House Natural Resources Committee
Legislative Hearing – September 11, 2024
Question for the Record

Question from Rep. Westerman for Heather Reams, President, Citizens for Responsible Energy Solutions

1) Ms. Reams, during the hearing, you pointed out that an increasing volume of renewable energy projects have been delayed by cumbersome NEPA reviews and lawsuits since 2022.
    a) Can you elaborate on how the reforms in this bill will help to streamline environmental reviews for renewable energy projects?

    **ANSWER:** The National Environmental Policy Act (NEPA) is a process statute which governs federal agencies when they assess the potential impact(s) of any proposed project – such as a renewable project, manufacturing plant, bridge, highway, or a pipeline – that has a federal nexus (i.e. crosses federal lands or waterways or receives federal funding). Thus, NEPA applies when a proposed project may involve a "major federal action" and subsequently outlines the steps agencies must take to review, assess, solicit public input, and produce an environmental assessment or more stringent environmental impact statement to mitigate any impacts.

    With recent and significant increases in federal clean energy tax incentives, programs, and funding, there has also been a disproportionate increase in proposed renewable projects subject to the NEPA process. As we have seen, the current NEPA process is lengthy and complex, while subjecting project applicants to indeterminate and costly litigation risks. The current NEPA process is holding back or even preventing potential renewable projects, which require certainty and predictability.

    Left unaddressed, the current NEPA process will stifle deployment of innovative technologies and impede the scaling of more clean energy generation. For example, an American Clean Power (ACP) Association report (April 2023) quantified the "average timeline for a project to obtain necessary National Environmental Policy Act (NEPA) reviews is 4.5 years. For transmission projects, the average timeline is even longer – 6.5 years." Further, ACP estimates this inefficient permitting is leading to $100 billion in lost investment, 150,000 fewer good-paying jobs, and more than 550 million more metric tons of carbon dioxide emissions over 10 years.

Additionally, a recent Breakthrough Institute report (July 2024) found that "litigation delayed fossil fuel and clean energy project implementation by 3.9 years on average, despite the fact that [federal] agencies won 71% of those challenges." Further, "On average, 4.2 years elapsed between publication of an environmental impact statement or environmental assessment and conclusion of the corresponding legal challenge at the appellate level. Of these appealed cases, 84% were closed less than six years after the contested permit was published, and 39% were closed in less than three."

Here are some specific examples of how the Chairman's discussion draft will streamline the NEPA process for renewable and other projects:

The discussion draft would ensure that "major federal action" – the threshold that triggers NEPA – means just that. This will filter out ancillary actions, such as simply receiving a federal grant for a renewable project, from triggering a review. Reducing the number of projects that trigger NEPA will return NEPA to its original intent of focusing on those actions that are significant in nature and will ensure time and resources are spent on fewer projects, accelerating the process for those projects and reducing the regulatory burden of projects never intended to be captured by a NEPA review.

The discussion draft would continue to allow agencies to utilize their expertise in performing environmental reviews. And, importantly, it would ensure that these agencies effectively stay focused only on the issues that are within the jurisdiction of the agency as opposed to allowing agencies to be involved outside their statutorily defined expertise. Keeping agencies focused on their expertise will reduce unnecessary expansion of review that can delay a final outcome, including for both a renewable project or for the infrastructure necessary for that project (i.e. transmission lines).

The discussion draft also delineates a judicial review process with actions and deadlines laid out in statue to ensure that process is not weaponized by special interests whose sole intent is to delay or thwart a project. Instead, the process in the discussion draft ensures generous vetting, information gathering, and transparency, without sacrificing efficiency. This would provide important guardrails for the judiciary and protect agencies and projects from never-ending litigation.

The discussion draft also ensures that last-minute, non-peer reviewed studies are not required to be considered in the NEPA process. By setting out in statute what information is required and not required of a NEPA review, the discussion draft would once again reduce exposure to frivolous lawsuits that cause uncertainty and result in unnecessary delays.

In sum, the Chairman's discussion draft addresses key elements of these permitting challenges facing developers by narrowing the timeline and scope of frivolous litigation and focusing agencies to review the relevant potential impacts of a project. It also would clarify what is defined as a "major federal action" triggering a NEPA review so that there is uniformity and clarity throughout the federal government.

CRES appreciates the Committee's recognition of the permitting issues facing all types of projects, including in the renewable energy sector, and stands ready to be a resource as Congress considers meaningful improvements to the NEPA process while upholding strong public input and environmental standards.