

RESOLVING ENVIRONMENTAL AND GRID RELIABILITY
CONFLICTS ACT OF 2012

—————
JULY 9, 2012.—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. 4273]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 4273) to clarify that compliance with an emergency order under section 202(c) of the Federal Power Act may not be considered a violation of any Federal, State, or local environmental law or regulation, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Resolving Environmental and Grid Reliability Conflicts Act of 2012”.

SEC. 2. AMENDMENTS TO THE FEDERAL POWER ACT.

(a) COMPLIANCE WITH OR VIOLATION OF ENVIRONMENTAL LAWS WHILE UNDER EMERGENCY ORDER.—Section 202(c) of the Federal Power Act (16 U.S.C. 824a(c)) is amended—

(1) by inserting “(1)” after “(c)”; and

(2) by adding at the end the following:

“(2) With respect to an order issued under this subsection that may result in a conflict with a requirement of any Federal, State, or local environmental law or regulation, the Commission shall ensure that such order requires generation, delivery, interchange, or transmission of electric energy only during hours necessary to meet the emergency and serve the public interest, and, to the maximum extent practicable, is consistent with any applicable Federal, State, or local environmental law or regulation and minimizes any adverse environmental impacts.

“(3) To the extent any omission or action taken by a party, that is necessary to comply with an order issued under this subsection, including any omission or action taken to voluntarily comply with such order, results in noncompliance with, or causes such party to not comply with, any Federal, State, or local environmental law or regulation, such omission or action shall not be considered a violation of such environmental law or regulation, or subject such party to any requirement, civil or criminal liability, or a citizen suit under such environmental law or regulation.

“(4)(A) An order issued under this subsection that may result in a conflict with a requirement of any Federal, State, or local environmental law or regulation shall expire not later than 90 days after it is issued. The Commission may renew or re-issue such order pursuant to paragraphs (1) and (2) for subsequent periods, not to exceed 90 days for each period, as the Commission determines necessary to meet the emergency and serve the public interest.

“(B) In renewing or reissuing an order under subparagraph (A), the Commission shall consult with the primary Federal agency with expertise in the environmental interest protected by such law or regulation, and shall include in any such renewed or reissued order such conditions as such Federal agency determines necessary to minimize any adverse environmental impacts to the maximum extent practicable. The conditions, if any, submitted by such Federal agency shall be made available to the public. The Commission may exclude such a condition from the renewed or reissued order if it determines that such condition would prevent the order from adequately addressing the emergency necessitating such order and provides in the order, or otherwise makes publicly available, an explanation of such determination.”.

(b) TEMPORARY CONNECTION OR CONSTRUCTION BY MUNICIPALITIES.—Section 202(d) of the Federal Power Act (16 U.S.C. 824a(d)) is amended by inserting “or municipality” before “engaged in the transmission or sale of electric energy”.

PURPOSE AND SUMMARY

H.R. 4273, the “Resolving Environmental and Grid Reliability Conflicts Act of 2012,” was introduced by Representatives Pete Olson, Mike Doyle, and Gene Green on March 28, 2012. The legislation provides that actions necessary to comply with an emergency order under section 202(c) of the Federal Power Act may not be considered a violation of any conflicting Federal, State, or local environmental law or regulation.

BACKGROUND AND NEED FOR LEGISLATION

Reliability of the electric grid

Electricity is generated from a variety of different energy sources, moved to substations by large, high-voltage transmission lines, and then ultimately delivered to consumers over smaller,

low-voltage distribution lines. Thousands of miles of transmission lines and distribution lines function together to form the “electric grid”—a vast network of interconnected transmission lines, local distribution systems, generation facilities, and related communications systems, with more than 800,000 megawatts of installed capacity, and serving more than 300 million people.

Unlike other commodities, electricity currently cannot be economically stored and thus it must be generated as it is needed, and supply must be kept in near constant balance with demand. This means generation and transmission operations must be monitored and controlled at all times to ensure a consistent flow of electricity—a complex process requiring the close coordination and cooperation of electricity industry participants and regulators. Deviations from this constant balancing of supply and demand can impair the “reliability” of the electric grid, resulting in a failure of electric power being delivered to customers.¹

As evidenced by recent reliability emergencies—the August 2003 Northeast Blackout, the February 2011 Southwest Blackout, and the September 2011 power outage in parts of Southern California, Arizona, and Mexico—impaired reliability can have significant economic, national security, public health, and safety consequences. Disruptions to adequate energy supply can cut off power to homes, hospitals, schools, offices, and farms, and commerce can come to a standstill, as airports, factories, and businesses sit idle. Moreover, defense facilities and military installations rely predominantly on power from the commercial electric grid and thus a loss of power supply can have serious national defense implications.

Reliability-related emergencies are not limited to bad weather, natural disasters, or terrorist attacks. For instance, a dramatic shift in the nation’s electric generation portfolio is underway. Although proper planning and coordination can mitigate most reliability concerns, this shift could nevertheless trigger reliability-related emergencies.

The Department of Energy’s emergency authority

The Secretary of Energy and the Department of Energy’s (DOE) Office of Electricity Delivery and Energy Reliability play an important role in ensuring the reliability of grid infrastructure, particularly in emergency situations.² One tool available to DOE to address reliability-related emergencies is section 202(c) of the Federal Power Act (FPA) (16 U.S.C. 824a(c)), which provides DOE authority to require the temporary interconnection of facilities and to direct power plants to continue operating in order to maintain the reliability of the electric grid during an emergency. Specifically, section 202(c) provides:

During the continuance of any war in which the United States is engaged, or whenever the Commission deter-

¹Reliability can be understood as the “ability to meet the electricity needs of end-use customers, even when unexpected equipment failures or other factors reduce the amount of available electricity.” North American Electric Reliability Corporation (NERC): “Reliability Terminology,” available at: <http://www.nerc.com/page.php?cid=115122>.

²Reliability-related concerns, particularly the August 2003 Northeast Blackout, led Congress to establish a greater federal role in ensuring the reliability of the electric grid in the Energy Policy Act of 2005. Section 215 of the Federal Power Act charged the Federal Energy Regulatory Commission with oversight of the reliability of the nation’s bulk power system and enforcement of reliability standards developed by NERC.

mines that an emergency exists by reason of a sudden increase in the demand for electric energy, or a shortage of electric energy or of facilities for the generation or transmission of electric energy, or of fuel or water for generating facilities, or other causes, the Commission shall have authority, either upon its own motion or upon complaint, with or without notice, hearing, or report, to require by order such temporary connections of facilities and such generation, delivery, interchange, or transmission of electric energy as in its judgment will best meet the emergency and serve the public interest. If the parties affected by such order fail to agree upon the terms of any arrangement between them in carrying out such order, the Commission, after hearing held either before or after such order takes effect, may prescribe by supplemental order such terms as it finds to be just and reasonable, including the compensation or reimbursement which should be paid to or by any such party.³

DOE has used its section 202(c) authority only sparingly. In fact, the authority has only been used on six occasions:

- On December 14, 2000, a section 202(c) emergency order was issued in response to the California energy crisis.
- On August 16, 2002, due to concerns regarding the availability of electricity on Long Island in the State of New York, a section 202(c) order was issued directing Cross-Sound Cable Company to operate the Cross-Sound Cable from Connecticut to Long Island and related facilities.
- On August 14, 2003, in response to the August 2003 Northeast Blackout, a section 202(c) order was issued directing the New York Independent System Operator and ISO New England to require Cross-Sound Cable Company to operate the Cross-Sound Cable and related facilities.
- On September 28, 2005, in response to Hurricane Rita and Hurricane Katrina, a section 202(c) emergency order was issued authorizing CenterPoint Energy to temporarily connect electricity lines to restore power to Entergy Gulf States, Inc., as well as electric cooperatives and municipal customers within the State of Texas.
- On December 20, 2005, in response to a request by the District of Columbia Public Service Commission, a section 202(c) emergency order was issued requiring operation of Mirant Corporation's Potomac River Generating Station to ensure compliance with reliability standards for the Washington, D.C. area.
- On September 14, 2008, in response to Hurricane Ike, a section 202(c) emergency order was issued authorizing CenterPoint Energy to temporarily connect electricity lines to restore power to Entergy Gulf States, Inc., as well as electric cooperatives and municipal customers within the State of Texas.⁴

Of the six instances, only two were generation-related, while the remaining four directed the interconnection of certain transmission lines and related facilities.

³ 16 U.S.C. 824a(c) (2006).

⁴ DOE's Use of Federal Power Act Emergency Authority, available at: <http://energy.gov/oe/does-use-federal-power-act-emergency-authority>.

Potential conflicts with environmental laws and regulations

A party subject to a section 202(c) emergency order may be unable to comply with environmental requirements that impose limitations on the way in which the party can operate its generation facilities or other infrastructure. For example, a generator operating in compliance with a section 202(c) order may be forced to exceed an air pollution limit in a Clean Air Act (CAA) permit, and thus violate the CAA. Under current law, the Environmental Protection Agency (EPA) could enforce CAA requirements against the generator through administrative, civil, or, in some cases, criminal actions. Similarly, a State may enforce State and Federal environmental regulations through State or Federal courts, and most environmental laws provide for civil enforcement actions by citizens in the absence of Federal or State enforcement action.

As explained below, there are two recent cases that demonstrate the potential problems that may arise when an entity is operating pursuant to a section 202(c) emergency order to maintain reliability and such operation conflicts with applicable environmental requirements.

Potrero Power Plant (2001)

From December 14, 2000, until February 7, 2001, DOE exercised its authority under section 202(c) of the FPA to compel operation of generation facilities during the California energy crisis, ordering certain generators to make energy available to the California Independent System Operator (CAISO). On April 6, 2001, EPA issued an administrative order on consent to Mirant Corporation's (Mirant) Potrero Power Plant after CAISO informed Mirant that the plant would be directed to operate over its permit limits during 2001. The Potrero Power Plant, located in the San Francisco area, had a relatively low annual operating limit of 877 hours. In order to ensure that the plant could operate as needed to preserve reliability, Mirant obtained approval from local and Federal regulators—the Bay Area Air Quality Management District and EPA—to operate for more than 877 hours.⁵ Despite these approvals, the City of San Francisco and certain environmental advocates brought a citizen enforcement action against Mirant for exceeding the operating limit.⁶ The alleged violations occurred when the plant continued to operate for reliability purposes after the expiration of the section 202(c) order.

Potomac River Generating Station

On August 22, 2005, Mirant announced that it would shut down its Potomac River Generating Station (Potomac River Plant), which supplied power to the District of Columbia through several transmission lines. The stated reason for the shutdown was to comply

⁵See Compliance and Mitigation Agreement between Mirant Potrero, LLC and the Bay Area Air Quality Management District (Mar. 29, 2001); *Mirant Potrero LLC*, R9-2001-04, Administrative Order on Consent (Apr. 6, 2001), available at <http://www.epa.gov/region9/energy/generators/r9200104mirant.pdf>.

⁶See Rachel Gordon, *Potrero Hill power plant operator sued/S.F. groups seek pollution controls*, San Francisco Chronicle (June 19, 2001), available at http://articles.sfgate.com/2001-06-19/news/17605126_1_mirant-corporation-pollution-clean-air-act; First Amended Complaint for Injunctive and Other Relief and Demand for Jury Trial, *City & County of San Francisco v. Mirant Potrero, LLC*, No. C-01-2356 PJH (N.D. Cal. Aug. 20, 2001); First Amended Complaint, *Bayview Hunters Point Community Advocates v. Mirant Potrero, LLC*, No. C-01-02348-PJH (N.D. Cal. Aug. 20, 2001).

with orders of the Virginia Department of Environmental Quality (Virginia DEQ) in response to modeled, localized NAAQS exceedances. Two days later, on August 24, 2005, Mirant shut down the plant. The District of Columbia Public Service Commission (DC PSC) responded by filing petitions with DOE pursuant to section 202(c) of the FPA and with FERC under sections 207 and 309 of the FPA requesting that Mirant be ordered to operate the Potomac River Plant for reliability purposes. As described in testimony provided by the Honorable Betty Ann Kane, Chairman of the DC PSC, the continued operation of the Potomac River Plant was “critical to ensuring that the downtown sectors of the District, including the White House, the Capitol, and other important Federal, as well as District government agencies, had adequate access to electricity supplies.”⁷

On December 20, 2005, pursuant to section 202(c), DOE ordered Mirant to resume operating the Potomac River Plant in order to maintain the electric supply to Washington, D.C. and avoid a potential reliability emergency.⁸ DOE extended the original order on subsequent occasions, determining that emergency conditions would persist until the necessary transmission upgrades were completed, a process that took nearly 16 months after the emergency certificate of convenience and necessity was issued.⁹

On February 23, 2007, the Potomac River Plant exceeded its 3-hour NAAQS limit while operating under a section 202(c) order. Subsequently, in 2007, the Virginia DEQ issued a Notice of Violation (NOV) and later fined Mirant for NAAQS exceedances.¹⁰ The NOV was issued by the Virginia DEQ notwithstanding the fact that EPA had previously issued an Administrative Compliance Order by Consent, which set forth certain operating standards “taking into account the seriousness of the modeled NAAQS exceedances and the concerns of DOE regarding electric reliability in the Central D.C. area,” and required Mirant to operate the Potomac River Plant “as specified by PJM and in accordance with the [2005] DOE Order.”¹¹

Need for legislation

Under current law, if a generating unit is ordered by DOE to operate pursuant to section 202(c), such operation could conflict with environmental requirements, and the owner of the unit would have to choose between violating an order from DOE and violating the environmental requirement. If the owner of the generating unit chooses to comply with the section 202(c) order to address the DOE-identified reliability emergency, the owner could be fined or sued for non-compliance with an environmental regulation, even though the party would not have violated the regulation but for its

⁷ See Testimony of the Honorable Betty Ann Kane, Chairman of the DC PSC, before the Subcommittee on Energy and Power (May 9, 2012).

⁸ See *DC Pub. Serv. Comm'n*, DOE Order No. 202-05-3 (Dec. 20, 2005) (the “2005 DOE Order”), available at http://www.gc.doe.gov/oe/downloads/departement-energy-order-no_202_05_3.

⁹ See Testimony of the Honorable Betty Ann Kane, Chairman of the DC PSC, before the Subcommittee on Energy and Power (May 9, 2012).

¹⁰ See Letter from Jeffery A. Steers, Regional Director, Commonwealth of Virginia, Dep’t of Environmental Quality to Michael Stumpf, Group Leader Plant Operations, Mirant Potomac River Generating Station, Notice of Violation Re: Mirant Potomac River Generating Station, Facility Registration No. 70228 (Mar. 23, 2007).

¹¹ See *Mirant Potomac River LLC*, Administrative Compliance Order by Consent at 4, Docket No. CAA-03-2006-0163DA (June 1, 2006).

compliance with the DOE order. Left unresolved, therefore, the current statutory structure creates the potential for conflicting legal mandates that could threaten the reliability of the grid. Indeed, testimony provided before FERC at a November 2011 reliability technical conference summarized, as follows, the reliability-related consequences potentially resulting from this conflict and the need for greater clarity in the law:

In an emergency, electricity generators are unfairly forced to weigh the risks and costs of violating environmental permits against the risks and costs of non-compliance with a DOE emergency order to run, creating uncertainty at a time when stability is most needed. It is imperative that there be clear authority within the federal government to direct actions that can balance an emergency reliability need with binding environmental regulations.¹²

Currently, section 202(c) does not authorize DOE to override conflicting environmental laws and regulations. There is no express statutory language in the FPA, the CAA, or any other law providing that section 202(c) “trumps” environmental requirements. Notably, in challenging the petition filed by the DC PSC that led to the 2005 DOE Order requiring the continued operation of the Potomac River Plant, the Virginia DEQ explained before DOE that:

Congress has not given the [FPA] primacy over the [CAA]. Nowhere in the [FPA]—202(c) or elsewhere—is there language providing that reliability concerns take precedence over federal and state environmental laws. Further, 201(a) of the [FPA] expressly preserves state jurisdiction over electric generation. The [FPA] also does not preempt Virginia law or the Director’s authority pursuant to Virginia law, because obligations arising under the federally approved [SIP] are a matter of both state and federal law.¹³

Based, in part, on its assertion that section 202(c) does not trump environmental laws, the Virginia DEQ subsequently issued a NOV and fined Mirant for NAAQS exceedances resulting from Mirant’s compliance with the section 202(c) order. As this example illustrates, the law is not settled with respect to whether section 202(c) or environmental laws take priority when in conflict with each other.

To ensure that the tools needed to maintain the reliability of the grid are available and effective despite potentially conflicting environmental requirements, H.R. 4273 amends section 202(c) of the FPA to clarify that when a party is under an emergency directive to operate pursuant to section 202(c), it will not be deemed in violation of environmental laws or regulations or subject to civil or criminal liability, or citizen enforcement actions, as a result of actions taken that are necessary to comply with a DOE-issued emer-

¹² See Testimony of Debra Raggio, Vice President, Government and Regulatory Affairs, and Assistant General Counsel, GenOn Energy, Inc., FERC Reliability Technical Conference, Docket No. AD12-1-000 (Nov. 29, 2011).

¹³ Letter from Commonwealth of Virginia Dep’t of Environmental Quality to Kevin Kolevar, Director, Office of Electricity Delivery and Energy Reliability, U.S. Dept. of Energy at 2, Docket No. EO-05-01 (Nov. 23, 2005), available at <http://www.gc.doe.gov/oe/downloads/letter-clarifying-position-director-virginia-department-environmental-quality-regarding>.

gency order. As FERC Commissioner Philip Moeller testified before the Subcommittee on Energy and Power, all four current FERC Commissioners agree that:

[G]enerators of electricity should not be put in a position of having to choose whether to violate Section 202(c) of the Federal Power Act or whether to violate the Clean Air Act when certain generating facilities are needed for crucial electric reliability needs. The law should not require citizens to violate the law.¹⁴

Balancing Environmental Considerations

A legislative solution to the conflict described herein should balance reliability considerations with environmental interests. Such an approach is consistent with what DOE has expressly sought to do in the past when utilizing its section 202(c) emergency authority. For example, in the 2005 DOE Order requiring the continued operation of the Potomac River Plant, DOE stated that “[o]rdering action that may result in even local exceedances of the NAAQS is not a step to be taken lightly. . . .” and ordered Mirant to “operate in a manner that provides reasonable electric reliability, but that also minimizes any adverse environmental consequences from operation of the Plant.”¹⁵ Accordingly, in issuing a section 202(c) order that may result in a conflict with an environmental law, H.R. 4273 requires DOE, to the maximum extent practicable, to ensure the order is consistent with all applicable environmental laws and regulations and minimizes adverse environmental impacts that may occur as a result of the emergency directive. The Committee emphasizes that section 202(c) provides DOE authority to address serious emergency threats to electricity reliability. The Committee does not intend for this amendment to section 202(c) to allow for long-term or indefinite noncompliance with environmental requirements.

Supporters of the legislation

Supporters of the legislation include the American Public Power Association, the Edison Electric Institute, the Electric Power Supply Association, the Industrial Energy Consumers of America, the Large Public Power Council, the Midwest Power Coalition, the National Rural Electric Cooperatives Association, and the U.S. Chamber of Commerce.

HEARINGS

On May 9, 2012, the Subcommittee on Energy and Power held a legislative hearing on H.R. 4273, the “Resolving Environmental and Grid Reliability Conflicts Act of 2012” and received testimony from:

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

¹⁴ See Testimony of the Honorable Philip Moeller, Commissioner, Federal Energy Regulatory Commission, before the Subcommittee on Energy and Power (May 9, 2012).

¹⁵ 2005 DOE Order 8–9. See also *id.* at 5 (“In response to the environmental concerns raised, this order seeks to minimize, to the extent reasonable, any adverse environmental impacts. Should EPA issue a compliance order directed to operation of the Plant, DOE will consider whether and how this order should [be] conformed to such order.”).

- 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;
- 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.; and,
- Mr. Stephen Brick, Consultant, on behalf of the Environmental Integrity Project.

COMMITTEE CONSIDERATION

On March 28, 2012, H.R. 4273, the “Resolving Environmental and Grid Reliability Conflicts Act of 2012,” was introduced by Representatives Pete Olson, Mike Doyle, and Gene Green.

On May 9, 2012, the Subcommittee on Energy and Power held a legislative hearing on H.R. 4273.

On June 7, 2012, the Subcommittee on Energy and Power met in open markup session to consider H.R. 4273. No amendments were offered during the markup, and the Subcommittee favorably forwarded H.R. 4273 to the full Committee by a voice vote.

On June 19 and 20, 2012, the Committee on Energy and Commerce met in open markup session. During the markup, an amendment in the nature of a substitute was offered and adopted by a voice vote. No other amendments were offered during the markup and the Committee ordered H.R. 4273 favorably reported, by a voice vote, to the House of Representatives, as amended.

COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, H.R. 4273 was reported by a voice vote, a quorum present. There was no request for a recorded vote.

COMMITTEE OVERSIGHT FINDINGS

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

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

H.R. 4273 clarifies that compliance with an emergency order under section 202(c) of the Federal Power Act may not be considered a violation of any Federal, State, or local environmental law or regulation.

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. 4273, the “Resolving Environmental and Grid Reliability Conflicts Act of 2012,” would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

EARMARKS

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. 4273, the “Resolving Environmental and Grid Reliability Conflicts Act of 2012,” 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.

JUNE 29, 2012.

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. 4273, the Resolving Environmental and Grid Reliability Conflicts Act of 2012.

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

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 4273—Resolving Environmental and Grid Reliability Conflicts Act of 2012

H.R. 4273 would amend existing law regarding actions taken by electric utilities when the Department of Energy (DOE) determines that the electric power system is experiencing emergency conditions. Under current law, during a designated emergency, DOE can require firms to produce or supply electricity to avoid or resolve blackouts or other risks to the electric power system. If those actions violate other regulatory requirements, such as air pollution limits, the affected firms may be liable for penalties under those laws. H.R. 4273 would revise this framework by establishing new procedures for ensuring compliance with environmental standards during designated emergencies. The bill also would exempt firms from certain civil and criminal liability if the actions taken to comply with DOE’s emergency orders violate environmental or other regulatory standards.

Pay-as-you-go procedures apply to this legislation because it could affect revenues and direct spending. CBO estimates, however, that the impact on the federal budget would be insignificant over the 2012–2022 period. According to DOE, it has issued emergency orders to electric utilities six times since 1978, and none of those transactions resulted in the payment of penalties. Based on that

historical experience, CBO estimates that revenues from such penalties would not be significant over the next 10 years under current law; as a result, CBO estimates that reducing firms' liability for such penalties would not result in any significant loss of federal revenues.

Similarly, CBO estimates that enacting H.R. 4273 would have no significant net effect on direct spending by the federal power agencies (such as the Tennessee Valley Authority) that could be liable for such penalties. Finally, we estimate that implementing the bill would have no significant effect on spending subject to appropriation.

The bill would impose an intergovernmental mandate by preempting state and local environmental and liability laws. Energy facilities would be exempt from complying with such laws if those laws conflict with an emergency order issued by DOE. Because the preemption of those laws would impose no duty on state and local governments that would result in additional spending or the direct loss of revenues, CBO estimates that the cost of that mandate would fall well below the annual threshold established in UMRA for intergovernmental mandates (\$73 million in 2012, adjusted annually for inflation).

The bill would impose a private-sector mandate to the extent that it eliminates an existing right to seek compensation for damages under environmental laws from utilities operating in compliance with a federal emergency order issued by DOE. The cost of the mandate would be the forgone value of awards and settlements in such claims. Because DOE has issued emergency orders infrequently, CBO expects that claims would be uncommon in the future. Consequently, CBO expects that the cost of the mandates would be small and fall below the annual threshold for private-sector mandates (\$146 million in 2012, adjusted annually for inflation).

The CBO staff contacts for this estimate are Kathleen Gramp (for federal costs), J'nell L. Blanco (for the impact on state and local governments), and Amy Petz (for the impact on the private sector). The estimate was approved by Theresa Gullo, 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.

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 LEGISLATION

Section 1. Short title

Section 1 provides the short title of “Resolving Environmental and Grid Reliability Conflicts Act of 2012.”

Section 2. Amendments to the Federal Power Act

Section 2(a) amends section 202(c) of the Federal Power Act (16 U.S.C. 824a(c)) to direct the Department of Energy (DOE), in issuing an order pursuant to section 202(c) that may result in a conflict with a requirement of any Federal, State, or local environmental law or regulation, to ensure that the order limits the generation, delivery, or transmission of electricity to only those hours necessary to meet the emergency and serve the public interest. DOE also must ensure the order, to the maximum extent practicable, is consistent with any applicable Federal, State, or local laws or regulations and minimizes any adverse environmental impacts that may result from such order. The Committee intends the term “adverse environmental impacts” to include any adverse public health impacts resulting from noncompliance with an environmental requirement that may result from such order. The Committee expects that DOE, to the extent practicable in light of the emergency, will continue its practice of consulting with federal, and where appropriate, other governmental, environmental regulators prior to the issuance of a section 202(c) order that may result in any adverse environmental impacts or a conflict with any Federal, State, or local environmental law or regulation.

Section 2(a) further amends section 202(c) to provide that if a party takes an action that is necessary to comply with a section 202(c) order and such action results in noncompliance with any Federal, State, or local environmental law or regulation, then such action shall not be considered a violation of such environmental law. Nor would the action subject the party to any requirement, civil or criminal liability, or a citizen suit under such environmental law. Thus, a party operating pursuant to a section 202(c) emergency directive will not be considered in violation of an environmental law or regulation if an action taken necessary to comply with the order conflicts with such environmental law or regulation. With respect to parties that may not be legally required to comply with a section 202(c) order directed to such party but that voluntarily choose to comply with such order, this provision also would apply to any actions taken by such parties that are necessary to comply with such order. In section 2(a), the term “environmental law or regulation” is not intended to be read broadly to include statutes such as the Atomic Energy Act or the Occupational Health and Safety Act.

Section 2(a) further amends section 202(c) to require that an order issued pursuant to section 202(c) that may result in a conflict with an environmental law or regulation shall expire not later than 90 days after issuance. DOE may renew or reissue such an order for subsequent periods, not to exceed 90 days, as DOE determines necessary to meet the emergency and serve the public interest. In renewing or reissuing the order, DOE must consult with the primary Federal agency with expertise in the environmental interest protected by a potentially conflicting environmental law. DOE must

include in the renewed or reissued order conditions determined by such primary Federal agency to be necessary to minimize any adverse environmental impacts that may result from such renewed or reissued order to the maximum extent practicable. The Committee encourages such primary Federal agency to submit such conditions to DOE in a timely manner. The conditions formally submitted to DOE by such primary federal agency shall be made available to the public. DOE has discretion to exclude such a condition from the renewed or reissued order if it determines the condition would prevent the order from adequately addressing the emergency. DOE must provide an explanation of any determination to exclude a condition and make it publicly available.

Section 2(b) amends section 202(d) of the Federal Power Act (16 U.S.C. 824a(d)) to clarify that section 202(d) is applicable to municipalities, and not solely to “persons” as defined under section 3 of the Federal Power Act (16 U.S.C. 796).

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

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

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**INTERCONNECTION AND COORDINATION OF FACILITIES; EMERGENCIES;
TRANSMISSION TO FOREIGN COUNTRIES**

SEC. 202. (a) * * *

* * * * *

(c)(1) During the continuance of any war in which the United States is engaged, or whenever the Commission determines that an emergency exists by reason of a sudden increase in the demand for electric energy, or a shortage of electric energy or of facilities for the generation or transmission of electric energy, or of fuel or water for generating facilities, or other causes, the Commission shall have authority, either upon its own motion or upon complaint, with or without notice, hearing, or report, to require by order such temporary connections of facilities and such generation, delivery, interchange, or transmission of electric energy as in its judgment will best meet the emergency and serve the public interest. If the parties affected by such order fail to agree upon the terms of any arrangement between them in carrying out such order, the Commission, after hearing held either before or after such order takes effect, may prescribe by supplemental order such terms as it finds to be just and reasonable, including the compensation or reimbursement which should be paid to or by any such party.

(2) *With respect to an order issued under this subsection that may result in a conflict with a requirement of any Federal, State, or local environmental law or regulation, the Commission shall ensure that such order requires generation, delivery, interchange, or transmission of electric energy only during hours necessary to meet the emergency and serve the public interest, and, to the maximum extent practicable, is consistent with any applicable Federal, State, or local environmental law or regulation and minimizes any adverse environmental impacts.*

(3) *To the extent any omission or action taken by a party, that is necessary to comply with an order issued under this subsection, including any omission or action taken to voluntarily comply with such order, results in noncompliance with, or causes such party to not comply with, any Federal, State, or local environmental law or regulation, such omission or action shall not be considered a violation of such environmental law or regulation, or subject such party to any requirement, civil or criminal liability, or a citizen suit under such environmental law or regulation.*

(4)(A) *An order issued under this subsection that may result in a conflict with a requirement of any Federal, State, or local environmental law or regulation shall expire not later than 90 days after it is issued. The Commission may renew or reissue such order pursuant to paragraphs (1) and (2) for subsequent periods, not to exceed 90 days for each period, as the Commission determines necessary to meet the emergency and serve the public interest.*

(B) *In renewing or reissuing an order under subparagraph (A), the Commission shall consult with the primary Federal agency with expertise in the environmental interest protected by such law or regulation, and shall include in any such renewed or reissued order such conditions as such Federal agency determines necessary to minimize any adverse environmental impacts to the maximum extent practicable. The conditions, if any, submitted by such Federal agency shall be made available to the public. The Commission may exclude such a condition from the renewed or reissued order if it determines that such condition would prevent the order from adequately addressing the emergency necessitating such order and provides in the order, or otherwise makes publicly available, an explanation of such determination.*

(d) *During the continuance of any emergency requiring immediate action, any person or municipality engaged in the transmission or sale of electric energy and not otherwise subject to the jurisdiction of the Commission may make such temporary connections with any public utility subject to the jurisdiction of the Commission or may construct such temporary facilities for the transmission of electric energy in interstate commerce as may be necessary or appropriate to meet such emergency, and shall not become subject to the jurisdiction of the Commission by reason of such temporary connection or temporary construction: *Provided*, That such temporary connection shall be discontinued or such temporary construction removed or otherwise disposed of upon the termination of such emergency: *Provided further*, That upon approval*

of the Commission permanent connections for emergency use only
may be made hereunder.

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