



MEMORANDUM

February 5, 2023

TO: Members of the Subcommittee on Energy, Climate, and Grid Security and Subcommittee on Environment, Manufacturing, and Critical Materials

FROM: Committee Majority Staff

RE: Joint Legislative Hearing entitled: “Unleashing American Energy, Lowering Energy Costs, and Strengthening Supply Chains”

I. INTRODUCTION

On Tuesday, February 7, 2023, at 10:00 a.m., the Subcommittee on Energy, Climate, and Grid Security and the Subcommittee on Environment, Manufacturing, and Critical Materials will jointly hold a legislative hearing in 2123 Rayburn House Office Building entitled “Unleashing American Energy, Lowering Energy Costs, and Strengthening Supply Chains.” Specifically, the hearing will review the following legislation:

- H.R. 150, Protecting American Energy Production Act;
- H.R. 484, Natural Gas Tax Repeal Act;
- H.R. __, Promoting Cross-border Energy Infrastructure Act;
- H.Con.Res. __, a resolution expressing disapproval of the revocation by President Biden of the Presidential permit for the Keystone XL pipeline;
- H.R. __, Promoting Interagency Coordination for Review of Natural Gas Pipelines Act;
- H.R. __, Unlocking Our Domestic LNG Potential Act of 2023;
- H.R. __, Securing America’s Critical Minerals Supply Act;
- H.R. __, Critical Electric Infrastructure Cybersecurity Incident Reporting Act;
- H.R. __, a bill to require the Secretary of Energy to direct the National Petroleum Council to issue a report with respect to petrochemical refineries in the United States, and for other purposes;
- H.R. __, a bill to amend the Clean Air Act to prohibit the phase out of gasoline and prevent higher prices for consumers and for other purposes;
- H.Con.Res. __, a resolution expressing the sense of Congress that the Federal Government should not impose any restrictions on the export of crude oil or other petroleum products;
- H.R. __, a bill to repeal section 134 of the Clean Air Act, relating to the greenhouse gas reduction fund;

- H.R. __, a bill to authorize the Administrator of the Environmental Protection Agency to waive application of certain requirements, sanctions, or fees, with respect to processing or refining of critical energy resources at a critical energy resource facility, and for other purposes;
- H.R. __, a bill to amend the Toxic Substances Control Act with respect to critical energy resources, and for other purposes;
- H.R. __, a bill to amend the Solid Waste Disposal Act to treat the owner or operator of a critical energy resource facility as having been issued an interim permit for the treatment, storage, and disposal, of hazardous waste, and for other purposes;
- H.R. __, a bill to require the Administrator of the Environmental Protection Agency to authorize the use of flexible air permitting with respect to certain critical energy resource facilities, and for other purposes; and
- H.R. __, a bill to prohibit the importation into the United States of unirradiated low-enriched uranium that is produced in the Russian Federation, and for other purposes.

II. WITNESSES

The Honorable Mark Menezes, Former United States Deputy Secretary of Energy, Former Chief Counsel, Energy and Environment, Committee on Energy and Commerce

The Honorable Bernard McNamee, Former Commissioner of the Federal Energy Regulatory Commission

Jeffrey Eshelman, II, President and Chief Executive Officer Independent Petroleum Association of America

Katie Sweeney, Executive Vice President and Chief Operating Officer National Mining Association

Raul Garcia, Legislative Director for Healthy Communities, Earthjustice

Tyson Slocum, Director of the Energy Program, Public Citizen

The U.S. Environmental Protection Agency (EPA), the U.S. Department of Energy (DOE), and the Federal Energy Regulatory Commission (FERC) were invited to provide witnesses to testify at this hearing; but all declined the invitation to appear.

III. BACKGROUND

A. H.R. 150, Protecting American Energy Production Act

This legislation would prohibit a moratorium on the use of hydraulic fracturing unless such moratorium is authorized by an Act of Congress. The legislation also establishes

the sense of Congress that States should maintain primacy for the regulation of hydraulic fracturing for oil and natural gas production on state and private lands. (Rep. Duncan has introduced this legislation.)

B. H.R. 484, Natural Gas Tax Repeal Act

This legislation would repeal the natural gas tax contained in Sec. 136 of the Clean Air Act (CAA). The natural gas tax was established through amendments to the CAA contained in the Inflation Reduction Act (IRA), which was signed into law on August 16, 2022. Sec. 136 of the CAA authorizes the EPA to impose or collect a “charge on methane emissions,” also referred to as a tax on natural gas. H.R. 484 also would rescind the unobligated balance of any amounts made available under Sec. 136. The IRA authorized and appropriated over \$1.5 billion under Sec. 136 of the CAA. (Rep. Pfluger has introduced this legislation.)

C. H.R. __, Promoting Cross-border Energy Infrastructure Act

This legislation would establish a more uniform, transparent, and modern process to authorize the construction, connection, operation, and maintenance of international border-crossing facilities for the import and export of oil and natural gas and the transmission of electricity. The legislation would replace the existing Presidential Permit process that has been established through Executive Order with a statutorily directed process. Under the legislation, FERC would be authorized to review applications for cross-border oil and natural gas pipelines, and DOE would be authorized to review applications for cross-border electric transmission facilities. Substantially similar legislation passed the House in the 115th Congress with a bipartisan vote. (Rep. Armstrong is expected to introduce this legislation.)

D. H.Con.Res. __, a resolution expressing disapproval of the revocation by President Biden of the Presidential permit for the Keystone XL pipeline.

This resolution expresses disapproval of President Biden’s revocation of the Presidential permit for the Keystone XL pipeline. (Rep. Lesko is expected to introduce this legislation.)

E. H.R. __, Promoting Interagency Coordination for Review of Natural Gas Pipelines Act

This legislation would improve coordination among Federal and State agencies reviewing applications for the construction of interstate natural gas pipelines. The legislation would strengthen FERC’s lead agency role under the Natural Gas Act (NGA) by requiring schedules, concurrent reviews, and provisions to resolve disputes among permitting agencies. Substantially similar legislation passed the House in the 115th Congress with a bipartisan vote. (Rep. Burgess has introduced this legislation.)

F. H.R. 647 Unlocking Our Domestic LNG Potential Act of 2023

This legislation would amend the NGA to repeal all restrictions on the import and export of natural gas. Under current law, the NGA prohibits the import or export of

natural gas, including liquefied natural gas (LNG), without completing a lengthy approval process conducted by DOE. The legislation would align the NGA with the existing national policy on the import and export of other fossil fuels, including crude oil and petroleum products. (Rep. Johnson has introduced this legislation.)

G. H.R. __, Securing America’s Critical Minerals Supply Act

This legislation would amend the Department of Energy Organization Act to require the Secretary of Energy to conduct an ongoing assessment of the nation’s supply of critical energy resources, the vulnerability of the critical energy resource supply chain, and the criticality of critical energy resources in the development of energy technologies. It would also direct the Secretary to strengthen critical energy resource supply chains by diversifying sourcing and increasing domestic production, refining, and processing of resources. Under this legislation, the term “critical energy resource” means any energy resource that is essential to the energy sector and energy systems of the United States, and the supply chain of which is vulnerable to distraction. (Rep. Bucshon is expected to introduce this legislation.)

H. H.R. __, Critical Electric Infrastructure Cybersecurity Incident Reporting Act

This legislation would amend the Federal Power Act to authorize DOE to promulgate regulations to require critical electric infrastructure owners and operators to share information regarding cybersecurity incidents with DOE. The provisions within the FPA that would be amended by this legislation originated from authority DOE was granted in the Fixing America’s Surface Transportation Act (FAST Act) that was signed into law in 2015. The FAST Act designated DOE as the “Sector-specific agency” for energy sector cybersecurity, granted DOE authority to address grid security emergencies, and granted FERC, in consultation with DOE, authority to protect, share, and designate critical electric infrastructure information. (Rep. Walberg is expected to introduce this legislation.)

I. H.R. __, a bill to require the Secretary of Energy to direct the National Petroleum Council to issue a report with respect to petrochemical refineries in the United States, and for other purposes.

This legislation requires the Secretary of Energy to direct the National Petroleum Council to issue a report examining the importance of petrochemical refineries to energy security. The report must also contain an analysis of the capacity of such refineries and opportunities to expand capacity, as well as analyze risks to refineries. (Rep. Latta is expected to introduce this legislation.)

J. H.R. __, a bill to amend the Clean Air Act to prohibit the phase out of gasoline and prevent higher prices for consumers and for other purposes.

This legislation responds to a regulatory proposal in the Biden Administration’s Risk Management Rule (RMP) expansion -- proposed on August 18, 2022. The proposal would make petroleum refineries using hydrofluoric acid alkylation units conduct hazard assessments of their existing plant’s chemical usage and manufacturing practices

to identify changes that could be made. This bill would prevent this operations assessment requirement from applying to refineries with active construction or operating permits. A new refinery or refinery without its permits could choose to follow the RMP assessment requirement or American Petroleum Institute Recommended Practice 751. Of note, section 12(d) of the National Technology Transfer Act of 1995, requires the Federal government to defer to industry consensus standards when those standards intersect with agency goals. (Rep. Crenshaw is expected to introduce this legislation.)

K. H.Con.Res. __, a resolution expressing the sense of Congress that the Federal Government should not impose any restrictions on the export of crude oil or other petroleum products.

This resolution would express the sense of the Congress that the Federal government should not impose any restrictions on the export of crude oil or other petroleum products. (Rep. Guthrie. is expected to introduce this legislation.)

L. H.R. __, a bill to repeal section 134 of the Clean Air Act, relating to the greenhouse gas reduction fund.

This legislation would repeal the program established under section 134 of the CAA and would rescind any unobligated balance of any funds made available under this section. Section 60103 of P.L. 117-169, commonly known as the “Inflation Reduction Act,” added this new section to the CAA to establish a Greenhouse Gas Reduction Fund and appropriated \$27 billion for EPA to award grants under the program until September 2024. (Rep. Palmer is expected to introduce this legislation.)

M. H.R. __, To authorize the Administrator of the Environmental Protection Agency to waive application of certain requirements, sanctions, or fees, with respect to processing or refining of critical energy resources at a critical energy resource facility, and for other purposes.

This legislation would add statutory waiver authority for EPA from certain parts of the CAA and the Solid Waste Disposal Act based upon national security or comprehensive energy security. (Rep. Pence is expected to introduce this legislation.)

N. H.R. __, a bill to amend the Toxic Substances Control Act (TSCA) with respect to critical energy resources, and for other purposes.

This legislation, which was included in Title VI of H.R. 8981 of the 117th Congress, would address repeated delays with EPA reviewing and making legally mandated, timely determinations of pre-manufacturing notices for new critical energy resources and new uses of existing critical energy resources. The legislation would prevent EPA from withholding judgment on a notice and preventing commercialization – without justification -- of a substance beyond TSCA’s statutory deadlines. This legislation would also prevent EPA from encouraging manufacturers to suspend or end the legal clock on EPA action if EPA has not made an initial review of the new critical energy resource to communicate the noted risks to the applicant. Finally, this legislation would

require EPA to consider costs, including social and environmental costs and benefits, as well as risk reduction, when determining whether an “unreasonable risk” exists from the manufacturing, processing, commercial transportation, use or disposal of the critical energy resource. (Rep. Curtis is expected to introduce this legislation.)

O. H.R. __, a bill to amend the Solid Waste Disposal Act (SWDA) to treat the owner or operator of a critical energy resource facility as having been issued an interim permit for the treatment, storage, and disposal, of hazardous waste, and for other purposes

This legislation, which was included in Title VI of H.R. 8981 of the 117th Congress, is patterned after a previous SWDA practice. It would address delays for SWDA-regulated waste permitting, but only for facilities that deal with critical energy resources. Specifically, the permitting involved related to on-site storage of more than 90 days, onsite waste treatment, or on-site waste disposal. The legislation would provide a facility, that files a Part A permit application, “interim status” until EPA or the State requires the facility to submit its Part B permit application for a long-term permit. (Rep. Carter is expected to introduce this legislation.)

P. H.R. __, a bill to require the Administrator of the Environmental Protection Agency to authorize the use of flexible air permitting with respect to certain critical energy resource facilities, and for other purposes.

This legislation would authorize EPA to issue flexible air permits and facilitate flexible, market-responsive operations for critical energy resource facilities. Flexible air permitting is a procedure that has been promoted by EPA to allow industrial facilities to obtain advance approval for changes to an emissions source without requiring the change to be reviewed and approved individually. Flexible air permitting ensures equal or greater environmental protection than conventional air permits. (Rep. Joyce is expected to introduce this legislation.)

Q. H.R. __, a bill to prohibit the importation into the United States of unirradiated low-enriched uranium that is produced in the Russian Federation, and for other purposes.

This legislation would amend the relevant sections of the USEC Privatization Act to prohibit the importation of unirradiated, low-enriched uranium that is produced in the Russian Federation. It would provide waiver authority until January 2028 to the Secretary of Energy to authorize the importation of such uranium, subject to certain limits, if no alternative, viable source of low-enriched uranium is available to sustain U.S. nuclear reactor or U.S. nuclear company operations or is determined to be in the national interest. This prohibition would not apply to imports of non-uranium isotopes or certain imports for national security or nonproliferation purposes. The legislation also would authorize the Department to use funds available in the Department’s nuclear credit program, up to no more than \$1.5 billion, for its American Assured Fuel Supply, to address potential low-enriched uranium supply disruptions. (Rep. Rodgers is expected to introduce this legislation.)

IV. STAFF CONTACTS

If you have any questions regarding this hearing, please contact Mary Martin of the Committee Staff at (202) 225-3641.

###