

**The U.S. House of Representatives
Energy and Commerce Committee
Joint Energy, Climate, & Grid Security Subcommittee And Environment,
Manufacturing, & Critical Materials Subcommittee Legislative Hearing:
“Unleashing American Energy, Lowering Energy Costs, And Strengthening Supply
Chains”**

February 7, 2023

**Opening Statement of Hon. Bernard L. McNamee
Former Commissioner of the Federal Energy Regulatory Commission**

One Page Summary of Major Points
February 7, 2023
Hon. Bernard L. McNamee

Three ways to enhance access to reliable, affordable and abundant energy:

1. Permitting reform.

- The substantive aspects of various environmental laws contribute to the rejection, delay and costs of energy projects. Therefore, attempts to make the bureaucracy work more efficiently may not result in more projects being approved or constructed.
- NEPA does not provide for a private right of legal action, but agencies' NEPA determinations are subject to legal action under the Administrative Procedures Act (APA). Permitting reform should consider limiting how APA challenges are applied in the NEPA and environmental contexts.

2. Enhancing natural gas production and natural gas pipelines.

- America has abundant natural gas resources, but government policies need to support the production, transportation, and use of natural gas for the benefit of the American people.

3. Restoring reliability to our electric grid.

- The reliability of the electric grid is declining. The convergence of regional transmission organizations (RTOs) and subsidized renewables result in price distortions, reduced reliability, and failure to pass along the full economic benefits of no-fuel, subsidized renewables to customers.
- Reforms to the Federal Power Act, FERC oversight, and role of the states should be considered.

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Chair Duncan, Ranking member DeGette, Chair Johnson, and Ranking Member Tonko—and Chair Rodgers and Ranking Member Pallone, Members of the Committee: Thank you for inviting me to participate in this hearing.

Before I begin, I want to make clear that the views expressed are my own and I am not representing anyone else in this hearing—neither my employer nor its clients.

New Energy Crisis

Today, the American people are facing a new energy crisis. Since the American Energy Renaissance of the early 2000s that transformed the United States from a net energy importer to energy independence and then energy dominance on the world stage, Americans are now faced with energy scarcity; artificial shortages of natural gas and oil despite massive reserves within the United States; and, an electric grid that is less reliable

Nor can this all be blamed on Putin’s war on Ukraine. Misguided domestic government policies, as well as a politicization of capital investment, are causing much of our current energy crisis. The results are reduced energy supplies and increased energy costs that hurt individuals and families; makes businesses that create jobs that drive our economy less competitive; and makes America less energy secure.

Though our energy challenges are wide-ranging, we have the means to reinvigorate our energy economy for the benefit of the American people.

Recognizing the limited time for these opening comments, I will focus on three major issues: 1) permitting reform; 2) the importance of natural gas to energy security; and 3) restoring reliability to our electric grid.

Permitting Reform

Over the years there have been a number of initiatives to speed up environmental reviews, including permitting reform. The problem is not just the agencies reviewing projects. Congressional actions such as the FAST Act¹, or One Federal Decision² have helped some, but the problems are much deeper than bureaucratic efficiencies.

Environmental reviews involve the interaction of NEPA (the National Environmental Policy Act) and other federal statutes, executive orders and guidance from CEQ. Agencies must apply substantive laws, such as the Clean Water Act and Endangered Species Act, as well as executive orders. Merely telling agencies to work faster, work together, or limiting page limits on environmental reviews, though helpful, will not resolve the underlying problems that make it so difficult to build anything.

The substantive aspects of various environmental laws contribute to the rejection, delay and costs of energy projects. Therefore, attempts to make the bureaucracy work more efficiently may not result in more projects being approved or being constructed.

To address permitting challenges, Congress should look to the substantive requirements in various laws and the agencies' regulations that implement them so as to ensure they properly protect the environment, but do not create artificial barriers.

¹ Fixing America's Surface Transportation Act (42 U.S.C. § 4370m et seq.) ("FAST-41").

² One Federal Decision started as an Executive Order under President Trump (Executive Order 13807, Aug. 15, 2017) and was also part of the Infrastructure Investment and Jobs Act (IIJA) (Nov. 15, 2021).

In addition, Congress should provide clear direction about the limits of CEQ's authority when issuing regulations implementing NEPA. Congress should consider repealing or narrowing regulations as to how an agency looks at cumulative impacts and indirect effects from projects. Furthermore, attempts to use the social cost of carbon in reviewing projects should be a decision made by Congress. Congress should also pay careful attention to how decisions related to environmental justice are made.

Another problem is NEPA litigation.

As enacted, NEPA does not provide a private cause of action. But courts have allowed agencies' NEPA decisions to be challenged in court using the Administrative Procedure Act (APA). The result is that agencies now spend an inordinate amount of time and effort trying to address every minor comment or issue raised in environmental reviews. And no matter how good the review is, the agency action can still be challenged in court and a project can be held up for years. Such delays can end up killing a project or making it more expensive.

Congress should consider reforming NEPA and the APA to limit how legal challenges can be made against agency actions. Of course, this is a two edged sword. We want agencies to be held accountable. So Congress needs to engage in a careful balancing of agency authority.

The Importance of Natural Gas to Energy Security

American energy security—and affordability—is vitally dependent on access to domestically produced natural gas. Natural gas is used for home heating and manufacturing; but also provides 38 percent of our electric generation³—though it varies

³ U.S. EIA, "What is U.S. electricity generation by energy source?" 2021 data, <https://www.eia.gov/tools/faqs/faq.php?id=427&t=3>

by region and state. Unleashing natural gas production should be a priority and natural gas pipelines are needed to get the product to end-users.

The United States has abundant supplies of natural gas, particularly in Texas and in the Marcellus shale formations. Pipelines are needed to get the gas to local distribution companies, manufactures, electric generators, and LNG export facilities. Through a combination of permitting reform and FERC’s adherence to its obligations under the Natural Gas Act when considering pipeline applications, all Americans will benefit from access to natural gas.

Furthermore, federal and state policy makers also need to recognize the interdependence of the electric grid and natural gas, especially natural gas pipelines.⁴ Because natural gas fired generation is dispatchable, on-demand, with fast ramping, it can provide electricity quickly when intermittent renewable resources are not available. In addition, access to abundant natural gas helps keep electric prices down. This means ensuring that those pipelines are also safe from cyber and physical threats.

Restoring Reliability to Our Electric Grid

Over 330 million Americans rely on electricity for their livelihood, quality of life, and survival. Yet, electric reliability is decreasing in many parts of the country—we have seen this in California, Texas and parts of the east coast. For example, the blackouts and shortages in California in August 2020 and summer 2022; Texas in February 2021 and summer 2022; and the December 2022 near misses in the eastern part of the United

⁴ NERC, “Electric–Gas Interdependencies, Potential Summer Energy Shortfalls are Focus of Board Discussions” (May 13, 2021), <https://www.nerc.com/news/Headlines%20DL/Board%2013MAY21.pdf>; NERC, “Special Reliability Assessment: Potential Bulk Power System Impacts Due to Severe Disruptions on the Natural Gas System” (November 2017) https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_SPOD_11142017_Final.pdf

States. In fact, NERC warned of the potential for shortages in the summer of 2022⁵ and this winter of 2022-23.⁶ And these failures have not been the usual weather related causes of blackout—mainly downed power lines. These blackouts have been caused by a lack of enough generation to power the grid. This is primarily a result of policy choices. In particular, the convergence of subsidized renewables and regional transmission organizations (RTOs).

Though described as “electricity markets,” RTOs are actually complex regulatory constructs regulated by FERC. RTOs generally use marginal price clearing auctions to set prices for wholesale electricity paid to generators throughout the day, but subsidized renewables are distorting price formation in the RTOs and undermining market fundamentals. These price distortions have made it harder for traditional baseload resources like coal and nuclear to stay in business. The price distortions are even undermining the ability of dispatchable natural gas to make the investments necessary to back up wind and solar. This does not mean wind and solar should not be part of the generation mix; rather, we need to have an all of the above approach that allows us to take advantage of the best attributes of each resource. Unlike traditional utilities, generators in RTOs have no obligation to serve customers. Furthermore, RTOs and generators are not passing on the full economic benefits of no fuel, subsidized renewables to customers. The end result has been higher prices for customers, less reliability, and little accountability.⁷

⁵ NERC, “2022 Summer Reliability Assessment” (May 2022), https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_SRA_2022.pdf

⁶ NERC, “2022–2023 Winter Reliability Assessment” (November 2022), https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_WRA_2022.pdf

⁷ For a more in depth discussion of the challenges with RTOs see Bernard L. McNamee, “Time to Update Wholesale Electric Markets – But Don’t Forget the Benefits of Traditional Utility Regulation,” RealClearEnergy, April 8, 2021

This can be contrasted with traditional utilities which engage in integrated resource planning to provide reliability; have their rates set in a manner that passes the economic benefits of renewables and fuel diversity to customers; and are accountable to state public utility commissions and state legislatures.

Congress may want to consider reforms to the Federal Power Act, FERC oversight, and enhancing the role of the states.

Conclusion

Reliable, affordable and abundant energy is essential to the American people and our nation. I am grateful that these committees are working on solutions to our energy challenges. I look forward to answering your questions.