

ONE HUNDRED TWELFTH CONGRESS
Congress of the United States
House of Representatives
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Statement of Rep. Henry A. Waxman
Ranking Member, Committee on Energy and Commerce
Markup on “H.R. 4273, Resolving Environmental and Grid Reliability Conflicts Act of 2012, and H.R. 5892, the Hydropower Regulatory Efficiency Act of 2012”
Subcommittee on Energy and Power
June 7, 2012

Today, we will consider two pieces of legislation.

The first is a bipartisan bill that will facilitate the development of new, environmentally responsible hydropower projects. It was introduced by Ms. McMorris-Rodgers and Ms. DeGette. This bill was developed through a good, cooperative process that has produced balanced, bipartisan legislation. The legislation is supported by both hydropower developers and environmentalists.

We are also considering the Olson bill. This bill would shield utilities complying with a Department of Energy emergency order from any liability for noncompliance with any federal, state, or local environmental law or regulation resulting from actions taken to comply with the DOE order.

I understand the basic concern expressed by proponents of this bill. Nobody wants to force a company to choose between complying with a DOE order and complying with environmental laws. In reality, this type of conflict rarely, if ever, arises. An actual conflict between a DOE order and environmental requirements may have happened, at most, one time.

While I am not convinced that legislation on this matter is necessary, I could support a targeted fix that addresses the industry’s concern in a balanced way.

However, as currently drafted, this bill is overly broad given the narrow issue it purports to address. It gives DOE, in the name of reliability, unfettered authority to waive any federal, state, or local environmental requirement for an unlimited period of time. Of course we want DOE to do whatever is necessary to keep the lights on. But electric reliability does not require us to remove all authority from the agencies that Congress has tasked with protecting the environment.

Under current law, if a utility is ordered by DOE to run a power plant for reliability purposes and it anticipates that it may violate an environmental requirement administered by EPA, the utility would need to negotiate with EPA for an administrative order or consent decree, which would protect the company against any EPA enforcement action. That's what Mirant did with the Potomac River plant back in 2006.

EPA plays an important role in minimizing environmental impacts when a unit must run for reliability reasons. But under the introduced bill, a utility has no incentive to reach an agreement with EPA to minimize the environmental impacts of operating under a DOE order.

EPA's role is eliminated, leaving the public with no assurance that unnecessary pollution will be avoided. This creates the potential for a big loophole in environmental protections.

The bill does include some non-binding language encouraging DOE to narrowly tailor its emergency orders. But that language is not mandatory. It provides no guarantee that the orders will minimize environmental impacts.

While I oppose the bill in its current form, I am pleased that we are having productive conversations with the bill's sponsors and the Committee Chairman about ways to improve the bill and prevent unintended consequences. I am hopeful that prior to consideration by the full committee we can agree on compromise language that fully addresses industry's concern without sacrificing the environmental protections that we rely on EPA and other agencies to uphold.