

119TH CONGRESS
2^D SESSION

S. _____

To prohibit the use of certain emergency authority to keep a fossil fuel-powered electric generating facility or fossil fuel power plant online, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. MARKEY (for himself, Mr. WELCH, Mr. VAN HOLLEN, Mr. MERKLEY, and Ms. BLUNT ROCHESTER) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To prohibit the use of certain emergency authority to keep a fossil fuel-powered electric generating facility or fossil fuel power plant online, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “No Big Fossil Bailouts
5 on Your Power Bill Act”.

6 **SEC. 2. LIMITATIONS ON CERTAIN EMERGENCY AUTHOR-**
7 **ITY UNDER THE FEDERAL POWER ACT.**

8 Section 202(c) of the Federal Power Act (16 U.S.C.
9 824a(c)) is amended—

1 (1) in paragraph (1), in the first sentence—

2 (A) by striking “or other causes,”; and

3 (B) by striking “with or without notice,
4 hearing, or report,”;

5 (2) in paragraph (2), by adding at the end the
6 following: “Before issuing such an order, the Com-
7 mission, to the maximum extent practicable, shall
8 consider alternatives to meet the emergency, includ-
9 ing alternatives that both meet the emergency and
10 minimize adverse environmental impacts.”;

11 (3) in paragraph (4)—

12 (A) in subparagraph (A), in the first sen-
13 tence, by striking “that may result in a conflict
14 with a requirement of any Federal, State, or
15 local environmental law or regulation”;

16 (B) in subparagraph (B), in the first sen-
17 tence—

18 (i) by inserting “advance of” before
19 “renewing or reissuing”; and

20 (ii) by striking “shall consult with
21 the” and inserting the following: “shall—

22 “(i) hold a hearing open to the public on the
23 proposed order;

24 “(ii) determine—

1 “(I) whether and the extent to which the
2 order will raise rates for ratepayers; and

3 “(II) whether the order may result in a
4 conflict with a requirement of any Federal,
5 State, or local environmental law or regulation;
6 and

7 “(iii) to accomplish the duties and comply with
8 the requirements described in paragraph (2) and
9 clause (ii), consult with—

10 “(I) the relevant State and local agencies
11 or regulators, including the relevant State com-
12 mission (collectively referred to in this para-
13 graph as the ‘relevant non-Federal agencies’),
14 in—

15 “(aa) each State and locality in which
16 the applicable facility is physically located;
17 and

18 “(bb) each State and locality in which
19 the order may result in a conflict described
20 in clause (ii)(II); and

21 “(II) the”; and

22 (iii) in clause (iii)(II) (as so des-
23 ignated), in the first sentence, by striking
24 “such law or regulation, and shall” and in-
25 serting the following: “each environmental

1 law or regulation with respect to which the
2 order may result in a conflict described in
3 clause (ii)(II).

4 “(C) The Commission shall”; and

5 (C) in subparagraph (C) (as so des-
6 ignated)—

7 (i) in the first sentence—

8 (I) by striking “such Federal
9 agency determines” and inserting “1
10 or more Federal or relevant non-Fed-
11 eral agencies consulted under sub-
12 paragraph (B)(iii) determine”; and

13 (II) by inserting “rate or” after
14 “adverse”; and

15 (ii) in the second sentence—

16 (I) by striking “The conditions”
17 and inserting “The cost estimates and
18 conditions”; and

19 (II) by striking “such Federal
20 agency” and inserting “any 1 or more
21 Federal or relevant non-Federal agen-
22 cies”; and

23 (D) by adding at the end the following:

24 “(D) An order issued under this subsection shall be
25 considered to be a renewed or reissued order subject to

1 the requirements of this paragraph and all other require-
2 ments relating to a renewed or reissued order if the order
3 relates to the same facility and a substantially similar
4 emergency as a previous order issued under this sub-
5 section.”; and

6 (4) by adding at the end the following:

7 “(6)(A) Except as provided in subparagraph (B), the
8 Commission may not issue an order under this subsection
9 that would—

10 “(i) prevent or delay the retirement or other
11 permanent closure of a facility for the generation of
12 electric energy; or

13 “(ii) require the generation of electric energy at
14 a facility that has retired or otherwise permanently
15 closed.

16 “(B) Subparagraph (A) shall not apply to a par-
17 ticular facility if—

18 “(i) an emergency exists that cannot be met in
19 any manner other than delay of the retirement or
20 other permanent closure of the facility; and

21 “(ii) the applicable Transmission Organization
22 requests in writing to delay the retirement or other
23 permanent closure of the facility.

24 “(7)(A) Before issuing an order under paragraph (1),
25 the Commission shall—

1 “(i) create a public online docket for matters
2 pertaining to the order; and

3 “(ii) publish on a publicly available website—

4 “(I) notice of the proposed order, including
5 a link to the docket created under clause (i);
6 and

7 “(II) any request submitted pursuant to
8 paragraph (6)(B)(ii).

9 “(B) An order issued under paragraph (1) (including
10 any renewed or reissued order under paragraph (4)) shall
11 be—

12 “(i) published on the publicly available docket
13 created under subparagraph (A)(ii); and

14 “(ii) accompanied by a report that includes—

15 “(I) an analysis of the causes of the emer-
16 gency;

17 “(II) an analysis of the alternatives consid-
18 ered to meet the emergency, including alter-
19 natives that both meet the emergency and mini-
20 mize adverse environmental impacts; and

21 “(III) estimates of the additional electrical
22 system costs that are expected to be incurred by
23 any electric utility and any customers of an
24 electric utility as a result of the order, including

1 the costs of additional fuel, maintenance, cap-
2 ital, or labor.

3 “(C) The Commission shall comply with subclauses
4 (II) and (III) of subparagraph (B)(ii) to the maximum
5 extent practicable, in light of the circumstances, in the
6 case of an initial order issued under paragraph (1) to ad-
7 dress a particular emergency, but shall fully comply with
8 those subclauses with respect to any renewed or reissued
9 order issued to address that emergency.

10 “(D) Not later than 60 days after the date on which
11 an order is issued under paragraph (1), each electric util-
12 ity that is, or expects to be, impacted by the order (includ-
13 ing each electric utility identified by the Commission
14 under subparagraph (B)(ii)(III)) shall provide to cus-
15 tomers of the electric utility written notice that includes—

16 “(i) an identification of the order, including a
17 link to, or instructions for accessing, the order as
18 published under subparagraph (B)(i);

19 “(ii) a description of the impacts and expected
20 impacts of the order, including any costs of addi-
21 tional fuel, maintenance, capital, or labor that have
22 occurred or are expected to occur as a result of the
23 order; and

24 “(iii) any other information relevant to the elec-
25 tric utility or customers of the electric utility.”.