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Proposed Legislation Aims to Regulate Digital Assets' Energy Use

On June 6, 2022, United States Senators Cynthia Lummis (R-WY) and Kirsten Gillibrand (D-NY) released the first major bipartisan bill intended to regulate digital assets. Interestingly, the bill calls for additional information around the energy use of digital assets. If passed, the bill would require the preparation and submission by the Federal Energy Regulatory Commission (FERC), in consultation with the Commodities Futures Trading Commission (CFTC) and Securities and Exchange Commission (SEC), of an annual report to be submitted to the Committee on Energy and Natural Resources, the Committee on Environment and Public Works of the Senate and the Committee on Energy and Commerce, and the Committee on Natural Resources of the House of Representatives on the following five aspects of digital asset energy use:

1. Energy consumption for mining and staking of digital asset transactions;
2. The effect of energy consumption on national, regional, and local energy process;
3. The effects of mining and staking of digital asset transactions on baseload power levels;
4. The use of renewable energy sources, including the use of nonrenewable sources that would otherwise be wasted, and a comparison of digital asset market energy consumption with the financial services industry and economy as a whole; and
5. The sources and reliability of the data used in compiling the report.

Additional data on energy use of digital assets would be useful to separate the competing narratives surrounding its energy use. On the one hand, some say that bitcoin mining, for example, uses excessive energy and contributes to

global warming. On the other hand, others have expressed that information is emerging indicating that bitcoin mining helps foster increased renewable energy use, utilizes waste energy streams, and adds resiliency to the electrical grid. A longer-term series of studies and assessment of the sources touting these narratives would likely be beneficial to develop a more accurate understanding of digital asset energy use. Nevertheless, it's worth considering what FERC's focus might be by assessing its past priorities.

FERC Chairman Richard Glick was recently reappointed by President Joseph Biden to another five-year term. While at FERC, Chairman Glick has supported rapid build-out of the electric grid and compensating flexible generation resources as well as the climate impacts of new energy infrastructure. Accordingly, FERC will likely closely monitor how the Electric Reliability Council of Texas (ERCOT)—the grid operator in Texas that is not FERC regulated—handles its ongoing initiative to integrate large flexible load resources into the ERCOT grid to determine whether FERC sees a role for crypto mining within the FERC-regulated bulk power system.

However, former CFTC Chairman and current Commissioner Christopher Giancarlo is a known supporter of blockchain innovation, while CFTC Chairman Rostin Benham has expressed a preference for proof-of-stake mining and has suggested that a requirement to disclose the amount of energy used by a particular coin would incentivize an industry shift to this less energy-intensive method of mining. At this time there is no indication that Chairman Benham plans for the CFTC to formally explore these options. The SEC could soon be inclined to use its authority to regulate digital assets through measures like requiring the disclosure of blockchains' environmental impact or mandating the use of trust companies, which would limit more environmentally taxing forms of hashing.

What this means to you

Clearly, more information on energy use is beneficial to the industry. And while the Lummis-Gillibrand legislation establishes a framework for developing answers to the many questions surrounding energy use of digital assets, the views of the officials at each agency charged with putting together the report are likely to influence the results and warrant close attention by industry stakeholders.

Contact us

Husch Blackwell will continue to track the Lummis-Gillibrand legislation as it makes its way through committee. Please contact Miguel Suazo, a member of our Energy & Natural Resources group, or your Husch Blackwell attorney if you have any questions.