Statement of the U.S. Chamber of Commerce

ON: Energy Accountability & Reform Legislation

TO: U.S. Senate Committee
on
Energy & Natural Resources

DATE: June 9, 2015

1615 H Street NW | Washington, DC | 20062

Thank you, Chairman Murkowski, Ranking Member Cantwell, and members of the Committee. I am Karen Harbert, president and CEO of the Institute for 21st Century Energy (Institute), an affiliate of the U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations, and dedicated to promoting, protecting, and defending America's free enterprise system.

The mission of the Institute is to unify policymakers, regulators, business leaders, and the American public behind common sense energy strategy to help keep America secure, prosperous, and clean. In that regard we hope to be of service to this Committee, this Congress as a whole, and the administration.

I would like to commend your leadership demonstrated by this undertaking. Drafting a multi-title energy bill and moving it through regular order is not something accomplished since 2007 and certainly not an easy task. I would also like to thank Chairman Murkowski and Ranking Member Cantwell for soliciting the Chamber's input on what a broad, bi-partisan energy bill should include. I would also like to thank your staffs for always being available, open-minded, and committed to success.

As we have previously shared with Committee Members and staff, in 2014, the Institute published *Energy Works for U.S.*, our comprehensive policy framework. Energy Works for US includes over 60 specific and actionable recommendations, covering all aspects of energy policy from nuclear to renewables to coal to oil and natural gas, but also areas sometimes overlooked when discussing energy policy such as workforce, cyber-security, and permitting to name a few. Many of these recommendations are incorporated in bills being discussed today, as well as bills that have been and will be considered by the Committee in the future.

Today's hearing is focused on "Energy Accountability and Reform Legislation," covering some 42 individual bills. In drafting energy legislation, we think it important to establish a framework for determining whether legislation is necessary, which agencies it should be directed towards, and how best to effect the desired change. Within the context of accountability and reform, we believe there is a great need for action. There have been, and continue to be, dramatic changes in our energy economy and existing law, sometimes decades old, is hampering our markets from being able to adapt to the changes. Additionally, as these changes have occurred, there has been more tension on the role of federal versus state regulatory primacy that was largely a dormant issue in the past. And as the United States Code and Code of Federal Regulations grow every day, it is important to continually make changes to streamline their governance and to minimize their impacts on Americans while still ensuring their efficacy. Finally, it remains crucial that the federal government is a judicious and competent steward of the tax revenue it collects and spends. It is through this lens that the Institute reviewed today's docket of bills and informed our positions.

Given the large number of bills and limited time we have to consider them, I will address a small subset of them in my testimony today.

MARKET REFORM

S. 1312 – Energy Supply & Distribution Act of 2015

No area of the U.S. economy has changed more dramatically over the last decade than the energy sector. Since 2006 the amount of oil produced in the U.S. has increased more than 90%. That 4.2 million barrel per day increase is larger than the annual production of every other country, save Saudi Arabia and Russia. In 2006 we were importing about two-thirds of all the crude we consumed in the U.S., and today that has been winnowed down to just over 40% and declining.

This massive growth in oil, as well as natural gas, production has created a tremendous economic catalyst for the U.S. economy. A recent IHS report the Institute commissioned found that this shale energy revolution had created some 2.1 million jobs by 2012 and is projected to reach nearly 3.9 million jobs by 2025. Similarly, the report found this renaissance had added more than $280 billion to the U.S. economy and is expected to generate more than $1.6 trillion in government revenue through 2025.

Energy Security

This massive change has outgrown many regulations and systems of governance and S. 1312 does an admirable job addressing some of the most glaring examples. As it relates to energy security, the bill would require a more strategic focus from the Department of Energy (DOE) in considering how energy markets have changed and that impact on energy security. The Institute has been the leading authority on energy security at home, and abroad, annually publishing the *U.S. Energy Security Risk Index* since 2011, quantifying the risks to energy security across dozens of metrics and tracking the trends of those risks in the past and into the future. Since 2012 we have also annually published the *International Energy Security Risk Index* comparing the levels of energy security risks across dozens of countries.

We support the bill's effort to infuse government thinking with energy security considerations and stand ready to work with DOE and the various agencies when this bill is enacted.

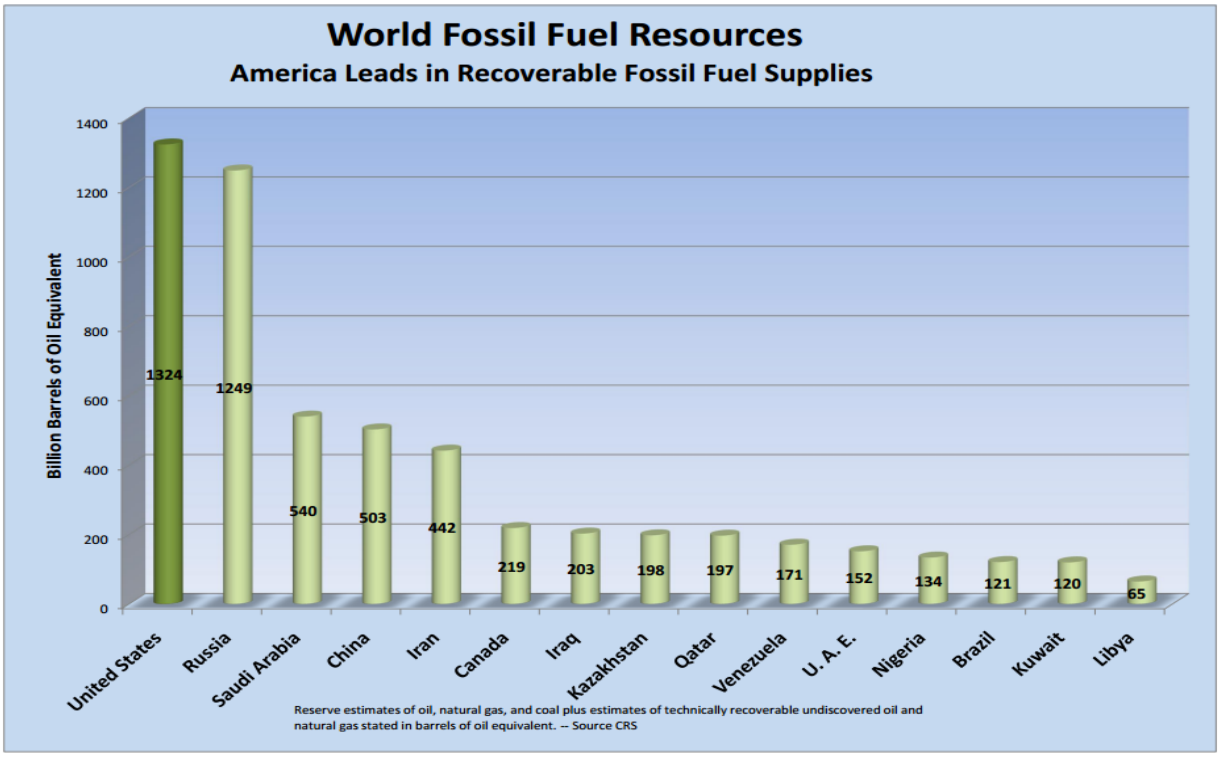
Data Collaboration

In producing our International Energy Security Risk Index, it has become clear that the level of energy data transparency varies greatly across the world, but becomes more vital to efficient markets every day. The Energy Information Administration (EIA) stands as an example by which the rest of the world should hold itself. Improvement can surely be made, but if the world provided the robust, accurate, and transparent data that EIA reports daily, energy markets would benefit tremendously. As such, we support the bill's focus on energy data collaboration between the U.S., Canada, and Mexico. Energy markets across the three countries are already integrated and interdependent, and further transparency and normalization would add significant benefit.

Crude Oil Exports

The prohibition on U.S. crude oil exports is a 40 year old vestige of a by-gone era and must be repealed immediately. This ban was instituted in the shadow of the Arab oil embargo that brought the U.S. economy to a grinding halt. The purported rationale was that the U.S. was not self-reliant enough on its own production to consider exporting any domestically produced oil. However, much has changed in the subsequent 40 years since the Energy Policy & Conservation Act of 1975 was passed.

Today, thanks to favorable geology and continuing innovation by the American oil and gas industry, the U.S. maintains more than 200 years of technically recoverable oil and over 500 years of in-place oil. Together with our massive natural gas and coal reserves, the U.S. has the largest energy resource base in the world. The policy of prohibiting trade of U.S. oil is not consistent with having the largest energy reserves in the world. Nor do any of these other countries with the largest energy reserves prohibit export of their domestically produced oil.



One of the concerns that many have voiced about exporting U.S. oil is the impact on consumers. Thankfully, this question has been investigated thoroughly by the Government Accountability Office as well as several think tanks and independent energy analysts and every report has concluded that exporting U.S. crude will cause gasoline prices to decline, not increase them.

These reports all found that allowing U.S. oil exports would add supply to the global oil market. Additional supply puts downward price pressure on the price of crude.

Because gasoline is essentially priced globally, a cheaper price for crude would put downward price pressure on gasoline.

Not only would consumers benefit from lower priced transportation fuels, but according to a recent IHS report, allowing U.S. oil exports would support an average of 400,000 jobs per year, generate an additional $1.3 trillion in government revenue through 2030, and add $265 in additional disposable income to every American household.

Over the past seven months, the drop in oil prices has led to more than 1,000 rigs to be laid down, resulting in an estimated 150,000 lay-offs. Much of this pain was unnecessary. Over the month of March, the average spread between West Texas Intermediate, the U.S. benchmark, and Brent, the global benchmark, was $7.50. That's an additional $7.50 per barrel U.S. producers are being denied because they cannot market that barrel outside of the U.S. If they could export and negotiate that higher Brent price, a significant number of U.S. wells that are now uneconomic would get spudded, putting thousands back to work.

Additionally, allowing U.S. exports would help deleverage countries that use their respective crude oil market dominance to negatively influence countries that must rely on imported oil. The world has witnessed how Russia has used oil and natural gas exports to force countries in Europe and Asia to acquiesce to its geopolitical and economic demands. Bringing U.S. oil to those markets would not completely displace Russian exports, but would provide a much stronger negotiating position for importers, most of which are strategic U.S. allies.

Moreover, it has become clear that terrorist groups such as ISIS are using oil produced from fields taken by force to fund its terrorist efforts. Bringing U.S. crude to the rest of the world presents the opportunity to undermine the demand for this illegally taken crude, helping to stifle further terrorist actions.

Exporting oil would benefit the U.S. economy and reduce the influence of countries and groups that use oil exports for purposes inconsistent with America's geopolitical and national security interests. I commend Chairman Murkowski and Senator Heitkamp for their steadfast leadership on this issue and their desire to bring U.S. policy into this millennium. We strongly support S. 1312 and urge the Committee to include it in the broader energy bill.

S 1310 - Deficit Reduction Through Fair Oil Royalties Act

Inasmuch as S. 1312 would update the regulation of energy markets to benefit the consumer and our geopolitical interests, S. 1310 would cause severe damage to our energy markets and significantly harm U.S. energy security.

This legislation would force any company wishing to enter into a new lease for exploration and production in the Gulf of Mexico to renegotiate old leases and agree to

pay a higher rate of royalty than what it is contractually obligated now. This bill seeks to fix an alleged error committed by the Department of Interior when implementing the Deepwater Royalty Relief Act, which was passed in 1995 at a time of historically low oil prices. To encourage continued investment in the frontier area of deepwater oil and gas development, Congress created a royalty relief program whereby producers would pay a lower royalty rate in order to decrease marginal operating costs and induce additional investment and ultimately, increased production.

This relief was to be based on volumetric levels, not price. When prices recovered, the relief was still in effect. Companies who successfully bid on leases assumed a predictable royalty rate as outlined by the law, regardless of price. This legislation intends to rewrite history after the fact and force companies to "voluntarily" agree to retroactively pay a higher royalty rate than the law requires. This legislation attempts an end-around the Constitution's prohibition of Congress passing *ex post facto* laws, forcing a renegotiation in order to be eligible for new leasing.

The sanctity of contracts is an underpinning of democratic law and a cornerstone of American democracy. We are not surprised when despot governments in the developing world retroactively change or break contracts, but it is unacceptable for it to happen in the U.S., even if indirectly. We oppose S. 1310 and encourage the Committee not to include it in the broader bill.

THE ROLE OF THE FEDERAL GOVERNMENT

As the U.S. energy landscape continues to shift at breakneck speed, it is crucial the role of the federal government constantly be reviewed to ensure continued technological innovation and reduction of energy security risk while also ensuring it continues to be done safely and with an ever-decreasing impact on the environment. In some cases that role has been and will continue to be, best served by the various states. In other instances, it is incumbent upon the federal government to streamline its regulatory approach to decrease barriers to investment and innovation.

S. 15 - Protecting States' Rights to Promote American Energy Security Act

On March 20, 2015, the Bureau of Land Management (BLM) issued new regulations of hydraulic fracturing on federal and tribal lands. However, in neither this final rule, nor the previously two proposed rule, did BLM justify new or additional regulation. State regulatory authorities have maintained primacy in the regulation of oil and natural gas exploration and production within each respective state's borders, including, to a large extent, federal lands.

State regulators not only possess the regulatory mandate from their respective state laws, but they have also developed the expertise necessary to understand the specific

geology, hydrology, and other physical nuances of the lands in their respective states. As such, the nation has benefited from the efficient extraction of oil and natural gas from producing states while also protecting human health and the environment.

While producers must comply with applicable state regulations when operating on federal lands, they must also navigate the moribund federal permitting process. As such, oil and natural gas exploration and production on federal lands has grown increasingly inefficient, preventing Americans from realizing job creation, economic growth, and increased energy security that accompany additional domestic production. The additional time required by the federal permitting process, in addition to existing regulatory requirements, increases the cost of production and makes operations on federal lands less economical than on state and private lands.

On April 3, 2015, the Congressional Research Service released an analysis concluding that oil production on federal lands had increased less than 1% between 2009 and 2014, while production on state and private lands had increased almost 90%. Similarly, natural gas production on federal lands decreased 35% while production on state and private lands increased more than 40%. Clearly, the existing federal regulatory process is much less efficient than the respective state processes. A recent report produced by the Heritage Foundation highlighted that BLM estimates it takes an average of 227 days for it to process and conclude an application for permit to drill, compared to 154 days in 2005 and the average 30 days it takes state governments to do the same.

BLM's rule will alter the balance of regulatory authority in a manner that would further disincentivize businesses from investing in the development of oil and natural gas on federal and tribal lands, while not identifying or addressing any specific issue that warrants the regulation. A July 2013 study sponsored by the Western Energy Alliance found that BLM's proposed hydraulic fracturing rule would create nearly $350 million in annual compliance costs, which corresponds to approximately $100,000 per well.

In promulgating its rule, BLM failed to identify any specific shortcomings of the existing framework of state regulation and in many cases merely duplicates state requirements. S. 15 would prevent BLM's arbitrary decision to further regulate hydraulic fracturing and making oil, natural gas, and geothermal energy production on federal lands even less economical than it already is. By clearly designating the primacy of state hydraulic fracturing regulations and preventing BLM from adding an unnecessary layer of federal regulation, this legislation would help maintain the economic benefits of America's shale revolution and preserve its nascent manufacturing renaissance.

S. 1230 – BLM MEMORANDA OF UNDERSTANDING

Similar to the impetus behind S. 15, S. 1230 would establish a strong direction from Congress that BLM should be relying on state oil and gas regulators, and not trying to duplicate their efforts. This legislation would provide a formalized avenue for a state to request BLM enter into a memorandum of understanding (MOU) relating to

measurements, meter inspections, and other operational activities. While we would like to see the scope of areas expanded and more clearly defined, this legislation is a good step towards a standard operational relationship whereby the expertise and competencies of state regulators is relied upon by BLM.

We support S. 1230 and urge the Committee to include it in the broader energy bill.

S. 1293 – DOE COORDINATION OF CLEAN COAL PROJECTS

Like all first-of-a-kind technology, the development of clean coal projects has proven to be expensive, lengthy, and an engineering challenge. Unlike some technology development though, clean coal technology has also encountered regulatory obstacles from seemingly all corner of the federal government. From air emissions, to water effluent, to geologic storage, clean coal technologies represents the melding of multiple technologies, as well as regulatory platforms. With so many disparate regulators involved in the permitting, licensing, and oversight of such projects, the regulatory process can add an additional layer of deterrent for the private sector to invest in developing clean coal technology.

To help introduce regulatory efficiencies, S. 1293 would designate DOE as the lead agency for coordinating all federal requirements for clean coal projects, including those emanating from the Clean Air Act, Safe Drinking Water Act, and the National Environmental Policy Act. Having one agency designated as lead would help prevent duplicative analysis as well as encourage the potential for a strategic regulatory approach across the multitude of regulatory frameworks. As a participant in the development of clean coal technology, DOE has the greatest knowledge base and experience with these projects and is the appropriate agency to be designated.

We support S. 1293 and urge the Committee to include it in the broader energy bill.

SPENDING TAX DOLLARS WISELY

The federal government has an important role in fostering the research and development that yields the energy technologies of tomorrow and in many cases, ensuring the country has the required workforce to not only operate today's energy economy but to design, build, and operate the energy economy of the future.

S. 1223 – Energy Loan Program Improvement Act of 2015

When the Energy Policy Act of 2005 was enacted, the creation of the Loan Guarantee program at DOE was arguably the most promising and novel aspect of a very robust bill. These guarantees were created to foster the deployment of energy technologies that are cleaner and aren't yet commercialized. As a way to minimize risk to the taxpayer, Congress stipulated that the recipient of the guarantee must fund the entire portion of the credit subsidy cost. This provision ensured the recipient had "skin in the game" and was not skirting any form of financial risk.

However, the American Recovery and Reinvestment Act of 2009 created a new class of loan guarantees whereby the federal government would shoulder the entire risk by funding the credit subsidy. When several of the recipients went bankrupt, much attention was drawn to the loan guarantee program, and many castigated it because of the undue risk born by the tax-payer. Unfortunately, this sordid period did much to sully the concept of loan guarantees, throwing the baby out with the bathwater.

Concessionary financing tools like loan guarantees provide an invaluable opportunity to bring new technologies to the market that would otherwise never see commercialization, depriving the public of cleaner and more efficient technologies. S. 1223 would correct the mistake made in the 2009 law by requiring a loan guarantee recipient again fund the credit subsidy cost, significantly reducing tax-payer risk. This legislation would also increase transparency for applicants.

We support S. 1223 and urge the Committee to include it in the broader energy bill.

S. 1256 – The Advancing Grid Storage Act of 2015

Through the development of the Clean Power Plan, this administration has it the policy of the U.S. to eliminate coal and natural gas generation and to marginalize nuclear power. In forcing the country into greater reliance on renewable electricity, the administration has not addressed how these largely intermittent power sources will be able to replace the baseload generation they are intended to replace. Without a functional and cost-effective stationary storage component widely deployed throughout the distribution grid, renewable power will never be baseload, limiting its potential use.

S. 1256 takes a step that DOE has not, making development of stationary storage a research priority and establishing a framework where commercialization is possible. We support the intent and pathways this bill provides to make that happen. We do, however, oppose the requirement that receiving support created by this bill be conditioned on requirement of Davis-Bacon prevailing wage rates.

We encourage the committee to adopt S. 1256, after removing the Davis-Bacon requirement, and include it in the broader energy bill

S. 1398 – the Energy Title of the America COMPETES Reauthorization Act of 2015

The America Competes Act was a watershed piece of legislation that began the arduous journey of accelerating advanced technology development and focus on STEM education development. Many positive results can be traced back to the original COMPETES including the creation and operation of ARPA-E. We continue to support the focus of COMPETES and appreciate the modifications made in this legislation to eliminate and combine programs.

We support S. 1398 and urge the Committee to include it in the broader energy bill.

S. 1422 – the Energy Workforce for the 21st Century Act

As an organization with membership spanning the entire energy economy, one of the most notable commonalities across all sectors and industries is workforce shortage. Some have called it the "great shift change" and it's already being felt today, but the greatest impacts are still to come. It is estimated that roughly one-third of the utility industry is within five years of retirement, and the number may be greater in the oil and gas industry. S. 1398 creates a strategic and methodic approach to increase the number of skilled workers trained to work in the energy and manufacturing sector, and taken together with COMPETES Reauthorization, this represents a good next step in workforce development. We are especially supportive of the technology-neutral fashion in which the bill approaches this issue.

While we support the intent of this legislation, we encourage Congress to ensure that such efforts to not compete with initiatives already funded and operational by the private sector academic institutions, as well as federal and state governments, including the Department of Veterans' Affairs.

SCOPE OF THIS TESTIMONY

This testimony represents our position only on the bills included. We have positions on other bills included in today's hearing, but were not included in this testimony in the interest of brevity and time. Additionally, there are other bills that require additional analysis and member consultation before we can offer an opinion. We look forward to working with the Committee on any of the bills considered today as this process continues to move forward.