

LEGAL UPDATES

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Professional

KYLE J. GILSTER
WASHINGTON:
202.378.2303
OMAHA:
402.964.5030
KYLE.GILSTER@
HUSCHBLACKWELL.COM

Senate Energy Bill Could Spur Renewable Development

On April 20, 2016, the U.S. Senate passed the Energy Policy Modernization Act of 2016 (the Act) by a vote of 85-12. If signed into law, the bipartisan bill would encourage renewable energy development; facilitate improvements in infrastructure, including grid storage; and make numerous other changes intended to keep pace with the nation's rapidly changing energy industry.

Encouraging Renewable Resources

The Act's renewable energy supply provisions focus on the development of hydroelectric, geothermal, marine hydrokinetic, and biomass energy resources.

The Act seeks to substantially increase the capacity and generation of hydropower resources by revising the definition of "renewable energy" in the Energy Policy Act of 2005 to include hydropower. In addition, it would revise the Federal Power Act to authorize longer extensions of preliminary permits and time for project construction and to improve the licensing process, including the process for review of administrative decisions. It would also amend existing hydroelectric production incentives and efficiency improvements and extend time for construction of Federal Energy Regulatory Commission (FERC) projects involving the Clark Canyon Dam and the Gibson Dam.

The Act would encourage new geothermal energy capacity on public land, identify high-priority areas for new geothermal development, and facilitate co-production of geothermal energy on oil and gas leases. It would encourage geothermal exploration test projects by categorically excluding certain such projects from review under the National Environmental Policy Act (NEPA).

Also, the Act would establish a program of research, development, demonstrations and commercial application for marine hydrokinetic renewable energy production, and establish grant and loan programs for innovation and market development in woody biomass heat and biopower.

Infrastructure and Accountability

With respect to the nation's electricity and energy storage infrastructure, the Act would establish a program of research, development and demonstration of electric grid energy storage, including research on materials and power conversion technologies; grid-scale testing and analysis of storage devices; safety and reliability of electric storage devices; and standards for storage device performance, interconnection and interoperability. It would expedite and improve the permitting process for electric transmission infrastructure and provide guidance on criteria for net metering studies.

The Act would enhance grid reliability by requiring transmission organizations to report on their electric generating capacity resources. In addition, it would provide for a more expedited emergency response to any disruptions in the grid.

Other Key Provisions

Additional provisions in the Act would:

Promote energy efficiency of buildings, appliances, manufacturing processes and vehicles.

Facilitate the trade of liquefied natural gas.

Designate FERC as the lead agency for coordinating federal authorizations and NEPA compliance for liquefied natural gas projects.

Establish a pilot program for streamlining the review and approval of applications for permits to drill for oil and gas.

Facilitate the availability, development and production of domestic critical mineral resources.

Next Steps

Congress must appoint a conference committee to reconcile the Act with a similar bill passed by the House on December 3, 2015. A reconciled bill, after being passed again by the House and Senate, could be delivered to the White House for President Obama's signature as soon as this summer.

Whether the president will sign the bill into law will likely depend on the specific provisions of the reconciled bill. While the Office of Management and Budget's Statement of Administration Policy

took issue with several provisions of the House bill, Energy Secretary Ernest Moniz has noted the Senate bill's "many positive elements." Retaining key provisions of the Senate bill is therefore crucial to both the legislation's success and its potential for impact on renewable energy development.

What This Means to You

The Act could significantly impact the development of renewable energy resources industry-wide. Its allocation of funding for research and development of hydroelectric, geothermal, marine hydrokinetic and biomass energy resources will likely present opportunities for manufacturers, as well as developers of renewable energy projects. Although the Act does not contain provisions specifically addressing wind and solar energy development, its provisions affecting grid infrastructure and energy storage technologies could address some of the existing challenges that constrain wind and solar energy development.

Understanding the potential impacts of the proposed legislation could help your business and your clients be positioned to take advantage of the numerous opportunities that are likely to result if the Act is signed into law. In addition, your participation in the legislative process could help educate Congress on the needs of your business and your clients and ultimately impact specific provisions of the Act.

Contact Us

For more information on how the proposed Energy Policy Modernization Act might impact your business or your clients, contact Alison Nelson, member of Husch Blackwell's Energy & Natural Resources team, at 303.749.7263. If you'd like assistance in advocating your interests before Congress, please contact Kyle Gilster, the leader of Husch Blackwell's Public Policy, Regulatory & Government Affairs team.