

**Opening Statement of Ranking Member Frank Pallone, Jr.  
Committee on Energy and Commerce  
Markup of H.R. 2042, Ratepayer Protection Act and H.R.  
2045, Targeting Rogue and Opaque Letters Act of 2015  
April 28, 2015**

Thank you, Mr. Chairman. Today we are marking up two pieces of legislation, both of which I oppose.

First, I would like to discuss the Ratepayer Protection Act. As I said during last week's Subcommittee markup of the legislation, for the Full Committee to move so quickly on a bill to gut the President's Clean Power Plan is misguided and unfortunate. I do not support this legislation and urge Members to closely examine its harmful effects on our country's progress to combat damaging pollution and catastrophic climate change. The so-called "Ratepayer Protection Act" effectively amends the Clean Air Act in a harmful and dangerous fashion.

This bill automatically delays implementation of the Clean Power Plan by extending all deadlines by however long it takes to complete all litigation. This blanket extension would be given to all polluters without regard for the merits of the legal challenges or their final outcome. Opponents of the rule would be given an incentive to “run the clock” on frivolous litigation, simply to put off having to reduce their carbon emissions.

The bill also allows a governor to say “the requirements of the Clean Power Plan don’t apply to me.” Right now if a state refuses to develop their own plan, EPA must step in with a federal plan to ensure public health is protected. The bill turns this cooperation on its head by letting a governor “opt out” of a federal plan – giving certain states a free ride to pollute without any consequences. It is one thing to encourage states to “just say no,” but to let a governor declare that his state is not subject to the federal Clean Air Act at all? That goes too far.

It should go without saying that legislation aimed at “fixing” a proposed rule is premature. Congress should not get in the business of addressing proposed rules any more than the courts should. It would create a “morass.”

Climate change is real, and we should be taking meaningful steps to address it. As I have said before, EPA’s proposed Clean Power Plan is both modest and flexible, and will help us tackle the urgent need to reduce our carbon emissions. Just saying no – as this bill would have us do—and condemning future generations is simply not an option. I will continue to oppose this particular bill and urge all my colleagues to join me.

Today, we are also marking up the TROL Act. Patent trolls take advantage of the disparity of information between the patent holder and the alleged.

The TROL Act deals with one piece of the patent troll problem—abusive patent demand letters. The purpose of the bill before us is to encourage targeted enforcement and ultimately stop such abusive tactics by patent trolls.

I could support legislation on demand letters that advances consumer protection. And I was pleased to support Chairman Burgess's amendment that passed at the Subcommittee markup correcting a major flaw in the affirmative defense provision of the bill.

Unfortunately, some significant flaws remain in the bill, which create a disincentive to enforcement by tying the hands of state attorneys general and by creating barriers to Federal Trade Commission (FTC) enforcement that are simply too high.

For example, one flaw is that this bill would place additional burdens on enforcers at both the state and federal levels,

particularly by requiring proof that the sender knew that representations in the letter were false or misleading. This knowledge requirement is an unusual element that would make investigations and enforcement far more difficult.

I expect amendments tomorrow that will address some of the flaws in the bill. I encourage my colleagues on both sides of the aisle to support amendments that make the TROL Act fully enforceable.

I will support efforts to ensure that states and the FTC can continue their enforcement efforts against bad actors and also collect civil penalties from wrongdoers. However, unless we see amendments tomorrow that fix the fatal flaws in this bill, I cannot support the TROL Act.