

Mr. Speaker, I am proud to pay tribute to Don Schneider's courageous service before this body of Congress and this nation. His selfless desire to protect the freedom of all Americans is a reflection of his unwavering love for our country and his continued service to his community is further illustration of a lifetime of devotion to our nation. Thank you, Don, for your service.

CONFERENCE REPORT ON H.R. 6,  
ENERGY POLICY ACT OF 2003

SPEECH OF

**HON. W.J. (BILLY) TAUZIN**

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 18, 2003*

Mr. TAUZIN. I rise to elaborate on the colloquy I had with Mr. Norwood during consideration of the conference report for H.R. 6 regarding section 1242 (relating to participant funding). Section 1242 ("Voluntary transmission pricing plans") adds a new section 219 to the Federal Power Act. Under this section, any transmission provider ("TP"), regardless of whether the TP is a member of an RTO or ISO, is eligible to submit a transmission pricing plan to the FERC. In the case of a participant funding ("PF") plan, the Federal Energy Regulatory Commission ("FERC") must approve the plan if it meets the requirements of the section, regardless of whether a TP is in an RTO or ISO, because the native load customers of the TP should not be penalized by being compelled to pay for unneeded generator interconnection transmission upgrades.

The provision requires the FERC to approve a PF plan if the plan is just and reasonable and meets other requirements relating to cost responsibility and allocation. The rates referenced means rates as they affect the TP's shareholders and native load customers. The rate must not be so low as to be confiscatory of the TP-shareholder's property. At the same time, the rate must not unjustly shift costs to the TP's native load customers. The just and reasonable requirement here operates in the context of a clear policy choice by Congress in favor of PF where an application meets the other requirements of this section. The requirements of (b)(2)(B) constitute a limitation or channelling of the FERC's discretion within the bounds of the just and reasonable standard, which the courts have held does not require a specific formula, method, or single numeric result in any given case. In determining the zone of reasonableness, the FERC is required to comply with the policy of allowing PF as provided in (b)(2)(B).

PF ensures just and reasonable rates in three ways. First, the TP fully recovers (in charges assessed to all transmission customers) the costs of any monetary credits it must grant to the party requesting the upgrade. Second, PF protects consumers from bearing costs for facilities they do not need, by ensuring that the party causing the upgrade costs is assigned those costs. Third, rates are kept at reasonable levels by ensuring that generation and transmission are sited in an economically efficient manner.

Subsection (b)(2)(B) provides that the upgrade costs are "assigned in a fair manner." The costs "assigned" or "paid" here means

the costs initially allocated at the time of the upgrade. If a cost is assigned to the TP, the TP rolls that cost into its embedded cost rate base and recovers the entire cost in a transmission charge assessed to all its own transmission customers. If a cost is assigned to, or paid by, the requesting party, the requesting party makes a lump-sum payment at the outset, financed by whatever means the requester arranges. Subsequently, the requesting party pays the same embedded cost transmission charge assessed to and paid by any transmission customer—this charge is not considered a "payment" in this context.

Subsection (b)(2)(B)(i) means that if, at the time of the request, the native load customers had no need for the upgrade, they do not have to pay for it. The phrase "such transmission service related expansion or new generator interconnection" refers to the specific upgrade requested. Thus, if the TP would not have built the same upgrade at the same time to serve its own customers, such customers should not have to pay for it. The phrase "would not have required" means that, at the time the upgrade is requested, the native load customers would not have needed the upgrade to reliably meet their load. Projected or hypothetical future "needs" or other "benefits" in no way qualify as upgrades required by these customers for the purposes of this provision.

Going forward, the requester would be charged the same embedded cost transmission service charge as any other transmission customer—a charge that includes the cost of any monetary credit (as it is used) or any other item in the embedded cost ratebase. This point is made clear in subsection (b)(2)(B)(iii)(I), which provides that a monetary credit would be "against the transmission charges that the funding entity or its assignee is otherwise assessed [by the TP]."

Clause (ii) is a clarification of precisely what costs are assigned in the up-front allocation of the upgrade costs. Clause (ii)(I) references the requirement that the requesting party "pay for" the "assigned" cost of the upgrade as set forth in clause (i). This language means that the requesting party makes a lump sum payment at the time of the upgrade for the costs of constructing the upgrade and any costs associated with completing the upgrade. Clause (ii)(II) makes clear that the requester is not also assigned, as part of this initial, lump-sum payment, certain future costs, resulting from the upgrade, that are later included in the TP's embedded cost rate base. The initial cost of the "physical" upgrade is not directly or immediately included in the embedded cost because the upgrade itself is paid for (assigned to) up front by the requesting party. The term "embedded cost" is a term of art typically defined as funds already expended for investment in plant and operating expenses, as shown on the utility's books.

The physical upgrade does not immediately qualify as a cost of "plant" because the TP has not been assigned the cost in the initial upgrade—such cost is paid for in the initial cost assignment by the requester, not by the TP. The "cost of the requested upgrade" does, however, enter the TP's embedded cost basis in the form of any monetary credit given to the requester as compensation for the requester's initial payment. Because this credit is a credit against the transmission charge assessed to the requester, it is revenue foregone

by the TP that must be recovered in the TP's rolled-in transmission rate. This cost is included in the TP's embedded cost charge to all transmission customers each billing period in the form of the cost of the monetary credit. Every transmission customer's rate (including the requester's) includes the cost of such credit. The difference for the requester is that he gets a credit against the same embedded cost transmission rate as charged to all transmission customers. Clause (ii)(II) means that, in the initial cost assignment, the requester does not also pay up front for the future rolled-in cost of the monetary credit. In the initial cost assignment, the requester pays only once for the transmission upgrade—and, under a PF plan using the monetary credit approach of (iii)(1), he gets full compensation for that lump sum payment in the form of the monetary credit over a 30 year period. In this lump-sum, up-front cost allocation, the requester does not have to pay for the upgrade twice by paying in advance for the monetary credit cost of the upgrade. For clarity, subclause (II) is expressed as a formula. The "difference" between the embedded cost including the upgrade and the embedded cost absent the upgrade equals the total cost of credits associated with the upgrade. Subclause (ii), in other words, means that the requester does not, in the up-front cost allocation, need to pay for both the cost of building the upgrade and the future cost of the credits needed to compensate it for that payment.

Subsequent to the initial cost allocation, the requester, like any other transmission customer, is assessed a standard transmission service charge for accessing the transmission system. It is against this service charge that any monetary credit under (iii)(I) is applied. Nothing in the provision prevents the TP from rolling the cost of the monetary credit into the embedded cost transmission charge for the use of the system—a charge that all transmission customers must pay as they take service. Clause (ii)(II) does not say or imply that the requester should not have to pay a transmission charge for the use of the system. Such a misreading would result in an unjust and unreasonable confiscation of utility-shareholder property, as well as an absurd departure from the FERC policy requiring all transmission customers to pay an access charge derived from the embedded cost of the system, including the cost of any credits given as the requester is assessed transmission charges. In other words, the provision is not intended to give the requester a double credit or double compensation (i.e., a discounted transmission rate on top of a credit or other compensation).

Conversely, the fact that the requester is assessed this charge (including the portion of the charge attributable to the cost of the monetary credit) in no way means that the requester is having to "pay twice" for the upgrade, because the transmission service charge is entirely separate from the cost allocation provided for in clause (ii). The requester pays for the upgrade in advance, and in exchange receives the credit or rights. By contrast, the requester is assessed a transmission charge in exchange for accessing the transmission system. Thus, this is not so-called "and" pricing.

Clause (iii) provides that the requester over time shall receive a form of compensation for its up-front, lump-sum payment. This compensation may be in the form of a monetary

credit of equal value, or financial or physical transmission rights, or another form of compensation proposed by the TP. Under (iii)(I), the requirement that the crediting period be "not more than 30 years" means that, so long as the crediting period proposed in the plan is 30 years or less, the FERC has no discretion to require that the crediting period be different from the proposed period.

The term "full compensation" in clause (iii) generally means that the requester gets appropriate compensation in exchange for making the up-front payment for the upgrade. In the case of a monetary credit under (iii)(I), this compensation is specifically identified as being "equal" to the cost of the participant funded facilities (spread over 30 years). In the case of the "financial or physical rights" option under (iii)(II), the compensation need not be quantified in terms of an amount equal to the cost of the upgrade. For example, in the case of a market using locational marginal pricing ("LMP"), such amount need not (and cannot) be calculated in advance. Nevertheless, such property rights resulting from the expansion are of great benefit to the requester as a hedge against paying potential congestion charges in the future. Thus, they are appropriate compensation. Subclause (III) gives the TP the option of proposing a different form of compensation. It does not give FERC discretion to require a different form of compensation when the TP proposes a monetary credit under subclause (I) or appropriate rights under subclause (II).

To ensure that native load consumers are protected from paying for facilities they do not need, I urge my colleagues in the House and Senate to vote for the conference report.

HONORING OUR FALLEN HEROES  
STAFF SGT. LINCOLN HOLLINSAID,  
CAPT. RYAN BEAUPRE AND  
PVT. SHAWN PAHNKE

**HON. JERRY WELLER**

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, November 19, 2003*

Mr. WELLER. Mr. Speaker, I rise today to commend the heroic actions of three service members from the 11th Congressional District of Illinois who gave the ultimate sacrifice of their life to the defense of our Nation. Army Staff Sgt. Lincoln Hollinsaid of Malden, Marine Capt. Ryan Beaupre of St. Anne and Army Pvt. Shawn Pahnke of Manhattan each served proudly and bravely.

Today, I am introducing legislation to honor their sacrifice by naming each of their hometown post offices in their name and I urge my colleagues to support these bills.

The Malden, Illinois post office would be named after Army Staff Sgt. Lincoln Hollinsaid, age 27. Staff Sgt. Hollinsaid was an engineer with the U.S. Army Third Infantry Division. He was killed April 7, 2003 while operating a crane to help clear a path allowing U.S. Army forces to penetrate the grounds of the Bagdad Airport and capture this key facility. Lincoln loved fishing, four-wheeling in his truck and was also a self taught guitar player.

The St. Anne, Illinois post office would be named after Marine Capt. Ryan Beaupre, age 30. Capt. Beaupre was a helicopter pilot with the U.S. First Marine Expeditionary Force. He

was killed March 20, 2003 while piloting a CH-46 Sea Knight helicopter in Kuwait, nine miles from the border with Iraq. Ryan enjoyed competing in cross-country and track. He was also a volunteer at "Home-Sweet-Home" mission, a homeless shelter and transitional housing program.

The Manhattan, Illinois post office would be named after Army Pvt. Shawn Pahnke, age 25. Pvt. Pahnke was a main battle tank crewman with the U.S. Army First Armored Division's First Brigade. He was killed June 16, 2003 while patrolling Baghdad in a Humvee. Shawn enjoyed playing baseball. He was also a husband and a father of a new born son.

Naming the Malden, St. Anne and Manhattan post offices after these brave soldiers is a fitting tribute to remember each of their lives, their service and the sacrifices of their families and their communities.

When we lose a soldier, it is a terrible loss for their families and for our Nation. Hardships are also felt by every family of those who are abroad who not only miss their loved ones, but may be having a difficult time making ends meet. The members of the armed forces are giving greatly to defend and protect our Nation, and we owe them an enormous debt of gratitude.

America's soldiers serve our country with honor. I hope that you will join me in honoring these soldiers who gave so much to our country.

On a personal note, my heart and prayers go out to all those who have sacrificed for this ongoing war on terror, and I urge my colleagues to support these fitting bills.

PERSONAL EXPLANATION

**HON. CHARLES A. GONZALEZ**

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, November 19, 2003*

Mr. GONZALEZ. Mr. Speaker, on rollcall Nos. 620, 621, 622, 623, had I been present, I would have voted "yea."

CONFERENCE REPORT ON H.R. 6,  
ENERGY POLICY ACT OF 2003

SPEECH OF

**HON. BOB ETHERIDGE**

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, November 18, 2003*

Mr. ETHERIDGE. Mr. Speaker, I rise today to vote against the conference report to H.R. 6, the Energy Policy Act of 2003.

It is a sad day in America for today Congress has passed up an historic opportunity to craft an energy policy for the 21st century. The legislation we are voting on could have been an honest, bipartisan effort to halt America's growing dependence on fossil fuels for energy. It could have been focused on new technologies, energy efficiency, renewable energy, and the research and development that could produce the breakthroughs that would power the world of tomorrow. Instead, this bill is stuck in the past. Modeled after the energy plan developed by Vice President CHENEY's secret energy committee, H.R. 6 reflects the philosophy that there is no energy problem that cannot be solved with another oil well.

I have no objection with supporting some new or additional oil and gas exploration or production because, until we develop the energy alternatives of the future, we must continue to meet our oil and gas needs. However, it must be done responsibly. Sacrificing environmental protection for petroleum production is not responsible. Exposing our great natural treasures, especially the North Carolina coastline, to exploitation and possible degradation is not responsible. And placing the vast majority of economic incentives that H.R. 6 offers toward more fossil fuel production, instead of energy efficiency and research into new technologies, is not responsible.

H.R. 6 provides \$23.5 billion in tax breaks over the next 10 years, the majority of that for oil and gas production. That's billions in tax breaks for energy companies paid for by our children and grandchildren. I could support some tax incentives for new sources of energy, but this Administration's economic record has already created a more than \$400 billion budget deficit. I cannot support more debt for future generations to pay off. The Senate version of the energy bill offered ways to pay for these tax breaks, but the Republican leadership struck them. Why are the Republicans so opposed to fiscal responsibility?

Not all of the bill's provisions are bad. I am pleased with the provisions on ethanol. They will provide new markets for corn growers and help reduce harmful emissions. The ban on the fuel additive methyl tertiary butyl ether (MTBE) will also help ethanol users while keeping more MTBE from seeping into the Nation's water supply. But H.R. 6 provides liability protection for MTBE manufacturers. So when somebody gets sick because their products got into the water supply, these companies cannot be held accountable. That's just plain wrong.

Like the Vice President's energy plan, this bill was developed by Republican leaders behind closed doors without concern for the needs of consumers. Republicans are demanding that this House vote on a 1000+ page bill after having less than a day to review it. How many of our constituents would sign a 1000 page contract after having barely a day to read it? None. That's why organizations like the Carolina Utility Customers Association—composed of North Carolina companies like Bayer Corporation, GlaxoSmithKline, Lorillard Tobacco, and R.J. Reynolds Tobacco—oppose H.R. 6. To quote their letter, "While H.R. 6 contains positive aspects, the fact remains that many questions need to be asked and adequately answered before this bill is passed. It is simply unwise to hastily pass a bill without fully understanding its impact."

Unfortunately, the Republican congressional leadership wasted an opportunity to develop a prudent energy policy. I must oppose H.R. 6.

PAYING TRIBUTE TO JAMES FUNK

**HON. SCOTT McINNIS**

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, November 19, 2003*

Mr. McINNIS. Mr. Speaker, it is with a solemn heart that I take this opportunity to pay tribute to the life of James Funk who recently