this cap to $750,000 per site in certain cases based upon the level of contamination, size or ownership status of the site.

Section 8. Multipurpose Brownfields Grants
This section increases flexibility in the Brownfields program by allowing multipurpose grants to cover inventory, characterization, assessment, technical assistance and/or cleanup at one or more brownfields sites, provided that the recipients present a revitalization plan and demonstrate capacity to conduct the proposed activities.

Section 9. Administrative Costs for Grant Recipients
This section allows up to 5 percent of a brownfields grant to be spent on administrative costs.

Section 10. Renewable Energy on Brownfields Sites
This section requires the Administrator to consider the extent to which a grant would facilitate the production of renewable energy on site when evaluating grant applications for brownfields funding.

Section 11. Small Community Technical Assistance Grants
This section, which was added to the bill following the legislative hearing, creates a discretionary set aside within technical assistance funding for technical assistance specifically targeted at small communities, Native American tribes, rural areas, and disadvantaged areas.

Section 12. Brownfields Funding.
This section extends the authorization at current levels ($200,000,000) for fiscal years 2017 through 2021.

Section 13. State Response Program Funding.
This section extends the authorization at current levels ($50,000,000) for fiscal years 2017 through 2021.

June 2017

Section-By-Section Summary of H.R. 2883

PROMOTING CROSS-BORDER ENERGY INFRASTRUCTURE ACT

Committee on Energy and Commerce, Democratic Staff

H.R. 2883 establishes a new permitting process for applicants seeking to construct, connect, operate, or maintain a border-crossing facility for the purpose of importing or exporting oil, natural gas, or electricity from Canada or Mexico. This replaces the existing requirement than an entire trans-boundary project, not just a segment, obtain a presidential permit. Below is a section-by-section analysis of the major provisions of the bill.

Sec. 2(a)(2): Certificate Of Crossing

This section requires the relevant official to issue a "certificate of crossing" for a border-crossing facility of a project within 120 days of final action under the National Environmental Policy Act (NEPA), unless the official finds that the project "is not in the public interest of the United States." The relevant officials are FERC for oil and natural gas pipelines, and the Secretary of Energy for electric transmission lines. Right now, cross-border oil pipeline approval is delegated to the State Department. Moving this responsibility to FERC could lead to delays since FERC currently has no authority or experience with the siting of oil pipelines.

Unlike the existing process, this provision establishes a rebuttable presumption of approval, tipping the scale in favor of the project. Instead of requiring an agency to affirmatively find that a project is in the public interest, it shifts the burden of proof to opponents of the project to show that it is not in the public interest. Further a "border-crossing facility" is defined as the portion of the project "that is located at an international boundary of the United States." Trans-boundary pipelines and transmission lines are multi-billion dollar infrastructure investments that stretch hundreds of miles, last for decades, and pose environmental risks well beyond the border crossing. This language limits the scope of review for federal approval to just a sliver of a much larger project and makes it extremely difficult for an agency to prove an application as contrary to the public interest.

Sec. 2(a)(3): Exclusions

This section temporarily excludes from the new permitting process any cross-border project with permit approval pending on the date of enactment. This exclusion ends when the application is denied, or two years later for any application still pending. This provision would give controversial projects incentive to simply wait until the exclusion expires, and would give any project denied a presidential permit a second bite at the apple under the new, rubber-stamp process.

Sec. 2(b): Importation or Exportation of Natural Gas to Canada and Mexico

Subsection (b) amends section 3 of the Natural Gas Act to require DOE to grant authorization for the export or import of liquefied natural gas (LNG) to or from Canada or Mexico, within 30 days. Currently, companies wishing to export LNG to Canada or Mexico must obtain federal approval before doing so. These applications are relatively simple filings, and approvals can include conditions, such as prohibitions against simply using Canada or Mexico as a pass-through before shipping the gas to another country. The sets a deadline for DOE to grant authorization, but provides no mechanism for a deadline extension or denial of an application. If DOE is faced with rigid deadlines it cannot meet, the result will likely be unnecessary application denials rather than expedited approvals.

Sec. 2(e): Modifications to Existing Projects

Subsection (e) says that no certificate of crossing or presidential permit is required for modifications to existing projects. Under this section, modifications include a change in ownership, volume expansion, downstream or upstream interconnection, or adjustments to maintain flow (such as an increase or decrease in the number of pump or compressor stations). As a result, controversial modifications to existing cross-border pipelines or transmission lines would not require federal approval and would not be subject to any environmental review. Many modifications, as defined by this bill, could have environmental impacts just as significant as those resulting from an entirely new project.

June 2017

Summary of the "Hydropower Policy Modernization Act of 2017"
Committee on Energy and Commerce, Democratic Staff

H.R. 3043, the Hydropower Policy Modernization Act of 2017 is a bill introduced by Rep. Cathy McMorris Rodgers on June 23, 2017. The committee print was forwarded by the Subcommittee on Energy on June 22, 2017. Following is a brief summary of the major provisions of the bill.

Section 1 – Short Title

Section 2 – Hydropower Regulatory Improvements

- Has five major parts. First it inserts a Sense of the Congress that hydropower is a renewable resource and that the U.S. should increase hydropower resources.
- Amends Section 203 of the Energy Policy Act of 2005 by increasing the goal for the amount of renewable electric energy consumed by the federal government from 7.5 percent to 15 percent for 2017 and each fiscal year thereafter. This section also changes the definition of renewable energy to include all existing hydropower in the list of renewable energy sources that can be used to meet the federal renewable energy consumption goal.
- Amends section 5 of the Federal Power Act (FPA) to extend the time periods that the Federal Energy Regulatory Commission (FERC) can provide when granting a preliminary permit for a hydropower construction project. It also changes the number of permit extensions allowed and sets the maximum period for all permit extensions to 8 years.
- Amends the section of the FPA that governs the term of hydropower licenses granted by FERC (section 15(e)). The bill directs FERC to consider investments made by a licensee on their project when FERC determines the length of a license upon renewal of the existing license. FERC is directed to give equal consideration to both mandatory and discretionary investments made by the licensee.
- Finally, amends section 33 of the FPA one of the sections of the FPA which addresses the authorities of federal agencies to impose conditions on a hydropower license. There are four amendments to this section, one of which corrects an omission to the text. The first substantive amendment changes the term "deems" to "determines". This change requires the Secretary of a federal agency imposing conditions on a license to address resource or wildlife issues to provide more substantial documentation and evidence to support their choice of the specific condition to protect the resource in question. This section of the bill also eliminates the dispute resolution provisions in this section to conform to the change made later in the discussion draft with respect to trial-type hearings. Lastly, a new paragraph is added to section 33 to apply all the changes in this section to three other sections of the FPA, sections 4(e), 6, and 18.

Section 3 – Hydropower Licensing and Process Improvements

- Section 34 defines a Federal authorization as any authorization required under Federal laws to obtain a license, license amendment, or exemptions under Part I of the FPA.
    - Designates the Commission as the lead agency to coordinate all applicable Federal authorizations and for the purposes of complying with the National Environmental Policy Act (NEPA).
    - Directs FERC to issue a rule to establish a schedule for the review of a license application and for obtaining all the necessary authorizations, conditions, and permits required by Federal law.
    - Contains a number of specific directions to FERC regarding the provisions that must appear in the final rule.
    - The rule must provide for consultation between FERC and other federal, state and local government agencies and Indian tribes, notification of all parties to the license proceeding, a

specific dispute resolution mechanism, and the rule must facilitate the completion of Federal and state agency studies prior to or concurrent with FERC's preparation of their National Environmental Policy Act (NEPA) document.

- Participants in the license review process are required to comply with the deadlines in the schedule. If a federal or state agency or Indian tribe cannot meet the schedule for the license review, they must apply to FERC for an extension that cannot exceed 90 days.
- Requires a federal agency that proposes conditions to protect wildlife or other natural or cultural resources on a license to submit a written statement demonstrating that the Secretary gave equal consideration to energy supply, flood control, navigation, air quality and other aspects of environmental quality.
- Prohibits the Secretaries of Agriculture, Commerce, and Interior from delegating their authority to regional offices.

· Section 35 establishes new procedures for trial-type hearings on disputes over conditions imposed by federal resource agencies to protect fish, wildlife, or other natural or cultural resources.

- Designates the establishes the venue for the trial-type hearing to be the Administrative Law Judge (ALJ) within the Office of Administrative Law Judges and Dispute Resolution of the Commission, a venue the industry believes will be more receptive to their concerns. Current law requires these hearings to be conducted by the ALJ in the respective Department of the Secretary that imposed the condition under dispute.
- Establishes a decision on a disputed issue of material fact by the ALJ as final and not subject to further administrative review. This is true even if later information demonstrates the finding on the fact to be wrong.

· Section 36 includes several provisions to improve the studies done in support of a licensing decision.

- Directs the Commission to consult with Federal and State agencies and the public and to develop a catalog of current best practices for evaluating all environmental impacts of a project, and to compile a comprehensive set of studies and data accessible to the public that could be used to inform license proceedings.
- Also directs the Commission and Federal, State, and local government agencies and Indian tribes to use current, accepted science in support of their actions, and requires parties in the licensing process to demonstrate that a study requested is not duplicative of current existing studies that are applicable to the project.
- Includes a subsection to facilitate regional and basin-wide plans and studies.

· Section 37 establishes a new program to expedite the consideration of applications for amendments to existing licenses. It establishes criteria for the types of amendments that can be considered for expedited application processing and the specific steps that FERC must take in considering these applications with specific deadlines for FERC's and other agencies' actions.

Section 4 –Technical and Conforming Amendments

· Amends sections 4(e) and 18 of the FPA to conform with other changes in the bill made in subsection 2(f) in which the term "deems" is replaced by the term "determines" and through the addition of the new Section 35 on trial-type hearings in Section 3.