



**Statement of David Joyner
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**Testimony on “The Past, Present and Future of the Federal Helium Program”
Before the U.S. House of Representatives Committee on Natural Resources
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Chairman Hastings, Ranking Member Markey, and Members of the Committee, I appreciate the opportunity to testify today on issues relating to the domestic helium industry and the Federal Helium Reserve. My name is David Joyner, and I am the President of Air Liquide Helium America, Inc., the helium company for American Air Liquide, one of the Nation’s leading industrial and medical gas companies. Headquartered in Houston, Texas, Air Liquide has over 5,000 U.S. employees in more than 200 locations throughout the country. For decades, Air Liquide has offered industrial and medical gases and related services to the Nation’s largest industries including manufacturing, electronics and healthcare. As a company, Air Liquide is focused on technological innovation to help make our Nation’s manufacturing and industrial sectors more efficient, environmentally friendly and productive.

I have been with Air Liquide working in the industrial gas sector for over twenty years, most recently as President of Air Liquide Helium America. In this role, I have gained an appreciation for the complexities of the helium market as well as the importance of helium to a variety of end-users. At the outset, I want to commend and thank you all for your hard work and that of your staff over the last year to consider this important issue. It is Air Liquide’s highest priority to assist you in continuing the operation of the Federal Helium Reserve in a manner that creates a stable and reliable helium supply capable of supporting the needs of end-users as well as providing an appropriate and reliable return on a Federal resource for U.S. taxpayers.

Air Liquide is a major supplier of refined helium in the United States and globally to customers that range from companies on the cutting edge of the electronics industry to health researchers,

automotive suppliers, laboratories and manufacturing facilities all over the world. When Congress passed the 1996 Helium Privatization Act (the 1996 Act), it was expected that the supply of crude helium in the Federal Helium Reserve would last until 2015. It is now possible that the Federal Helium Reserve's supply of helium could last much longer if properly managed. Despite the amount of remaining helium, the funding mechanism in the current law could lead to the closure of the Federal Helium Reserve in the Fall of 2013. This closure would effectively take close to a third of the global supply and half of the domestic supply of helium offline creating shortages and substantially increasing the cost of helium for end-users. Accordingly, the timing of this hearing is critically important as Congress must act in order to ensure access to the helium remaining in the Federal Helium Reserve.

As members of this Committee have noted in previous hearings, a stable supply of helium is important to our Nation's economy as it is a vital component in products ranging from magnetic resonance imaging (MRI) machines to airbags for the automotive sector. Helium is also important to our Nation's security as it is used in a variety of military and defense surveillance programs. Finally, the reliability of our helium supply is important for the Nation's research efforts such as those being undertaken at our Nation's national laboratories and at our own Delaware Research and Technology Center. These important efforts would be threatened by any sustained shortage in the domestic helium supply, particularly one that can be largely avoided by responsible management practices.

For these same reasons, it is important to consider what changes can be made to create a more open and competitive helium market that would improve reliability and benefit end-users. To that end, I would like to confine my remarks to two issues that we see as important as the Committee considers legislation relating to the Federal Helium Reserve: (1) accessibility; and (2) price discovery and qualified bidders.

I. INCREASING ACCESS AND CREATING A MORE COMPETITIVE AND TRANSPARENT MARKET FOR FEDERAL CRUDE HELIUM

As the Committee is aware, the helium stored at the Federal Helium Reserve is "crude" helium which must first be refined (i.e. "tolled") into liquid before it is transported to other facilities for additional processing and then on to end-users. The process of refining helium involves the

transport of the crude helium from the Federal Helium Reserve through the Helium Pipeline—a system that runs through Kansas, Oklahoma, and Texas—to one of six refining facilities that are located on the pipeline. These six refining facilities are owned by just four companies and were established by those companies in the last century to take advantage of privately-owned crude helium supplies. Nevertheless, with the enactment of the 1996 Act and the resulting use of the federal government’s infrastructure to sell crude helium from the Reserve, these companies gained the unexpected windfall advantage of controlling access to the public’s stockpile of crude helium due to their preexisting refineries.

Air Liquide is a so-called “non-refiner” and, as such, we must contract with the refiners—who are also our competitors in the sales market—to be able to distribute any helium purchased from the BLM. Put simply, refiners are not entering into tolling contracts for open market sales with non-refiners, effectively prohibiting non-refiners from utilizing the BLM source. In recent years, the BLM has contractually committed 94 percent of the captive deliverable volumes to these refiners and six percent to non-refiners. However, in reality, the refiners also control the remaining six percent because without a tolling contract in place, the non-refiners cannot be assured of refined product. Given that any amount of crude helium that remains unsold reverts back to the refiners for purchase, another disincentive for the four companies to provide tolling services exists—an additional market advantage that was surely not envisioned by the 1996 Act.

This current system’s drawbacks were noted by the National Research Council’s 2010 report, *Selling the Nation’s Helium Reserve*, (the “NRC 2010 Report”) which stated: “given that refining the helium must take place at one of the facilities connected to the Helium Pipeline, the limited number of potential processors of federally owned crude helium place significant restrictions on alternatives to the current sale procedures being followed by BLM.”¹

Proof that this system does not promote a competitive market can be seen in the fact that, in the last five years, Air Liquide has been the only non-refiner to purchase any amount of the six percent allocation. The consequences of the situation described above have important

¹ *Selling the Nation’s Helium Reserve*, National Research Council: Committee on Understanding the Impact of Selling the Helium Reserve, The National Academies Press (2010).

implications for end-users of helium. Adopting a more market-based approach was recommended by the NRC 2010 Report which stated the following:

The Bureau of Land Management (BLM) should adopt policies that open its crude helium sales to a broader array of buyers and make the process for establishing the selling price of crude helium from the Federal Helium Reserve more transparent. Such policies are likely to require that BLM negotiate with the companies owning helium refining facilities connected to the Helium Pipeline the conditions under which unused refining capacity at those facilities will be made available to all buyers of federally owned crude helium, thereby allowing them to process the crude helium they purchase into refined helium for commercial sale.²

Utilizing this approach would result in a more accurate and transparent BLM system and would benefit consumers by increasing the number of suppliers competing for the business of federal users and open market users with helium from the BLM. In an analogous situation, the United States has recognized the benefits of opening privately owned interstate pipeline capacity to the market in the natural gas industry where ownership of transportation capacity rights is held separate from ownership of the actual gas pipeline.³ Noting the impact this system has had on the domestic market, the report states: “[u]nbundling of capacity rights from facility ownership makes it possible for a producer to access markets through a competitive bid for pipeline capacity.”

We greatly appreciate the efforts of Members of this Committee and Committee staff to meet the goal of increasing access in H.R. 527—the Responsible Helium Administration and Stewardship Act. In addition to Chairman Hastings and Ranking Member Markey, we would specifically like to recognize Representative Flores for his active and diligent engagement on this issue and similar focus towards ensuring the program’s future sustainability. To ensure that this goal is realized on the ground, we are recommending the insertion of language into the bill that would tie volumes of crude helium purchased in an auction to corresponding pipeline delivery allocations. Such an incentive-based approach is not unprecedented. BLM recently piloted a methodology that encourages bidding to supply helium to federal users via the “in-kind” and

² *Id.* at 8.

³ *Shale Gas and U.S. National Security*, Kenneth B. Medlock, et al., James A. Baker III Institute for Public Policy (July 2011).

“MOU” program by providing the buyer of the helium volume with a corresponding helium delivery allocation that is held for the buyer until the buyer designates that the volume is to be delivered to a certain refiner who has agreed to toll the in-kind volumes. To match this program, we recommend clarifying that purchasers of helium in Section 2 Part B of H.R. 527’s envisioned auction would also receive corresponding helium delivery allocations. Working together with other provisions in H.R. 527 that ensure competitiveness and fair acts and practices, an expansion of this methodology to include the auction envisioned by H.R. 527 would not interfere with contractual arrangements between private parties but would instead increase participation and transparency in the BLM’s efforts while providing greater competition and reliability for end-users.

Finally, we believe the transition process to a new sales system, especially system similar to the one already being managed by BLM, should be a seamless and prompt progression to allow both industry and end-users to have the confidence that a reliable supply of helium from the BLM is ensured.

II. PRICE DISCOVERY AND QUALIFIED BIDDERS

Under the provisions of the 1996 Act, the BLM was directed to sell off the helium from the Federal Helium Reserve at a price solely designed to pay down the Reserve’s existing debt. It is commonly agreed that this resulted in the BLM charging a price below the free market value of crude helium. Air Liquide supports active price discovery that would allow the Secretary to establish a more accurate minimum price for federal crude helium. Currently, H.R. 527 would only allow the Secretary to consider “new or newly negotiated” contracts for the purchase or sale of at least 15 million standard cubic feet of helium over the previous two years. It is our recommendation that the phrase “new or newly negotiated” be stricken from this definition as most helium contracts in the market are active long-term contracts. These long-term contracts typically have price adjustments year-over-year that ensure they will reflect current market conditions. It is our recommendation that such long-term contracts, active in the last two years, be included for the Secretary’s consideration so BLM has the maximum number of data points from which to derive a minimum sale price that offers the fairest return to the U.S. taxpayer. We would also recommend that the reference be clarified by adding “wholesale” to the definition

of qualifying domestic transactions to avoid the subjective and unrepeatable analysis necessary to theorize the net crude helium value in such transactions.

Air Liquide's goal is to ensure a stable and reliable supply of helium for end-users. Accordingly, as H.R. 527 opens up access to federal crude helium for more bidders, we also recommend ensuring that only persons with an infrastructure capable of accepting and delivering vast quantities of helium (we have recommended a minimum threshold of 750,000 standard cubic feet delivery increments and prorated 10,000,000 standard cubic feet quarterly lots) be allowed to participate in the auction process. Doing so allows the BLM to manage its sales of federal crude helium effectively and efficiently while ensuring that the broadest base of end-users will be able to rely on a broader base of bidders to service their helium needs.

Finally, as stated, we commend the Committee's efforts to include methodology that can achieve a more accurate minimum price for BLM crude. As the parties work towards achieving the most appropriate return to the U.S. taxpayer, we also ask the Committee to be cognizant of the impact that future changes to the BLM posted crude price will have on the global helium market. As Air Liquide has previously testified, a predictable, repeatable and verifiable BLM crude price will carry lasting, stabilizing effects for not only the domestic but also the global helium community.

Air Liquide appreciates the Committee's attention to this important issue and supports the goal of ensuring the continuing viability of the Nation's helium supply. We believe the changes to the current system are achievable without disrupting supply and would do much to add competition to the market and benefit consumers. I thank the Committee for inviting me to testify, and I would be pleased to answer any questions you may have.