THE COMMITTEE ON ENERGY AND COMMERCE

INTERNAL MEMORANDUM

May 7, 2012

TO: Members, Subcommittee on Energy and Power

FROM: Committee Staff

RE: Hearing on "The American Energy Initiative"

On Wednesday, May 9, 2012, at 9:00 a.m. in room 2123 of the Rayburn House Office Building, the Subcommittee on Energy and Power will hold the nineteenth day of its hearing on "The American Energy Initiative." This day of the hearing will focus on H.R. 4273, the "Resolving Environmental and Grid Reliability Conflicts Act of 2012" and H.R. ___, the "Hydropower Regulatory Efficiency Act of 2012."

I. WITNESSES

Panel I

The Honorable Patricia Hoffman
Assistant Secretary for the Office of Electricity Delivery and Energy Reliability
U.S. Department of Energy

The Honorable Gina McCarthy
Assistant Administrator for the Office of Air and Radiation
U.S. Environmental Protection Agency

The Honorable Philip D. Moeller
Commissioner
Federal Energy Regulatory Commission

Mr. Jeffery C. Wright
Director, Office of Energy Projects
Federal Energy Regulatory Commission

Panel II

The Honorable Betty Ann Kane
Chairman
D.C. Public Service Commission

Ms. Debra Raggio
Vice President, Government and Regulatory Affairs, and Assistant General Counsel
GenOn Energy, Inc.

Mr. Stephen Brick
Consultant
On behalf of:
Environmental Integrity Project

Mr. Andrew Munro
Director, Customer Service Division
Grant County Public Utility District
On behalf of:
National Hydropower Association

Mr. Kurt Johnson
President
Colorado Small Hydro Association

Mr. Matthew Rice
Colorado Director
American Rivers

II. RESOLVING ENVIRONMENTAL AND GRID RELIABILITY CONFLICTS ACT OF 2012

A. BACKGROUND

The Environmental Protection Agency (EPA) has finalized regulations affecting the electric utility industry, such as the Cross-State Air Pollution Rule and the Utility MACT Rule, that will result in the accelerated retirement or retrofitting of a significant portion of the nation's coal-fired power plants. Such retirements and retrofits could have negative impacts on the reliability of the electric grid.

One proposed solution to address conflicts between reliability needs and EPA's rules is section 202(c) of the Federal Power Act (16 U.S.C. 824a(c)), which provides the Department of Energy (DOE) authority to direct power plants to continue operating in order to maintain the reliability of the electric grid during an emergency. Proponents of this solution contend that section 202(c) authorizes DOE to override conflicting environmental laws and regulations. However, there is no express statutory language in the Federal Power Act or other law that provides DOE authority to "trump" environmental law; nor has DOE ever taken this position when it has utilized its section 202(c) emergency authority.

Left unresolved, the current statutory structure creates the potential for conflicting legal mandates that could threaten the reliability of the grid and force power plant owners to choose compliance with one law over another. For example, if a generating unit is ordered by DOE to operate under section 202(c), and at the same time is prohibited from operating due to environmental limitations, the owner of the unit must choose between violating an order from DOE and violating the environmental law.[1]

B. SUMMARY OF THE LEGISLATION

H.R. 4273, the "Resolving Environmental and Grid Reliability Conflicts Act of 2012," was introduced on March 28, 2012, by Representatives Olson (R-TX), Doyle (D-PA), Terry (R-NE), Green (D-TX), Kinzinger (R-IL), and Gonzalez (D-TX).

[1] Mirant Corporation (now GenOn Energy, Inc.) faced this dilemma in 2005 when DOE ordered the Potomac River Generating Station to operate to protect the electric supply to Washington, DC. Mirant complied with the order but was later fined by the Virginia Department of Environmental Quality for a NAAQS violation. Mirant also would have faced liability from a citizen law suit under the Clean Air Act if it had been forced to violate a plant-specific environmental permit limit in order to comply with the DOE order.

Section 1: Provides the short title of "Resolving Environmental and Grid Reliability Conflicts Act of 2012."

Section 2:

- Amends section 202(c) of the Federal Power Act (16 U.S.C. 824a(c)) to clarify that when an electric generator is operating pursuant to a section 202(c) emergency directive to generate or transmit electricity, it will not be considered in violation of environmental laws or regulations, or subject to civil or criminal liability or citizen suits, as a result of its actions to comply with the Federal emergency order.

- Directs DOE to work to minimize adverse environmental impacts in emergency orders issued pursuant to section 202(c) of the Federal Power Act.

- Clarifies that the term "environmental law" does not include laws and regulations under the Occupational Safety and Health Act of 1970.

- Provides that section 202(d) of the Federal Power Act (16 U.S.C. 824a(d)) is applicable to municipalities.

III. HYDROPOWER REGULATORY EFFICIENCY ACT OF 2012

A. BACKGROUND

Hydropower is a renewable generation resource that provides affordable and reliable electricity. Currently, nearly 7 percent of the electricity generated in the United States comes from hydropower. In addition, the hydropower sector employs 300,000 workers across the United States.

Despite abundant resources, the production of electricity from water resources is significantly underutilized. For example, only about 3 percent of the nation's approximately 80,000 dams currently generate hydropower. One study completed on behalf of the National Hydropower Association concluded that by utilizing currently untapped resources, the United States could add approximately 60,000 megawatts (MW) of new hydropower capacity by 2025, potentially creating as many as 700,000 jobs in the process.

One of the primary impediments to greater utilization of hydropower resources is the regulatory process, which has proven costly, time-consuming and burdensome, even for small hydropower projects. The regulatory process to license and construct a hydropower facility remains considerably longer than the process for other energy resources. For example, the Integrated Licensing Process established specifically for hydropower projects is structured to be completed in 5 years, while the development timeline for wind and solar projects can be as short as 18-24 months.

B. SUMMARY OF THE LEGISLATION

A discussion draft of the "Hydropower Regulatory Efficiency Act of 2012" was released on May 2, 2012, by Rep. Cathy McMorris Rodgers (R-WA) and Rep. Diana DeGette (D-CO).

Section 1: Sets forth the Act's short title and provides a table of contents.

Section 2: Sets forth findings on the untapped potential of hydropower resources, in terms of both power production and job creation.

Section 3: Facilitates the development of small hydropower projects by increasing the licensing exemption from 5 MW to 10 MW.

Section 4:

- Promotes hydropower development at conduits (*i.e.*, man-made water conveyances such as tunnels, canals, or pipelines that are operated for water distribution and not primarily for electricity generation) by excluding projects under 5 MW from Federal licensing requirements if the project meets certain criteria.

- Facilitates conduit project development by exempting projects between 5-40 MW from Federal licensing requirements, upon approval of the Federal Energy Regulatory Commission (FERC).

Section 5: Allows FERC to extend the term of a preliminary permit for up to 2 years, for a total of 5 years, in order to allow a permittee sufficient time to develop and file a license application.

Section 6: Directs FERC to investigate the feasibility of establishing a streamlined 2-year licensing process for hydropower development at non-powered dams and closed-loop pumped storage projects. The results of the program will be reported to Congress.

Section 7: Directs the Secretary of Energy to complete a study of: (1) the technical flexibility and potential of certain hydropower storage facilities and technology to support intermittent renewable generation and provide grid reliability benefits; and (2) the range of opportunities for hydropower from conduits.

IV. ISSUES

The following issues will be examined at the hearing:

- The scope of DOE's section 202(c) emergency authority.

- Lessons learned from previously-issued section 202(c) emergency orders, including the experiences of electric generators and State public utility commissions.

- Potential impacts on grid reliability resulting from conflicting Federal laws.

- The importance of hydropower to providing reliable and affordable electricity.

- The potential for new hydropower development in the United States and the resulting economic benefits.

- Measures to facilitate new hydropower development by improving the efficiency of the regulatory process.

V. STAFF CONTACTS

If you have any questions regarding this hearing, please contact Patrick Currier at (202) 225-2927.