

FAIR RATEPAYER ACCOUNTABILITY, TRANSPARENCY,
AND EFFICIENCY STANDARDS ACT

MARCH 14, 2016.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. UPTON, from the Committee on Energy and Commerce,
submitted the following

R E P O R T

[To accompany H.R. 2984]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 2984) to amend the Federal Power Act to provide that any inaction by the Federal Energy Regulatory Commission that allows a rate change to go into effect shall be treated as an order by the Commission for purposes of rehearing and court review, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

CONTENTS

	Page
Purpose and Summary	2
Background and Need for Legislation	2
Hearings	2
Committee Consideration	3
Committee Votes	3
Committee Oversight Findings	3
Statement of General Performance Goals and Objectives	3
New Budget Authority, Entitlement Authority, and Tax Expenditures	3
Earmark, Limited Tax Benefits, and Limited Tariff Benefits	4
Committee Cost Estimate	4
Congressional Budget Office Estimate	4
Federal Mandates Statement	5
Duplication of Federal Programs	5
Disclosure of Directed Rule Makings	5
Advisory Committee Statement	5
Applicability to Legislative Branch	5
Section-by-Section Analysis of the Legislation	6
Changes in Existing Law Made by the Bill, as Reported	6

PURPOSE AND SUMMARY

H.R. 2984, a bill to amend the Federal Power Act to provide that any inaction by the Federal Energy Regulatory Commission (FERC) that allows a rate change to go into effect shall be treated as an order by the Commission for purposes of rehearing and court review, was introduced by Rep. Joseph P. Kennedy, III (D-MA) on July 8, 2015.

BACKGROUND AND NEED FOR LEGISLATION

Section 205 of the Federal Power Act (FPA) sets forth specific processes to set rates for electricity, including opportunities for the public to protest a rate change filed with FERC.¹ Pursuant to the FPA, new rates take effect if FERC approves them or if FERC fails to issue an order approving or denying the filed rates by the time statutorily required by the FPA. The failure to approve or deny a rate may result from agency delay or, in some limited cases, a vote that results in a deadlocked Commission, for example a 2–2 vote.² In such cases, the rates become effective by operation of law, even when these rates were not approved by a majority of commissioners.

The FPA provides administrative redress for members of the public to protest Commission rate decisions.³ However, if rates become effective by operation of law—for example, as a result of a deadlocked Commission—the administrative processes are not available to the public because FERC did not technically issue an order for the public to protest. In such cases, there is no legal or administrative avenue for ratepayers to remedy or protest the rate change. This scenario has occurred on at least five occasions in the past fourteen years.

To resolve this procedural discrepancy, H.R. 2984 amends the requirement under section 205 of the FPA that a public utility provide FERC and the public sixty days' notice before making changes to its rate, charge, or classification structure. If a lack of action by FERC allows such a change to take effect, including if FERC allows the 60-day notice period to expire without taking action, FERC's lack of action will be treated as though FERC had issued an order accepting the change for purposes of the right of any party affected by a FERC order to apply for a rehearing within 30 days. Therefore, the bill would provide opportunities for rehearing of orders affecting rates, even in instances where the Commission is deadlocked.

HEARINGS

The Subcommittee on Energy and Power held a hearing on H.R. 2984 on February 2, 2016. The Subcommittee received testimony from:

- Ann Miles, Director, Office of Energy Projects, Federal Energy Regulatory Commission;

¹ 16 U.S.C. § 824d.

² FERC is generally comprised of 5 commissioners, each of whom is appointed by the President and confirmed by the U.S. Senate for a 5-year term. In some circumstances, FERC may operate with less than 5 commissioners. Presently, FERC has only 4 sitting commissioners resulting from Commissioner Moeller's recent departure.

³ See sections 205 (16 U.S.C. 824d) and 313 (16 U.S.C. 825l) of the FPA.

- Max Minzner, General Counsel, Office of the General Counsel, Federal Energy Regulatory Commission;
- Timothy L. Powell, CEP, Director of Land, GIS and Permits, Williams Company;
- Edward Lloyd, Evan M. Frankel Clinical Professor of Environmental Law, Columbia University School of Law, *on behalf of the New Jersey Conservation Foundation and Stonybrook Millstone Watershed Association*;
- Bill Bottiggi, General Manager, Braintree Light and Electric Department;
- Bill Marsan, Executive Vice President, General Counsel and Corporate Secretary, American Transmission Company;
- Tyson Slocum, Energy Program Director, Public Citizen, Inc.; and,
- Jeffrey A. Leahey, Esq., Deputy Executive Director, National Hydropower Association.

COMMITTEE CONSIDERATION

On February 10 and 11, 2016, the Subcommittee on Energy and Power met in open markup session and forwarded H.R. 2984 to the full Committee, without amendment, by a voice vote. On February 24 and 25, 2016, the full Committee on Energy and Commerce met in open markup session and ordered H.R. 2984 reported to the House, without amendment, by a voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There were no record votes taken in connection with ordering H.R. 2984 reported. A motion by Mr. Upton to order H.R. 2984 reported to the House, without amendment, was agreed to by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held a hearing and made findings that are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The goal of H.R. 2984 is to amend the Federal Power Act to provide that any inaction by the Federal Energy Regulatory Commission that allows a rate change to go into effect shall be treated as an order by the Commission for purposes of rehearing and court review.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 2984, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

EARMARK, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives, the Committee finds that H.R. 2984 contains no earmarks, limited tax benefits, or limited tariff benefits.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 11, 2016.

Hon. FRED UPTON,
*Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2984, the Fair RATES Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Megan Carroll.

Sincerely,

ROBERT A. SUNSHINE
(For Keith Hall, *Director*).

Enclosure.

H.R. 2984—Fair RATES Act

Under the Federal Power Act (FPA), the Federal Energy Regulatory Commission (FERC) is responsible for ensuring that rates, terms, and conditions set by public utilities related to interstate transmission and sales of electricity are just and reasonable. Section 205 of that act requires public utilities to notify FERC of any changes to such rates, terms and conditions. Under current law, FERC has 60 days to review the proposed changes and issue an order determining whether the changes can take effect; parties affected by such orders can seek a rehearing of FERC's decision and a subsequent review by an appellate court. If, however, FERC fails to issue an order within 60 days, any proposed changes take effect automatically. In the absence of an official decision by FERC, affected parties cannot request a rehearing.

H.R. 2984 would amend section 205 of the FPA to specify that any failure by FERC to issue an order related to a proposed change in rates or other terms would be considered an order to allow such changes. Thus any affected parties could seek a rehearing and appellate review of the changes.

By expanding the number of cases in which proposed rate changes potentially could result in rehearings, H.R. 2984 could in-

crease FERC's workload. However, based on information from FERC about the extremely limited number of cases that would be affected by the proposed change, CBO estimates that any increased administrative costs to the agency would be insignificant in any given year. Further, because FERC recovers 100 percent of its costs through user fees, any change in that agency's costs (which are controlled through annual appropriation acts) would be offset by an equal change in fees that the commission charges, resulting in no net change in federal spending.

Because enacting H.R. 2984 would not affect direct spending or revenues, pay-as-you-go procedures do not apply. CBO estimates that enacting H.R. 2984 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

H.R. 2984 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Megan Carroll. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

DUPLICATION OF FEDERAL PROGRAMS

No provision of H.R. 2984 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that enacting H.R. 2984 specifically directs to be completed no rule makings within the meaning of 5 U.S.C. 551.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section provides the short title of “Fair Ratepayer Accountability, Transparency, and Efficiency Standards Act” or the “Fair RATES Act.”

Section 2. Amendment to the Federal Power Act

Section 2 amends the requirements under section 205 of the Federal Power Act that a public utility provide FERC and the public 60 days’ notice before making changes to its rate, charge, or classification structure. Specifically, if a lack of action by FERC allows a change to take effect, including if FERC allows the 60-day notice period to expire, such lack of action will be treated as if FERC had issued an order accepting the change, thereby allowing any affected party to apply for rehearing within 30 days.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

FEDERAL POWER ACT

* * * * *

**PART II—REGULATION OF ELECTRIC UTILITY COMPANIES
ENGAGED IN INTERSTATE COMMERCE**

* * * * *

RATE AND CHARGES; SCHEDULES; SUSPENSION OF NEW RATES

SEC. 205. (a) All rates and charges made, demanded, or received by any public utility for or in connection with the transmission or sale of electric energy subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges shall be just and reasonable, and any such rate or charge that is not just and reasonable is hereby declared to be unlawful.

(b) No public utility shall, with respect to any transmission or sale subject to the jurisdiction of the Commission, (1) make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage, or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.

(c) Under such rules and regulations as the Commission may prescribe, every public utility shall file with the Commission, within such time and in such form as the Commission may designate, and shall keep open in convenient form and place for public inspection schedules showing all rates and charges for any transmission or sale subject to the jurisdiction of the Commission, and the classification, practices, and regulations affecting such rates and

charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services.

(d) Unless the Commission otherwise orders, no change shall be made by any public utility in any such rates, charges, classification, or service, or in any rule, regulation, or contract relating thereto, except after sixty days' notice to the Commission and to the public. Such notice shall be given by filing with the Commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force and the time when the change or changes will go into effect. The Commission, for good cause shown, may allow changes to take effect without requiring the sixty days' notice herein provided for by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published. *Any absence of action by the Commission that allows a change to take effect under this section, including the Commission allowing the sixty days' notice herein provided to expire without Commission action, shall be treated as an order issued by the Commission accepting such change for purposes of section 313.*

(e) Whenever any such new schedule is filed the Commission shall have authority, either upon complaint or upon its own initiative without complaint at once, and, if it so orders, without answer or formal pleading by the public utility, but upon reasonable notice to enter upon a hearing concerning the lawfulness of such rate, charge, classification, or service; and, pending such hearing and the decision thereon the Commission, upon filing with such schedules and delivering to the public utility affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, or service, but not for a longer period than five months beyond the time when it would otherwise go into effect; and after full hearings, either completed before or after the rate, charge, classification, or service goes into effect, the Commission may make such orders with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made at the expiration of such five months, the proposed change of rate, charge, classification, or service shall go into effect at the end of such period, but in case of a proposed increased rate or charge, the Commission may by order require the interested public utility or public utilities to keep accurate account in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts are paid, and upon completion of the hearing and decision may by further order require such public utility or public utilities to refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such increased rates or charges as by its decision shall be found not justified. At any hearing involving a rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the public utility, and the Commission shall give to the hearing and decision of such questions preference over other questions pending before it and decide the same as speedily as possible.

(f)(1) Not later than 2 years after the date of the enactment of this subsection and not less often than every 4 years thereafter, the

Commission shall make a thorough review of automatic adjustment clauses in public utility rate schedules to examine—

(A) whether or not each such clause effectively provides incentives for efficient use of resources (including economical purchase and use of fuel and electric energy), and

(B) whether any such clause reflects any costs other than costs which are—

(i) subject to periodic fluctuations, and

(ii) not susceptible to precise determinations in rate cases prior to the time such costs are incurred.

Such review may take place in individual rate proceedings or in generic or other separate proceedings applicable to one or more utilities.

(2) Not less frequently than every 2 years, in rate proceedings or in generic or other separate proceedings, the Commission shall review, with respect to each public utility, practices under any automatic adjustment clauses of such utility to insure efficient use of resources (including economical purchase and use of fuel and electric energy) under such clauses.

(3) The Commission may, on its own motion or upon complaint, after an opportunity for an evidentiary hearing, order a public utility to—

(A) modify the terms and provisions of any automatic adjustment clause, or

(B) cease any practice in connection with the clause, if such clause or practice does not result in the economical purchase and use of fuel, electric energy, or other items, the cost of which is included in any rate schedule under an automatic adjustment clause.

(4) As used in this subsection, the term “automatic adjustment clause” means a provision of a rate schedule which provides for increases or decreases (or both), without prior hearing, in rates reflecting increases or decreases (or both) in costs incurred by an electric utility. Such term does not include any rate which takes effect subject to refund and subject to a later determination of the appropriate amount of such rate.

* * * * *

