

AMERICA'S ENERGY FUTURE, PART I: A REVIEW OF UNNECESSARY AND BURDENSOME REGULA- TIONS

HEARING

BEFORE THE

COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

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AMERICA'S ENERGY FUTURE, PART I: A REVIEW OF UNNECESSARY AND BURDENSOME REGULATIONS

Friday, July 13, 2012

HOUSE OF REPRESENTATIVES,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, D.C.

The committee met, pursuant to call, at Constitution Hall, University of Central Oklahoma, Edmond, Oklahoma, Hon. Darrell E. Issa [chairman of the committee] presiding.

Present: Representatives Issa, Lankford and Farenthold.

Staff Present: John Cuaderes, Majority Deputy Staff Director; Linda Good, Majority Chief Clerk; Kristina M. Moore, Majority Senior Counsel; Cheyenne Steel, Majority Deputy Press Secretary; and Donald Sherman, Minority Counsel.

Chairman ISSA. The Committee will come to order.

Welcome, to all of our guests. Today we come to Oklahoma City at the request of Chairman Lankford. As members of the committee that oversees all of Government, the most important part of Government is our relationship with the private sectors, job creators. So our field hearings, around the country, including here in Oklahoma City today, are about finding out how jobs are created and what the impediments to job creation are, red tape, stumbling blocks of all sorts, sometimes simply Government not getting out of the way, are what we usually hear about.

Today, obviously, the subject will be energy and energy independence at a time when America imports as much oil as it produces and, yet, we find in oil and natural gas, in coal and other minerals, we could be self-sufficient.

Our Committee is here today to find out why we are not. When asked to come to Oklahoma City by Chairman Lankford, I not only said yes, but I said when would be the best time to do it? And he said it's beautiful in Oklahoma City all year. Not believing that, I consulted with the weatherman, and they said, you know, you can come anytime to Oklahoma City and you will get weather.

So, James, I want to thank you for providing the kind of weather we hoped for today.

Additionally, Mr. Farenthold has come from Texas. He will make an opening statement. He will insult Oklahoma appropriately by calling it some portion of northern Austin. Be prepared for it.

I will close what is an informal opening statement by making it clear that I do have a connection to Oklahoma. Now, my connection is tenuous, but I want you to understand that we can stretch to it,

because Blake may stretch to it. Boone Pickens' wife is my constituent. So I know Boone comes to Oklahoma from time to time to give a few bucks to universities, a few, but not necessarily here. I didn't see the stadium at this particular location.

But you do have three members of Congress who each have something in common. We all claim Boone Pickens, which means we all understand that America is the Saudi Arabia of natural gas. And, in fact, we could have a—we do have an abundance of a very clean fuel, one that, if we use, should please both the left, who want us to reduce our carbon footprint, and the right, myself included, who want to know that America can feed itself the energy that changed the Stone Age because, as a friend of mine once said, the Stone Age didn't end because it ran out of stone; it ended because we learned how to harness energy.

And with that, I recognize—actually, I'm going to save you for last, Mr. Farenthold, for his opening statement. And then, Chairman, if you would introduce the Panel in your Opening Statement, I'd appreciate it.

Thank you.

Mr. FARENTHOLD. Thank you, Chairman Issa, Chairman Lankford, I'm happy to be up here north of the Red River. As I was so appropriately informed by Representative Lankford earlier this morning, I am not really from Texas. I'm from Baja, Oklahoma.

I always thought Oklahoma was far north Dallas.

I'll accept being from Baja. I'll accept being from Baja, Oklahoma, today.

And, you know, energy is critical to our country. And the energy production and low energy prices we have right now overcome a lot of problems with American competitiveness. We have a higher labor rate, higher cost of doing business here in America and a higher regulatory cost. But our low energy prices make America a real good option for a revitalization of manufacturing jobs. If we cannot overcome paying our people well here, but we can overcome paying our people well here and an intrusive amount of Government regulations.

So I think one of the things I would like to get out of the hearing today is impact and feedback from the Panel about how overregulation from Washington is affecting, not only the oil and gas industry, but overall, the economic development in Oklahoma and the remainder of the country.

I think you will find that you've got a group of people up here from Congress, Chairman Lankford, Chairman Issa and myself. Chairman Issa is from California. Obviously, Mr. Lankford is from Oklahoma. I'm from Texas. That's three of the top five crude oil producing states in the country, and I'm proud to be in the top five with you guys.

So I'm looking forward to listening to what our panelists have to say and then ask our questions in developing a record so we can take the Oklahoma experience back to Washington, D.C., and learn how it's being done in states like Oklahoma and Texas where it's working.

Thank you.

Chairman ISSA. Mr. Lankford, I want to thank you for bringing us here. And the hearing is yours, at least through the introduction of this incredibly good panel.

Mr. LANKFORD. Thank you. And I do want to say thank you, as well, Chairman. Thank you for bringing us here. It is an unusual thing to bring Washington to Oklahoma. We try to take Oklahoma to Washington. Now we're trying to turn that thing around, get some wisdom into it. So I really appreciate you being here. And for the staff that's here and for Blake, for being here, as well and being a part of it.

I want to thank the University of Central Oklahoma, as well, for hosting this event and for allowing us to come to this great facility, this great room.

And then, also, our witnesses, which I will introduce in just a moment, I have a formal opening statement, I will get a chance to read through it, to set the tone for what we're trying to accomplish today, to be able to set some of those questions there.

Since the 1970s and all the energy crisis and all the spikes in fuel costs, our nation has talked about an energy policy that would make our nation energy independent. We're all used to the comments of why aren't we energy independent. We focus on exploration, on supply lines, on diversification of fuels, renewable fuels, natural resources, the environment and more.

We've asked ourselves, do we consume too much? Do we produce too little? Or are our resources, are they just in short supply?

In the middle of this four-year journey, we invested in oil, coal, natural gas, hydroelectrics, solar, nuclear, geothermal, biofuels, hydrogen and multiple other experimental fuels. But we're not energy independent yet. Not even North America is energy independent yet.

What I want to know is why? What's preventing us from obtaining energy independence.

Our economy runs on inexpensive and reliable energy, millions of jobs are created by energy.

If we can move from talking about it to actually doing it, our energy independence could make the difference in the American economy.

Around 300 billion dollars a year is spent on purchasing crude oil from foreign sources, which is a tremendous drain on our economy.

We have to deal with the national security and the implications of that, as well, depending on foreign sources.

Our Navy just sent out the green fleet for a test run on biofuels that cost \$27 a gallon. The goal is to find a way to function our military on fuels that we can grow and produce so we're not at risk for a fuel shortage in the time of war.

That's a noble cause, but, again, it begs the question, why can't we produce our own energy at a reasonably rate and ample supply.

I want to know today, is it our lack of supply? The President loves to imply that we're running out of oil, and we have to switch to other fuels. He repeats often, two percent of the world's crude in reserves, but we use 20 percent of the world's oil. Are we running out?

In the 1970s, President Jimmy Carter's administration focused—forced the electricity generation towards coal, because he believed that we were running out of natural gas, and we need to use an abundance fuel for electricity generation.

Now that Oklahoma is demonstrating an incredible abundance in natural gas in America, this administration has turned it's attention to attacking natural gas for exploration and usage.

I want to know, is it our regulatory environment? The Federal Regulations and guidance appear to be in front of science at times. The BLM and EPA have already made major moves against hydraulic fracking. But in 2010, a Congressionally mandated study of fracking has not even released its draft findings for it's first year of the study. For the past two years, in fact, the EPA has studied the nations five worst environmental sites around fracked wells to look for any environmental consequences.

And though the studies have not been released, it's my understanding, that the initial findings were actually very positive. The first year of the study, without any conclusive findings, will be released late this year and, by the way, right after the election. And the final data will be released in 2014. The control wells in the frac state have not even begun the field research yet.

But the lack of evidence hasn't slowed the frequent guidance of regulation concerning fracking for the Federal Government.

The same is true for air quality around the sites. The EPA has manipulated gas release data from flowback from a few well sites and extrapolated that data onto all producers, when, in reality, even the initial data study, the three company's flowback was seriously flawed, and it's been demonstrated the EPA is flawed. But that doesn't seem to slow down the EPA assault on admissions around well sites. And, in fact, it's estimated that the EPA overestimated the release by 1,400 percent. That's a slight error.

What's ironic is the Regional Haze rule policy that came about because environmental groups sued the EPA, and the EPA quickly settled with them in what we call "sue and settle."

We can go on and on about the issues. It's just connecting science with the actual practice of energy. I want to know, is our regulatory environment slowing down our production?

Permits for oil and gas and mining have dropped dramatically on Federal lands. The length of time it takes to acquire Federal permits to drill is ten times longer on Federal land than it is on private land.

And when a project finally does move forward, brace yourselves for this, we have to still deal with the Department of Interior and Fish and Wildlife.

Let me give you two Oklahoma examples you may or may not have heard of. In Western Oklahoma, we have a wild chicken called the Lesser Prairie-Chicken. This chicken, apparently, is a chicken, and it will not breed around anything tall and noisy. So Fish and Wildlife have stated it wants control over Western Oklahoma, and it wants to keep at least 64 percent of all of Western Oklahoma uncultivated to benefit the Lesser Prairie-Chicken.

The Fish and Wildlife wants control over how many cows can graze in the field, how many fields or farms are for crops, when we

put in roads, energy production, including wind energy, and much more.

You may not know about that chicken right now, but once we begin more and more exploration of oil and gas in Western Oklahoma, you'll know more about it.

In Southern Oklahoma, we have a multi-million dollar pipeline project on hold because a doctoral student in Kansas gave his work about burrowing beetles to Fish and Wildlife. Now, the Keystone Pipeline and other pipelines are on hold until they can prove they won't affect the beetle.

Do you remember the President standing in front of a big stack of empty oil pipes, talking about how we're going to expedite all the permits for the Keystone Pipeline in the southern leg?

Guess what. They've all stopped because Fish and Wildlife has shut it down, because of the burrowing beetle. It's common across Southern Oklahoma.

I want you to know, I want to know, if we don't have energy independence because the Federal Government cares more about chickens and beetles than people and national security, I think we need to find that out.

I want to know if the Federal Government is intentionally slowing down production by taking over the states primary to permit electricity generation and exploration.

And I want to know if we're really running out of supply, so we have to move today a different fuel for our national survival. Today is the day for Oklahoma common sense.

In the hearing the testimony of people who have to live with the Federal regulations and still provide energy that our nation requires to thrive.

I really am looking forward to the testimony, and to the insight.

Several of these folks, I have met before; several of them I have not. But I'm looking forward to your expertise.

Let me introduce the people that are here.

Michael Ming is the Oklahoma Secretary of Energy, incredibly knowledgeable and incredibly passionate about the future of our nation's energy independence.

Patrice Douglas is our newest Commissioner of the Oklahoma Corporation Commission. The Oklahoma Corporation Commissioner is very well known in this room and in Edmond as the former Mayor of Edmond.

Mr. Mike McDonald is the President of Triad Energy, Inc., and President of Domestic Energy Producers Alliance. He comes with a lot of experience and background on independent production.

Patricia Horn—I think it's just Trisha Horn, isn't it—is the Vice President for Governance and Environmental Health & Safety of OG&E and has a great deal of knowledge about wind and about coal and about the background of how we use that for electricity generation.

Mr. Brian Woodard is the Vice President of Regulatory Affairs of the Oklahoma Independent Petroleum Association and comes with tremendous background and experience in the regulatory environment.

Mr. Joseph Leonard is the Environmental Health and Safety Engineer at Devon Energy Corporation and knows extremely well the

issues that we face in the regulatory environments and in the environment in drilling and producing on Federal lands.

So I'm honored these guests are here.

Mr. Chairman.

Chairman ISSA. Thank you, Mr. Lankford.

Chairman ISSA. The Oversight Committee exists to secure two fundamental principles. First, Americans have a right to know the money Washington takes from them is well spent.

And, second, Americans deserve an efficient and effective government that works for them. Our duty in the Oversight and Government Reform Committee is to protect these rights. Our solemn responsibility is to hold Government accountable to taxpayers, because taxpayers have a right to know what they get from their Government.

We have an obligation to work tirelessly in partnerships with citizen watchdogs to deliver the facts to the American people and bring genuine reform to the Federal bureaucracy. That is why we're here today.

Pursuant to our Committee rules, I would ask that all the Witnesses please rise and take the oath. Raise your right hand.

Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth and nothing but the truth?

Let the record indicate all answered in the affirmative. Please take your seat.

As promised before we began, I will reduce how we do business on the Committee to a simple stoplighting that we all deal with. In front of you there is a timer that has a green, a yellow and a red light. Green means go; the yellow means go fast to get underneath the light before it turns red. And red means get to the intersection and stop, if you're not in an intersection. If you have not reached the intersection, find a way to stop it anyway.

So with that, Mr. Ming, if you would present your testimony, recognizing that, for all of you, your full testimony will be placed in the record. So you may go off script as you see fit to help make the record more complete.

WITNESS STATEMENTS

STATEMENT OF C. MICHAEL MING

Mr. MING. Good morning, Chairman Issa, and Members of the Committee. My name is Michael Ming. I currently serve as the Oklahoma Secretary of Energy under Governor Mary Fallin. I previously served five years as the President of the Research Partnership to Secure Energy for America, a nonprofit public-private partnership, which I helped found, that manages the nation's unconventional natural gas and ultra-deep water research programs with oversight from the U.S. Department of Energy.

Prior to that, I spent 25 years as an independent oil and natural gas producer drilling and operating wells as a hands-on operational petroleum engineer. So I have been at this business for over thirty years.

I appreciate the opportunity to be here today before you to discuss the important topic of unnecessary and burdensome regula-

tions, one that could not be more important at this critical time to our nation's security and economic well being.

My comments today are of a general, but pointed, nature. I will discuss the roles of both Federal and State Governments in developing and enforcing regulations that should seek to balance the needs of producing reliable, secure, affordable, and environmentally acceptable energy supplies for America.

While others may speak to specific examples of overreaching and onerous regulations, I will direct my comments to the diseased Federal regulatory culture.

I will focus on three areas: (1) what appears to be a concerted agenda to push for Federal regulation over State regulation, especially around hydraulic fracturing; (2) the overtly compromised practices of Federal agencies, struggling to justify their existence in a world of reduced government budgets; and (3) a concerning increase in the influence and direct involvement of activist environmental groups in Federal research and regulation.

To appreciate the rapid acceleration of this unprecedented regulatory effort, it is critical to first understand what has transpired in the last seven years in America. A literal tsunami of new but traditional energy supplies has totally disrupted our nation's energy future, starting first with unconventional natural gas from shale formations, progressing to unconventional oil from shales and now unlocking formerly marginal supplies of oil.

While a few years back these newfound supplies of natural gas were viewed as just a clean bridge fuel to the future, they are now also unquestionably a part of our energy future for decades to come.

2011 marked the highest annual U.S. natural gas production on record, eclipsing records from the early 1970's, and January, 2012, was the highest monthly natural gas production on record. And the United States is now the largest natural gas producer in the world. If the value of U.S. natural gas production was calculated based on its energy content relative to an oil-equivalent price, as it is generally elsewhere around the globe, it would imply an economic stimulus of approximately \$300 billion per year to the U.S. economy. It is also likely that, in the next four or five years, the U.S. will erase 20 years of oil decline, and depending on the forecaster, it is possible that North America could be energy independent in the next 10 years. Excessive regulation and the climate of uncertainty created thereby, places these opportunities and America's chance at energy independence at risk.

Hydraulic fracturing has become the point of attack. It is both the key to accessing these new supplies, and it is the epicenter of the disruptive wave that ideologues are attempting to stop.

These impressive developments have significantly changed the tactics of those who want to see traditional fuel use eliminated. Rather than attempting to make our energy system better, they would prefer to ideologically replace traditional energy at any cost. Yet, this view of the world ignores three critical aspects of energy policy: Balance; system optimization; and scale.

First, all forms of energy have consequences, whether traditional or renewable. It is critical, therefore, to balance the tradeoff between human needs and environmental sustainability.

Second, in order to optimize our existing energy resources, we must look at energy as a system instead of indiscrete fuel silos. This means looking for synergistic opportunities to leverage our energy resources, instead of simply using them the same way we always have.

Finally, the issue of scale has to be acknowledged. It seems that some in Washington either don't understand this concept, or they don't want to understand it.

Traditional fuels provide unmatched energy on demand at scale, today, and are, therefore, indispensable to our energy portfolio. It is also important to recognize that there is no better way to protect the environment than to have a strong economy. Environmental protection is clearly correlated to economic health. One only has to look at the developing world to understand this tragedy. Whether looking at the denuded hillsides in Haiti or Africa, experiencing virtually unbreathable air in Chinese cities, or witnessing unregulated toxic discharges in third-world countries, economic health is the gateway to environmental protection.

In this light, it seems we are on a well-orchestrated and micro-managed path that sacrifices economic development in an ideological quest to eliminate all fossil fuels. It is disguised in the name of environmentalism and carried out under the auspices of regulation.

I confess that I am both a capitalist and an environmentalist. One can be both. I lecture frequently on how traditional fuels in partnership with renewable energy and energy efficiency actually possess almost unlimited potential.

Leveraged together and treated as a system, the combination can affordably power our nation's factories, homes, and economic future, while reducing emissions, improving system reliability, enhancing fuel diversity, and hedging price volatility.

Just as importantly, it offers the first real opportunity in decades to essentially become energy independent. We can't let ideological regulation stymie the important role that capital markets can play in this evolution.

There are those, however, who are not pleased with this grand disruption, and the unprecedented emergence of unconventional resources in time and scale based on private sector technology and innovation. This new supply of affordable energy has imparted a newfound sense of urgency to opponents of traditional energy. I believe these opponents play a key role in this new era of exceptional regulation. One only has to look at the recently announced Sierra Club's Beyond Gas campaign, which I believe actually sacrifices environmental benefits in the name of environmentalism.

This Committee's recent hearing on sue and settle, or, as others have called it, a wink and a nod, only reinforces the perception of something that cannot pass the sniff test. Recent specific events that have highlighted the close connection of environmental activists to bureaucrats should be of great concern.

Furthermore, there appears to be a huge conflict of interest between government research and regulation. In a recent hearing before the House Committee on Energy and Commerce Subcommittee on Energy and Power, Congressman Joe Barton revealed that a disturbing number of EPA's supposedly "independent" Clean Air

Scientific Advisory Committee were also recipients of Federal research funding. Such practices undermine scientific credibility, and lead to the most insidious form of science, where the experiments might be designed to produce the desired results.

Furthermore, widely referred studies used to justify policy objectives simply because the conclusions fit the desired outcome even if the conclusions are flawed.

Chairman ISSA. If you could summarize.

Mr. MING. Excuse me?

Chairman ISSA. If you could summarize.

Mr. MING. Okay.

Chairman ISSA. I'm looking at the number of pages there.

Mr. MING. I've just got half a page, but I'll go to the summary.

Chairman ISSA. Thank you.

Mr. MING. I greatly appreciate the opportunity to speak to you today and encourage you to take a pragmatic and balanced approach to energy. While digging into specific overreaching regulations is one approach, it only addresses the symptoms. I urge you to look at the root of the problem, which is the diseased culture itself, and I have described three of the viruses: A perceived agenda to pre-empt State regulatory authority; unchecked growth in the bureaucracy; and the relationship of third-party activists in creating regulations.

I also urge you, if you are so inclined, to consider reading Governor Fallin's Oklahoma First Energy Plan. It is a pragmatic and balanced plan, one that other states, and the Federal Government, can use as a template to optimize their own resources.

Thank you for your invitation and your attention.

Chairman ISSA. Thank you. And thank you for the years in which Mary was a member of Congress. She gave us quite a few of those ideas during that time, too.

[Prepared statement of Mr. Ming follows:]

Good Morning Chairman Issa and Members of this Committee. My name is Michael Ming. I currently serve as the Oklahoma Secretary of Energy under Governor Mary Fallin. I previously served five years as the President of the Research Partnership to Secure Energy for America, a nonprofit public-private partnership, which I helped found, that manages the nation's unconventional natural gas and ultra-deep water research programs with oversight from the U.S. Department of Energy. Prior to that I spent 25 years as an independent oil and natural gas producer drilling and operating wells as a hands-on operational petroleum engineer. So I have been at this business for over thirty years. I appreciate the opportunity to be here today before you to discuss the important topic of unnecessary and burdensome regulations, one that could not be more important at this critical time to our nation's security and economic wellbeing.

My comments today are of a general but pointed nature. I will discuss the roles of both federal and state governments in developing and enforcing regulations that should seek to balance the needs of producing reliable, secure, affordable, and environmentally acceptable energy supplies for America. While others may speak to specific examples of overreaching and onerous regulations, I will direct my comments to the diseased federal regulatory culture. I will focus on three areas: (1) what appears to be a concerted agenda to push for federal regulation over state regulation, especially around hydraulic fracturing; (2) the overtly compromised practices of federal agencies, struggling to justify their existence in a world of reduced government budgets; and (3) a concerning increase in the influence and direct involvement of activist environmental groups in federal regulation and research.

To appreciate the rapid acceleration of this unprecedented regulatory effort, it is critical to first understand what has transpired in the last seven years in America. A literal tsunami of new but traditional energy supplies has totally disrupted our nation's energy future, starting first with unconventional natural gas from shale formations, progressing to unconventional oil from shales, and now unlocking formerly marginal supplies of oil. While a few years back these newfound supplies of natural gas were viewed as just a clean bridge fuel to the future, they are now also unquestionably a part of our energy future for decades to come. 2011 marked the highest annual U.S. natural gas production on record, eclipsing records from the early 1970's, and January, 2012 was the highest monthly natural gas production on record. And the United States is now the largest natural gas producer in the world. If the value of U.S. natural gas production was calculated based its energy content relative to an oil-equivalent price, as it generally is elsewhere around the globe, it would imply an economic stimulus of approximately \$300 billion per year to the U.S. economy (assuming 25 TCF per year with a \$12/MMBTU price differential). It is also likely that in the next four or five years the U.S. will erase 20 years of oil decline, and depending on the forecaster, it is possible that North America could be energy independent in the next 10 years. Excessive regulation and the climate of uncertainty created thereby, places these opportunities and America's chance at energy independence at risk. Hydraulic fracturing has become the point of attack. It is both the key to accessing these new supplies, and it is the epicenter of the disruptive wave that ideologues are attempting to stop.

These impressive developments have significantly changed the tactics of those who want to see traditional fuel use eliminated. Rather than attempting to make our energy system better, they would prefer to ideologically replace traditional energy at any cost. Yet, this view of the world ignores three

critical aspects of effective energy policy: balance; system optimization; and scale. First, all forms of energy have consequences whether traditional or renewable. It is the critical, therefore, to balance the tradeoff between human needs and environmental sustainability. Second, in order to optimize our existing energy resources, we must look at energy as a system instead of in discrete fuel silos. This means looking for synergistic opportunities to leverage our energy resources, instead of simply using them the same way we always have. Finally, the issue of scale has to be acknowledged. It seems that some in Washington either don't understand this concept, or if they do understand it, they don't want to talk about it. Traditional fuels provide unmatched energy on demand at scale, today, and are therefore indispensable to our energy portfolio.

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In this light it seems we are on a well-orchestrated and micro-managed path that sacrifices economic development in an ideological quest to eliminate all fossil fuels. It is disguised in the name of environmentalism and carried out under the auspices of regulation. I confess that I am both a capitalist and an environmentalist. One can be both. I lecture frequently on how traditional fuels in partnership with renewable energy and energy efficiency actually possess almost unlimited potential. Leveraged together and treated as a system, the combination can affordably power our nation's factories, homes, and economic future, while reducing emissions, improving system reliability, enhancing fuel diversity, and hedging price volatility. Just as importantly, it offers the first real opportunity in decades to essentially become energy independent. We can't let ideological regulation stymie the important role that capital markets can play in this evolution.

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used to justify policy objectives simply because the conclusions fit the desired outcome even if the conclusions are flawed. Imagined crises are easy to sensationalize and often become permanent gospel by lazy journalists. Unfortunately, sensationalism still sells best at just the time our nation needs to take a deep breath and assume a more balanced, pragmatic approach to forging a practical and reasonable energy future.

I am also deeply concerned with how regulations are influenced by perpetually growing federal bureaucracies, especially when large sums of money are passed out. It is my experience that large budgets to distribute lead to money going to those who either support the specific bureaucracy or who conduct politically favorable research. Produce the answers that are desired and research the flavor of the day and funding continues, otherwise it stops. Throwing money at problems instead of utilizing good old fashioned leadership is a recipe for the exact budgetary disaster we are now facing. Capital allocation should never be conducted through the ballot box.

Furthermore, bureaucracies have to be doing something to justify their existence, but taking risk is intolerable because it could lead to failure. The only way to not risk failure is to not do anything. The game then becomes how to be busy yet not do anything that could lead to failure. Writing regulations, forming additional task forces, or conducting additional studies on top of previous studies certainly fit this methodology. One sure-fire way to eliminate unnecessary regulations is to reduce budgets and eliminate unnecessary process itself.

While programs all seem to have noble intentions and perceived public benefits, they can all too often quickly become all process and no results. Most critically, they can become impossible to shut down. If the government chooses to invest in R&D, science cannot be politicized nor can credibility or integrity be compromised. My personal experience with the behavior of the USDOE revealed an extraordinarily compromised agency. And this is at a time when current budget proposals to jointly fund the USDOE and the EPA are under consideration. There could not be a worse time to grow the bureaucracy, especially within agencies whose behavior and performance do not justify continued rewards of any type. More regulation requires more staff, and the process grows on itself. It is virtually impossible to undo regulations just as it is to eliminate programs. Regulatory reform is a tiring and tedious process, which is best avoided by not developing unnecessary regulations in the first place.

Finally, the federal grab for power seems to be insatiable. Whether it is simply human nature or an agenda power play, there could not be a more devastating blow to our nation's economic and energy security future than one-size-fits-all regulations from Washington. This is especially true when regulations are based on ideological agendas, limited knowledge of specific regional needs and conditions, or deliberate disregard for the responsiveness of capital markets. States are the logical and proven regulators of their own resources and can provide the timely responsiveness that capital markets demand while still protecting the environment. It appears that while the EPA says they are not interested in local regulatory jurisdiction, their actions paint a different picture. Scouring local statutes and regulations to find exploitable weaknesses to assert primacy, or conducting unprecedented localized inspections with questionable jurisdiction, does not paint a picture of an agency wanting states to regulate themselves.

All this said, it is critically important that states continue to develop, implement, and enforce strong regulations in order to protect the environment and the public interest. Oklahoma, for example, is a model for both developing effective regulations and enforcing them, and continuously improving regulations as conditions and technology change. Federal pre-emption simply cannot replace state effectiveness. The citizens of a state have to live with the results of their actions, so they have the ultimate accountability for their actions.

I greatly appreciate the opportunity to speak to you today and encourage you to take a pragmatic and balanced approach to energy. While digging into specific overreaching regulations is one approach, it only addresses the symptoms. I urge you to look at the root of the problem, which is the diseased culture itself, and I have described three of the viruses: (1) a perceived agenda to pre-empt state regulatory authority; (2) unchecked growth in the bureaucracy; and (3) the relationship of third-party activists in creating regulations.

I also urge you, if you are so inclined, to consider reading Governor Fallin's Oklahoma First Energy Plan. It is a pragmatic and balanced plan, one that other states, and the federal government, can use as a template to optimize their own resources.

Thank you again for your invitation and your attention.

Chairman ISSA. Ms. Douglas.

STATEMENT OF PATRICE DOUGLAS

Ms. DOUGLAS. Thank you for coming to Oklahoma and thank you for letting me be a part of this proceeding today.

I would be remiss if I didn't welcome you to Oklahoma, but I would be extremely remiss if I didn't welcome you to Edmond as its former Mayor.

So I am so glad you're here.

Edmond is glad you're here, and we're proud to have this proceeding taking place here.

I'm going to go off script. I'm going to talk a little bit about my perspective as a State Regulator. And I have to disclose to you that, in my former life, I was a banker. So I have a healthy skepticism of Federal Regulations. I have seen what Federal Regulation can do to an economy and to an industry. And so when I was asked to be on Oklahoma's Chief Regulating Board for so many industries, I brought the skepticism with me.

I want to talk about three different things today. I want to talk, first, about the difference in a State Regulator and a Federal Regulator. I want to talk, also, about how Oklahoma has managed some of the national topics, like disclosure of chemicals in fracked fluids. I also want to talk to you a little bit about how I see this overlap into the utility industry and what I see coming for Oklahoma, based on some of the regulations that are being forced down on Oklahomans.

First, I'm disheartened by the fact that we even have to talk about whether a State regulatory body should be in charge of the oil and gas industry, in charge of the utility industry, in charge of so many of the industries that we regulate.

The State Regulators have vast amounts of experience. We, just this year, the Oklahoma Corporation Commission held over 30,000 hearings. We issued over 10,000 orders, and more than 6,500 of those orders involve the oil and gas industry.

So in one year, we had 6,500 cases worth of experience in regulating the oil and gas industry.

And then you multiply that times the fact that we have a regulator on our Commission who's been there for 24 years. And you can see the vast experience that we bring.

The other thing that Oklahoma Regulators know and understand is that we've been fracking wells since 1948. And I think you can drink our water and you can breathe our air. We've been regulating this industry since the early 1900s, and we have, right now, over 190,000 active wells in Oklahoma.

So the Corporation Commission has vast experience in regulating the oil and gas industry. We have a lot of expertise. And I believe, also, we're able to recognize that every individual is different, every State is different, as is every geological formation. So what fits in Pennsylvania doesn't fit in Oklahoma. One size does not fit all when it comes to regulation of this kind of an industry. And, as a State Regulator, I get to take into consideration what my industry in Oklahoma needs.

Secondly, I want to talk to you a little bit about how we did a different approach with regard to the disclosure of hydraulic

fracking chemicals. There was a big push—I'm sure you've seen it in the news, about how bad hydraulic fracking is and how concerned people were about the chemicals that were in hydraulic fracturing, the process.

So we, in Oklahoma, decided to be a leader in this area. Our industry came together, and almost 100 percent of the industry agreed that we should disclose, even if the industry didn't believe it was going to make people safer, they felt like it was going to give the perception of making people feel safer. So they were willing to come to the table and talk to us.

As we worked on a rule for how we were going to disclose these chemicals, we found out that small companies and large companies had different needs. But we all wanted to reach the same goal, making sure that Oklahoma was protected.

So instead of having a one-size-fits-all kind of rule, what we did was we enacted a rule that allowed this disclosure through two different methods, and recognizing that a small business guy can't afford the additional time and research and training that it takes to maybe input all this data into a database with regard to the chemicals used, we, as a commission, took that responsibility on ourselves.

So we gave two different avenues by which you can report these chemicals, and we allowed companies to choose.

So we show in that rule that one size does not fit all, that Oklahoma needed a rule that would work for Oklahoma.

Lastly, I want to say something really quickly about the utility industry. I see the EPA pushing a rule that, as a regulator, is going to force me to enact \$2.1 billion dollars of increases on utility customers in Oklahoma. Are they going to get safer electricity? No. Are they going to get more electricity? No. Is it going to be more reliable? No.

What it does is it forces utilities to make decisions about assets before the time is ready to make decisions about assets. So I believe, if Oklahoma was given the choice of formulating a rule, we would formulate a rule that encourage what our natural resources are, that encourage the use of those natural resources, and that helps Oklahoma consumers.

Thank you for letting be here today.

Chairman ISSA. Thank you so much.

[Prepared statement of Ms. Douglas follows:]

TESTIMONY OF
PATRICE DOUGLAS
COMMISSIONER
OKLAHOMA CORPORATION COMMISSION
BEFORE THE
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

Hearing Entitled, "America's Energy Future, Part 1: A Review of Unnecessary and Burdensome Regulations"

Friday, July 13, 2012

Thank you for the opportunity to testify today. I appreciate your interest in hearing the perspective of a state regulator regarding regulations that hinder America's energy independence.

I want to personally thank the Committee for focusing on this topic of national importance, and for holding this hearing in Oklahoma, a leader in energy production. As a state regulator, former mayor, banker and lawyer, I know first-hand the fine line between a regulatory environment that fosters responsible growth, and one that destroys it. It is not only important to identify specific regulations that hinder, rather than help; it is also vital that we identify and correct the systemic problems and mistaken approaches that give rise to such regulations. Without a systemic approach, any unnecessary or harmful regulation will quickly be replaced by another.

The Oklahoma Corporation Commission has broad regulatory responsibility when it comes to energy. This includes the oil and natural gas industry, electric and natural gas utilities, pipelines, and distribution systems for motor fuels. In 2011, the Oklahoma Corporation Commission held more than 30,000 hearings and issued more than 10,000 orders – more than 6500 of these related to the oil and gas industry.

Oklahoma is an energy state. We are the nation's fourth largest natural gas producer and the fifth largest oil producer. The latest study commissioned by the Oklahoma Energy Resources Board shows Oklahoma's oil and gas industry directly or indirectly accounts for some \$28 billion in state personal income, and more than 344,000 jobs. One out of every three dollars is directly or indirectly related to this industry – which equates to \$52 billion dollars of gross state product.

We are a leader in alternative energy, currently ranking eighth in the nation in commercial wind power production. When the "wind comes sweeping down the plain," we have turned it into energy.

From my perspective, the United States is at a crossroads when it comes to energy. One road offers steady progress toward energy independence. The other guarantees continued reliance on foreign energy. Needless or poorly-executed regulation puts us on a path to continued reliance of foreign energy.

In a well-balanced regulatory environment, America's energy industry is not doomed to extinction. New technology has unlocked oil and gas reserves that were once unreachable. The Energy Information Administration says that given America's new-found energy strength, within 8 years almost half of the oil we need for our nation will be produced in North America, and by 2035, OPEC's hold on North America will be completely broken.

But this promise of a bright energy future is endangered by a federal regulatory approach that too often appears to be based on arbitrary conclusions, political expediency, agenda setting, and misunderstanding. Of overwhelming concern is the mistaken belief that development of our oil and natural gas resources and environmental protection are mutually exclusive goals. It is this mistaken belief that leads to the conclusion that the federal government would be better at regulating, and should have the primary role in such regulation.

Oklahoma is proof that's not the case.

The Fraser Institute Global Petroleum Survey now ranks Oklahoma #1 worldwide for natural gas and oil exploration and production investments. This did not come about - as some may mistakenly think - as a result of weak or insufficient environmental regulation. Instead, the study specifically noted a "clear, consistent, and competitive" approach to regulation. However, another state dropped significantly due to "increased concerns about the cost of complying with state regulations, uncertainty over environmental regulations and administration of regulations." Clearly, needless regulation and its arbitrary application lead to lesser investment - a serious danger in this quivering economy.

Oklahoma's regulatory approach has fostered the growth of an industry vital to America's economy and national security, while also protecting our state's precious water and land. The basis for this successful effort is simple and goes to the heart of the "federal vs. state" debate: We live here. This is our home. We have a vested interest in both the economic and environmental health of our state.

Oklahoma's Corporation Commissioners have expertise and varied experience to bring to the table. Of the three Commissioners, one is a petroleum geologist and attorney, and another has over 20 years experience in regulation of the energy industry. As for my experience, I am an attorney, banker, and former mayor of Oklahoma's 6th largest city. Our staff offers more than 200 years of combined experience both in the regulation and actual operation of energy businesses, including oil and natural gas.

Oklahoma currently has about 190,000 oil and natural gas wells in most of our 77 counties. Before statehood, the first commercial oil well was completed in 1897. In Oklahoma, the industry has been fracturing wells since 1948. Clearly, the state regulatory process has worked, and continues to work. We continue to improve our processes. We aim to bring all stakeholders into our process, and to implement good regulatory practices that consider the health and safety of Oklahomans and protect Oklahoma's air and water.

Importantly, this knowledge and expertise is Oklahoma-based, making it possible to formulate policy and regulations that work best for Oklahoma. Each state is unique. In fact, each geological formation is unique. The “one size fits all” approach favored on the federal level can be counter-productive. At the same time, states can quickly share problems and possible solutions. An individual state can tailor solutions to its own needs. Lessons from law school taught me that this is the exact role envisioned by the founders of our nation – that states are the testing ground for new ideas and that we learn from our sister states.

When regulatory changes are needed, we – as state regulators - can move far more quickly than a federal bureaucracy. For example, it took two years for the Environmental Protection Agency to complete discussions on how to study hydraulic fracturing. In the same time, the State Review of Oil and Natural Gas Environmental Regulations, Inc. (STRONGER), comprised of state regulators, environmental organizations, and the energy industry, completed five state reviews of hydraulic fracturing regulations, and made recommendations that states, including Oklahoma, have implemented. As of May 31, 2012, this STRONGER review had been completed in 22 states, covering more than 90% of our onshore production. In follow-up reviews, most of the recommendations made by STRONGER had been implemented.

At a state level, we are directly accountable to Oklahomans. Oklahoma Corporation Commissioners are elected, and any citizen can directly contact us. We work to make the process as open as possible. Our rulemaking process is conducted in public, and we work hard to be sure all stakeholders are involved and that their knowledge and needs are integral to both the process and solution. To cover all 77 counties in Oklahoma, we have field inspectors to insure regulations are followed.

The benefits of a “state” approach was evidenced at a recent OCC rulemaking proceeding. It pertained to the development of Oklahoma’s public reporting system for the materials used in hydraulic fracturing. Part of our model involves the use of the Ground Water Protection Council’s ‘FracFocus’ web site for reporting, which is now being embraced by federal regulators as the way to go for reporting on drilling done on federal land. A second piece of the model allows the industry to report directly to our state commission. As commissioners, we recognized the value of a reporting system that meet the needs of our industry and our citizens. It is not a “one size fits all” approach.

During this rulemaking process, certain members of Oklahoma’s oil and gas industry expressed concerns about the cost of this new rule – specifically about the cost of additional training and new compliance deadlines. The industry was divided in its opinion. Continued communication and local meetings with OCC staff led to a rule that lessened the cost impact by phasing in the requirements, and by placing commission staff in a role to bear some of the burden. The resulting rule provided a solid middle ground which accomplishes the goal of making public the chemicals used in hydraulic fracturing fluids, while lessening the cost impact on Oklahoma companies.

While our approach might be unnecessary in a different state with less oil and gas production, it was important to Oklahoma. One size does not fit all.

Involvement betters a regulatory system. Working in partnership with the Oklahoma Corporation Commission, the Oklahoma Energy Resources Board – created by and funded with voluntary contributions from the oil and gas industry – has restored to productive use abandoned well sites. All of this is done without cost to the taxpayer.

Stakeholder involvement and openness in the process are key to avoiding the problem Senator Fred Thompson accurately observed - that “agencies sometimes lose sight of common sense as they create regulations.” As the two examples above show, state regulatory commissions like Oklahoma are able to inject local expertise into the process of rulemaking, and more able to respond quickly and efficiently to concerns of Oklahomans.

As for the argument that state regulatory bodies are “too intertwined” with the oil and gas industry to be effective at protecting our environment, I disagree. Our Oklahoma Constitution prohibits commissioners from having a financial interest in an oil and gas company. We take an oath to uphold our constitution. And as my example above shows, we do not always agree with the industry but instead make independent judgments as to how we can best uphold our constitutional and statutory duties of protecting Oklahoma’s natural resources as well as its economic resources.

This is not meant to suggest that Oklahoma and other states are perfect. We are not. We have and will continue to work in a positive way with the Environmental Protection Agency, and other federal agencies, on matters of mutual interest in which we can share our collective expertise. We seek ways to improve.

The issue is simply whether successful energy regulation is better suited to the state level, or the federal. In my opinion, the clear answer lies with the states. Instead of designating a “federal regulator,” states would be better served if we were able to have federal agencies as resources for information to help us.

When considering a regulation, with both private and public sector experience, I ask three questions: 1) What is the goal? 2) Is the goal something that is truly beneficial and necessary? 3) Will the regulation accomplish the goal in the least burdensome, most efficient way.”

Recently, I have questioned whether this litmus test was applied in the Environmental Protection Agency’s recent rules mandating so-called “green completion” techniques for oil and gas wells. The EPA states that their goal was “cost-effective regulations, required by the Clean Air Act, to reduce harmful air pollution from the oil and natural gas industry while allowing continued, responsible growth in U.S. oil and natural gas production.” To support this new mandate of “green completion,” the EPA argues that the new mandate will significantly improve air quality and will not be overly costly on businesses.

Oklahoma’s oil and gas industry – composed of both big and small companies - disagrees, pointing out some of the faulty assumptions made by the EPA to justify these additional mandates. First, the amount of harmful gases emitted during the initial stages of a well’s life is far less than estimated by the EPA. Oklahoma’s oil and gas industry estimates that the EPA missed the mark by as much as 1,400 percent. The faulty assumptions were pointed out to the

EPA, but were either ignored or dismissed.

Secondly, the EPA states that the costs of "green completion" are offset by the additional recovery of natural gas and other products that can be sold. Again, our Oklahoma companies disagree. Oklahoma companies estimate that the added cost to business could be as much as \$1 million per ton of harmful gas reduction. From a small business owner's and consumer's standpoint, these costs are huge and any benefit that may occur is small. The math simply does not work.

I am not suggesting that we encourage emissions that could harm Oklahoma's clean air. I simply believe we should review all the facts. Our largest oil and gas companies already use "green completion" methods in more than 90 percent of the wells drilled - and were doing so prior to the EPA's edict. Applying a "one size fits all" approach does not allow for critical evaluation and flexibility. For the smaller producers, the new rules may result in fewer wells drilled, translating to less production and fewer jobs. Further, the consumer could see higher energy prices as a result of the rules, with little or nothing in the way of direct benefit.

We also need to consider whether the application of the rule has unintended consequences. Too often, a rule that seeks a worthy goal is applied in an arbitrary way that is harmful, rather than helpful.

An example of this can be found in the EPA's regulation of conversions of vehicles to compressed natural gas (CNG).

There is no doubt that growth of CNG as a motor fuel is good for America, reducing our dependence on foreign oil, reducing emissions, and saving consumers at the pump. Since CNG is domestically produced, events in foreign lands -- such as Iran's recent "saber rattling" -- have no direct impact on CNG prices. In Oklahoma, CNG sells for less than half the price of a gallon of regular gasoline, and is a cornerstone of Governor Mary Fallin's energy plan.

The biggest barrier to increased CNG use in Oklahoma is availability of the product to the consumer and the cost of conversion. As Americans use more CNG, more facilities will be needed to meet this demand. The Oklahoma Corporation Commission recently approved a rebate plan to encourage the use of CNG, offering Oklahomans rebates for the purchase of a CNG-powered vehicle, conversion of a vehicle to CNG, and for the installation of a home refueling system.

But even with the rebate, the cost of conversion remains high. The reason is simple: the biggest component of the cost of CNG conversion is compliance with EPA regulations. The manufacturers of these conversion kits must go through a complex certification process that costs \$200,000 or more. Each certification applies only to a single engine type. Installers also must be certified, adding yet another layer of cost.

The EPA's justification of this rule is the Clean Air Act, most notably, that section which forbids the unauthorized tampering with a vehicle's emission controls. That rule was originally aimed at much dirtier fuels. Natural Gas is one of the cleanest transportation fuels available today.

While certification of CNG conversions is intended to promote health and safety, the rule as applied is slowing the growth of CNG. If left to the states, a new rule could be designed with the new fuel in mind. However, as currently drafted and applied, the rule is not meeting the intended goal, and is instead, thwarting the growth of an industry which supports economic development and clean air. Oklahoma's congressional delegation has repeatedly tried without success to streamline the regulations concerning CNG conversions.

The Oklahoma Corporation Commission is seeing a similar controversy over the EPA's regulations on regional haze issue. Oklahoma worked hard to develop a State Implementation Plan (SIP) to meet the regional haze standards. The SIP would have met those standards even sooner than that proposed by the EPA.

But it was rejected – at least partially because it would have left coal-burning plants in place longer than what the EPA deems desirable. Rather than allow for a more cost-effective transition that would accomplish the same goal, the EPA apparently prefers its own system – regardless of outcome. The result – a court battle which costs both the government and companies badly needed resources and the possibility of skyrocketing electric bills. If the court battle is resolved in favor of the EPA, Oklahoma's two largest electric providers could see as much as 2.1 billion dollars in costs to retrofit coal plants, without consideration of whether the plant is due for retirement in the near future. All of this would be funded on the backs of Oklahoma families and businesses.

Many federal regulations do not seem to change regardless of new data questioning their need. For example, the American Burying Beetle's status as an endangered species has not changed, in spite of evidence showing its population in Oklahoma is far greater and more wide-ranging than originally thought. This has resulted in needless expense and lost production for the state's oil and gas industry as it complies with requirements aimed at solving a problem that may not exist. It could also affect and slow the wind energy industry.

As we go forward, it is important to remember that regulations often affect more than one sector. Rules that affect one sector will likely have spillover effects in another. The wind energy sector is affected by regulations applied to the natural gas industry. The utility sector is affected by rules implemented in the coal sector, the natural gas sector, and the wind sector. One regulation can have a domino effect.

Norman Ralph Augustine observed that "Regulations grow at the same rate as weeds." The question that should be uppermost in the minds of regulators, lawmakers, and policy makers is whether that growth will produce a fruitful garden, or choke it off.

New language adopted by the Oklahoma Corporation Commission March 16, 2012

Oklahoma Administrative Code 165:10-3-10. Well completion operations

(b) **Chemical disclosure.** Within 60 days after the conclusion of hydraulic fracturing operations on an oil, gas, injection, disposal, or service well that is hydraulically fractured, the operator must submit information on the chemicals used in the hydraulic fracturing operation to the FracFocus Chemical Disclosure Registry or, alternatively, submit the information directly to the Commission. If the chemical disclosure information is submitted directly to the Commission under this subsection, the Commission will post such information on the FracFocus Chemical Disclosure Registry.

(1) The submission required by this subsection must include the following information:

- (A) the name of the operator;
- (B) the API number of the well;
- (C) the longitude and latitude of the surface location of the well;
- (D) the dates on which the hydraulic fracturing operation began and ended;
- (E) the total volume of base fluid used in the hydraulic fracturing operation;
- (F) the type of base fluid used;
- (G) the trade name, supplier, and general purpose of each chemical additive or other substance intentionally added to the base fluid; and
- (H) for each ingredient in any chemical additive or other substance intentionally added to the base fluid, the identity, Chemical Abstract Service (CAS) number, and maximum concentration. The maximum concentration for any ingredient must be presented as the percent by mass in the hydraulic fracturing fluid as a whole, and is not required to be presented as the percent by mass in any particular additive.

(2) For purposes of this subsection, the phrase "chemical additive or other substance intentionally added to the base fluid" refers to a substance knowingly and purposefully added to the base fluid and does not include trace amounts of impurities, incidental products of chemical reactions or processes, or constituents of natural materials.

(3) The operator is not responsible for inaccurate information provided to the operator by a vendor or service provider, but the operator is responsible for ensuring such information is corrected when any inaccuracy is discovered.

(4) If certain chemical information, such as the chemical identity, CAS number, and/or maximum concentration of an ingredient, is claimed in good faith to be entitled to protection as a trade secret under the Uniform Trade Secrets Act, 78 O.S. §§85-94, the submission to the FracFocus Chemical Disclosure Registry may note the proprietary nature of that chemical information instead of disclosing the protected information to the registry. The submission must include the name of the supplier, service company, operator, or other person asserting the claim that the chemical information is entitled to protection as a trade secret and provide the chemical family name or similar descriptor for the chemical if the chemical identity and CAS number are not disclosed. The Commission or the Director of the Oil and Gas Conservation Division may require the claimant to file with the Commission a written explanation in support of the claim.

(5) Nothing in this subsection restricts the Commission's ability to obtain chemical information under the provisions of OAC 165:10-1-6 or other applicable Commission rules.

(6) This subsection applies to:

(A) horizontal wells that are hydraulically fractured on or after January 1, 2013; and

(B) other wells that are hydraulically fractured on or after January 1, 2014.

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Oklahoma Ranked No.1 Worldwide for E&P Investments (Fraser Institute)

NGI's Daily Gas Price Index

27 June 2012

Oklahoma is better than OK after vaulting into the No. 1 position worldwide for natural gas and oil exploration and production (E&P) investments, according to the sixth annual Fraser Institute Global Petroleum Survey.

The state ranked first of 147 jurisdictions worldwide in the Canadian public policy think tank's survey, moving up from fourth place among 135 jurisdictions in 2011. Fraser tallied the responses of 623 petroleum industry executives and managers regarding barriers to upstream investments in various jurisdictions around the world based on tax rates, regulatory regimes, environmental regulations and security threats.

The exploration and development budgets of participating companies accounted for more than half of the annual spending on E&P among international oil companies, Fraser said.

The United States dominated the top 10 rankings, with Mississippi at No. 2, falling from the top spot in 2011. Texas moved into third place, up from fifth in 2011, while North Dakota rose to fourth place from 10th. New Mexico jumped to seventh from 41st a year ago; Kansas fell to eighth from third; and West Texas, which counted as a jurisdiction, fell to 10th from sixth place.

The Canadian province of Manitoba (fifth), the Netherlands (sixth), and Denmark (ninth) rounded out the global top 10.

Fraser senior economist Gerry Angevine, who coordinated the survey, credited the U.S. leaders with implementing "safe and sensible sensible petroleum development" regimes. "Their tax, regulatory and labor terms are clear, consistent and competitive. They are in a great position to attract and reap economic benefits from petroleum investment, including the development of shale gas and tight oil resources through the application of hydraulic fracking technology."

Ohio, which was ranked second for E&P investments a year ago, fell to 14th place in the latest tally, the "result of increased concerns about the cost of complying with state regulations, uncertainty over environmental regulations, and the interpretation and administration of regulations," the survey said.

Several U.S. states dramatically improved their scores from a year ago. California moved to 45th place from 91st a year ago, which at that time had been the lowest of any U.S. state, based on improved "fiscal terms, taxation, labor availability and regulatory issues." Year/year New Mexico vaulted from 41st place; Colorado moved to 16th from 53rd; and Pennsylvania rose to 34th from 65th. Alaska and New York were the worst-ranked U.S. states in this year's survey from a year ago, at 61st and 68th, respectively.

U.S. offshore-Gulf of Mexico, which had fallen to 60th in the 2011 ranking following the 2010 Macondo well blowout, improved to 26th in the latest ranking. "Respondents indicated that they are now less concerned about regulatory duplication and uncertainty in the Gulf of Mexico," the survey said.

Within Canada Saskatchewan fell to No. 2 among the provinces and territories after ranking as the top jurisdiction in 2011; Saskatchewan was ranked 13th overall from 11th a year ago. "While Saskatchewan outperformed Manitoba in some important areas (e.g., fiscal terms), Manitoba's improved scores on questions pertaining to taxation in general, the cost of regulatory compliance and uncertainty over environmental regulation propelled the province to the top of the Canadian rankings," according to the survey.

Alberta climbed to third from sixth in Canadian-only rankings; it climbed to 21st from 51st in Fraser's global rankings, mostly because of improved scores pertaining to the regulatory climate. "Two years ago Alberta ranked 60th in the world for oil and gas investment, the result of what the industry saw as an unexpected royalty grab by the provincial government," said Angevine. "Today investors say they are

less concerned about regulatory uncertainty, the cost of regulatory compliance, and regulatory duplication and inconsistency."

British Columbia was ranked the fifth most-attractive Canadian jurisdiction, up from eighth in 2011, while Newfoundland and Labrador dropped to sixth from fifth in the Canadian rankings. The Yukon, which was not ranked in 2011, finished seventh, the Northwest Territories rose to eighth from 10th, and Quebec's ranking remained at ninth. New Brunswick rounded out the Canadian list in the 10th spot.

The "10 least attractive jurisdictions are Bolivia, Venezuela, Iran, Russia-Eastern Siberia, Libya, Ecuador, Uzbekistan, Argentina-Santa Cruz, Iraq and Russia-other," the survey said. "Investors say they will continue to turn away from jurisdictions with onerous fiscal regimes, political instability, land claim disputes, and corruption," Angevine said. "Similarly, investors prefer to avoid jurisdictions with costly, time-consuming, and uncertain regulations."

The jurisdictions were assigned scores for each of 18 factors that affect investment decisions, and the scores were based on the proportion of negative responses received. The higher the proportion of negative responses for a jurisdiction, the higher were its perceived investment barriers and, therefore, the lower its ranking.

Chairman ISSA. Mr. McDonald.

STATEMENT OF MIKE MCDONALD

Mr. McDONALD. Chairman Issa, Congressman Lankford, Congressman Farenthold, I appreciate the opportunity to testify today.

I thank the Committee for its oversight of the Executive Branch Agencies and for investigating regulations that hamper the production of domestic crude oil and natural gas. These fossil fuels are critical to Oklahoma and the nation.

I am the co-owner of Triad Energy, Inc., a 31-year-old independent producer of crude oil and natural gas. I have 11 employees. I am the current President of the Domestic Energy Producers Alliance and immediate past Chairman of the Oklahoma Independent Petroleum Association.

This year, our company will drill 10 wells.

I have submitted my written testimony for the record and will take only a few moments to address key points.

First, we must understand that fossil fuel opponents follow a proven strategy to curb production of oil and natural gas, a strategy to wrap small businesses like mine with enough red tape to affect our mission to provide affordable U.S. energy.

These professional fossil fuel opponents did not rely on facts or science to justify their effort. So they resort to fear mongering. This strategy has been on grand display lately, especially on hydraulic fracture. The EPA's wrongful actions in Texas, Wyoming and Pennsylvania and the resignation of an EPA Regional Administrator, when he has, I quote, "crucified them," enforcement plan was exposed, showed the limits of Federal credibility when it comes to regulating oil and gas operations."

Regulators now admit that hydraulic fracturing is a safe and proven technology governed by effective State controls. But the Bureau of Land Management will press forward with costly, time-consuming and additional rules to regulate hydraulic fracturing on Federal and Tribal lands.

Flaws in a 40-year old Endangered Species Act allow fossil fuel opponents to slow energy development with species listings that make no sense and for which there is no recovery plan.

The EPA's new greenhouse gas reporting regime will cost our industry hundreds of millions of dollars annually. Every dollar that I must spend on compliance and paperwork is a dollar I cannot spend exploring for oil and gas.

In effect, these regulations are hidden taxes on my company. Compliance costs cannot be recovered because I do not have the ability to increase the price of my product. We are price takers, not price makers.

But the Agency merely reflects the President's anti-fossil fuel bias. Each of President Obama's four budgets has specifically targeted small producers like me. The President has proposed raising my taxes by repealing a tax provision, which has been the law of the land since 1913, that allows me to expense normal business costs, such as labor, fuel and supplies. And by preventing me and millions of royalty owners from coast to coast from depleting well assets as they decline, which has been on the books since 1926.

The impact of such tax proposals would be devastating for American energy independence. Without my ability to expense normal business costs, I will be forced to cut my drilling budget by at least 30 percent. That's less steel manufactured in Pennsylvania, fewer jobs to help our nation's economic recovery, less money in the pockets of my royalty owners and less revenue to Oklahoma and the U.S. Treasury.

And this is not a small impact. There are 18,000 independent producers like me operating in 32 states, who would also have to reduce their budget. We are not big oil. But, together, we independent producers drill 95 percent of all wells drilled in the U.S. and produce, roughly, 82 percent of U.S. natural gas production, and more than 54 percent of U.S. oil production.

And we pay a lot of taxes, royalties, in rent to Federal, State and Local Governments. In 2010, we generated \$131 billion for Federal and State coffers.

In Oklahoma, our industry is responsible for one out of every three dollars in gross state product. One out of every five dollars in personal income, and represents one out of every six jobs in our State. Since 2009, our industry has added nearly 12,000 jobs, with the average compensation of more than \$113,000 per job.

We are helping the U.S. economy recover, but we cannot create more jobs nor make America energy independent if our hands are tied by Federal red tape.

Thank you very much for allowing me to appear today. I look forward to any questions you may have.

[Prepared statement of Mr. McDonald follows:]

**Testimony of Mike McDonald
President and Co-owner, Triad Energy, Inc.**

**U.S. House of Representatives
Committee on Oversight & Government Reform
Oklahoma City Field Hearing**

**“America’s Energy Future, Part I: A Review of Unnecessary and Burdensome
Regulations”**

Friday, July 13, 2012

Chairman Issa, Ranking Member Cummings, members of the Committee, I appreciate the opportunity to testify today.

I would like to thank my Congressman, James Lankford, for his leadership to increase the domestic production of crude oil and natural gas. These fossil fuels are critical not just to Oklahoma, but also to the nation. America is blessed with an abundance of energy, but unnecessary federal regulation is hampering our ability to become truly energy independent.

I am the co-owner of Triad Energy, Inc., a 31-year-old independent producer of crude oil and natural gas. I have 11 employees. I am the current president of the Domestic Energy Producers Alliance and immediate past chairman of the Oklahoma Independent Petroleum Association. This year, I will drill 10 wells.

Like my peer independent producers, Triad Energy explores for new, domestic oil and natural gas reserves using modern finding, drilling, and producing techniques.

Today’s hearing is critical to understanding the impact federal regulations have on domestic oil and natural gas production and the limits of federal credibility when it comes to regulating exploration and production operations.

There are roughly 18,000 independent producers like me operating in 32 states. Although some are larger and well known, the average independent producer employs 11 full-time and three part-time employees. He or she has been in business for 26 years on average.¹

Together, we drill 95 percent of all U.S. wells and account for 68 percent of total U.S. production – roughly 82 percent of U.S. natural gas production and more than 54 percent of domestic oil production;

Onshore here in America, independents are responsible for:

- over 3 percent of the total U.S. workforce;
- more than 4 million American jobs;
- more than \$579 billion in total economic activity;
- 4 percent of U.S. GDP;²

In 2010, independent producers' employees paid \$30.7 billion in income, sales, and excise taxes. Our combined total federal, state, and local taxes, royalties and rents were \$69.1 billion. Our ecosystem of direct, indirect and induced jobs generated \$131 billion for federal and state coffers.³

Every \$1 million of upstream capital expenditure by independent producers results in \$1.1 million in total taxes, \$5.1 million in overall contribution to U.S. GDP, six direct jobs, and 33 total upstream jobs.⁴

Speaking specifically about Oklahoma, the oil and gas industry is our lifeblood. Our industry is responsible for one out of every three dollars in gross state product, one out of every five dollars in personal income, and represents one out of every six jobs in our state. Since 2009, our industry has added nearly 12,000 jobs with the average compensation in our industry being more than \$113,000 per job.⁵

America's economic recession would have been deeper and more painful without thousands of producers like Triad Energy and our commitment to high-skilled workers, good-paying blue-collar jobs, and American energy.

Like the committee, I am troubled by federal regulatory overreach and its impact on my company's ability to continue creating good jobs and to find and produce the U.S. oil and natural gas that is helping make America energy independent.

Thanks to technological breakthroughs in horizontal drilling and hydraulic fracturing the United States now imports less than 49 percent of its oil, down from 60 percent a few short years ago.

This success does not sit well with fossil fuel opponents. Without concern for the facts, they have become fear mongers to drive regulation and enforcement actions.

Their strategy is to create anxiety over oil and natural gas development; criticize state regulations as insufficient; demand that the regulatory process be federalized or that existing federal regulations be strengthened; use litigation when necessary to give the agencies an excuse to act; and then use the resulting regulatory process to slow development by increasing the costs of compliance in terms of both employee hours committed to the paperwork burden and actual dollars.

For instance, let's take hydraulic fracturing – the current bogeyman used by environmental activists to scare ordinary citizens, drive professional fundraising appeals, and motivate environmental extremists and powerful voting blocs that simply oppose fossil fuels.

Hydraulic fracturing is a technique used to provide a pathway for natural gas and oil trapped inside a rock into a producing well so that they can be brought to the surface. The earliest hydraulic fracturing jobs occurred in the late 1940s in Oklahoma and Kansas. The

technique has been continuously used and improved since that time. Generally, a solution that is 99.5 percent water and sand is pumped under extreme pressure into the rock. The pressure creates tiny fractures in the rock. The fluid is then pulled out of the rock while the sand remains behind to prop open the fractures and allow the oil and natural gas to flow into the wellbore.

More than 100,000 Oklahoma wells have been hydraulically fractured over the past 60 years without a single documented instance of contamination to ground water or drinking water.⁶

This is because state ground water regulations were developed long before hydraulic fracturing began and have proven more than sufficient in regulating the practice. Oklahoma's first commercial oil well was drilled in 1897, 10 years before statehood. The Oklahoma Corporation Commission was given responsibility for regulation of oil and gas production in Oklahoma in 1914. The Commission has exclusive state jurisdiction over all oil and gas industry activity in Oklahoma, including oversight and enforcement of rules aimed at pollution prevention and abatement and protecting the state's water supplies.⁷

Such state regulations established well construction standards including protective steel casing and cementing requirements. They were designed to protect ground water from contamination by oil and its produced water. These regulations have effectively prevented contamination of drinking water and ground water in more than a million instances where hydraulic fracturing has been used nationwide.⁸

Additionally, each phase of the well drilling and completion process already is federally regulated by the Clean Water Act; the Comprehensive Environmental Response, Compensation and Liability Act; the Emergency Planning and Community Right-to-Know Act; and by the Occupational Safety and Health Administration.

Despite these facts the Bureau of Land Management has proposed a new layer of costly, time-consuming and duplicative regulations for hydraulic fracturing on federal and tribal lands while simultaneously admitting that hydraulic fracturing is not a problem. That bears repeating – new rules for a procedure that already is sufficiently regulated by the states and that the Bureau says is NOT a problem. The Bureau says it does not anticipate adding staff nor lengthening its workweek to handle the increased agency workload. The regulation will result in unnecessary costs for businesses that operate on federal and tribal lands, longer delays for drilling permits, fewer jobs, and less revenue for the tribes and the U.S. Treasury.

The BLM rule comes on the heels of egregious EPA enforcement actions to frighten the public about hydraulic fracturing in Parker County, Texas, (EPA Region 6), Pavilion, Wy. (EPA Region 8) and Dimock, Penn. (EPA Region 3). In each case, the EPA ignored science and rushed to a conclusion that hydraulic fracturing had contaminated a water supply only to quietly reverse itself later.

In the case of Parker County, Texas, the EPA Region 6 Administrator decided that state and local officials had not taken sufficient action to investigate claims of contaminated drinking water. Without scientific basis for doing so, the EPA decided to blame reports of contamination on hydraulic fracturing, notified opponents of hydraulic fracturing that it intended to make news, ordered independent producer Range Resources to provide clean drinking water to local residents, engaged in a media campaign to frighten residents about the danger of a fire or explosion, imposed heavy financial penalties on Range Resources, and then promoted its ability to assess heavy penalties through news releases.⁹

Earlier this year, however, a judge found that one of the local residents alleging contamination had worked with environmental activists to deceive public officials and the

community about the threat. In March, EPA quietly withdrew its administrative order that alleged Range Resources had polluted the water and dropped its lawsuit against Range Resources.

Recently, the EPA Region 6 Administrator was forced to resign after a video of him surfaced wherein he detailed an enforcement strategy designed to “crucify” oil and gas producers and create fear within the industry.

However, regulatory overreach is not limited to hydraulic fracturing. As the Committee knows, the tactical application of the Endangered Species Act is one of the fastest ways for fossil fuel opponents to slow energy development and job creation. During the past four years, environmental activists have filed more than 500 lawsuits against the U.S. Fish and Wildlife Service in an effort to facilitate the listing of species as endangered under the Endangered Species Act.¹⁰

Typically, these activists overwhelm the Service with hundreds of proposed candidate listings so the Service cannot respond within the statutory timeline and then sue the Service. The Service then settles the lawsuit without examining the scientific evidence and taxpayers pay the costs associated with the environmental lawyers so the process can begin anew. Of the 1,391 animal and plant species listed only 20 have ever been removed from the list.¹¹

Several listed and candidate species, in particular the listed American Burying Beetle and the Lesser Prairie Chicken affect drilling operations in Oklahoma. To protect the beetle producers must hire consultants, who must put out survey traps containing carrion, file additional paperwork with USFWS, and slow drilling operations during the beetles’ active period.

The Committee will hear additional testimony on the beetle and the Lesser Prairie Chicken from another witness, but Oklahoma producers are now working with state wildlife

officials on common-sense practices to mitigate our impact on the Lesser Prairie Chicken – which is abundant enough across the border in Kansas to justify a hunting season.

One of the costliest regulations facing independent producers today is the EPA's new greenhouse gas reporting regimen. According to one fellow producer, the compliance software costs associated with the greenhouse gas reporting requirements under EPA's proposed New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) exceed \$227,000 plus \$54,000 in annual maintenance and updates. The total cost of monitoring equipment, capture devices, and reporting measures to meet EPA greenhouse gas reporting and reduction efforts will run into the hundreds of millions of dollars annually.

My company explored the possibility of meeting the EPA reporting mandate in-house, but the reporting system is so complicated and the jeopardy associated with getting it wrong so severe that we ultimately decided to outsource the work. This is an expense that adds no value to my company. I now cannot spend those dollars to pay a geologist, lease mineral assets, or hire a well service company to help me drill for oil and natural gas. In effect it is a hidden tax on our industry. The cost of compliance with the regulation cannot be recovered because we do not have the ability to increase the price of our product. We are "price takers" not "price makers".

Finally, there is only one elected office that is indistinguishable from the bureaucracy that serves it, and that is the office of the President of the United States. Despite words and photo ops to the contrary, the President's actions, and the actions of his executive agencies when it comes to regulatory expansion, clearly indicate the President's anti-fossil fuel bias.

Each of President Obama's four budgets has specifically targeted small producers like me. The President has proposed raising my taxes four times by preventing me from expensing

normal business costs (such as labor, fuel, and supplies) and by preventing me (and millions of royalty owners from coast to coast) from depreciating well assets as they decline.

The impact of these proposals would be devastating for American energy independence. Without my ability to expense normal business costs I would be forced to cut my drilling budget. I would drill at least three fewer wells. That's less steel manufactured in Pennsylvania, fewer jobs to help our nation's economic recovery, less money in the pockets of my royalty owners, and less revenue to Oklahoma and the U.S. Treasury.

I encourage the Committee to continue examining the impact of overzealous and unnecessary regulation on America's energy independence.

Thank you very much for allowing me to appear today. I look forward to any questions you may have.

¹ Independent Petroleum Association of America, 2012.

² IHS Global Insight, "The Economic Contribution of the Onshore Independent Oil and Natural Gas Producers to the U.S. Economy," April 2011.

³ Ibid.

⁴ Ibid.

⁵ Oklahoma Independent Petroleum Association, 2012.

⁶ Testimony of Jeff Cloud, Oklahoma Corporation Commission, U.S. Senate Committee on Environment & Public Works, April 12, 2011.

⁷ Ibid.

⁸ Testimony of the Independent Petroleum Association of America, U.S. House Committees on Agriculture and Natural Resources, July 8, 2011.

⁹ EPA, "EPA Region 6 Enforcement and Compliance Results for 2011," December 8, 2011.

¹⁰ Opening Statement of U.S. Rep. Doc Hastings, U.S. House Committee on Natural Resources, Hearing "Taxpayer-Funded Litigation: Benefiting Lawyers and Harming Species, Jobs, and Schools, June 19, 2012.

¹¹ Ibid.

Chairman ISSA. Ms. Horn?

STATEMENT OF PATRICIA D. HORN

Ms. HORN. Good morning, Chairman Issa, good morning Representative Lankford and Farenthold. It's so nice of you to be here in Oklahoma, and we so appreciate all the work that you do for us in Washington.

I'm here to speak on behalf of Oklahoma Gas and Electric, an electric utility headquartered in Oklahoma City. OG&E is the largest utility operating in Oklahoma with, approximately, 790,000 customers in 268 communities in Oklahoma and Western Arkansas.

If I could just brag for just a moment. In 2011, OG&E was named best in class for customer service by J.D. Powers and Associate. Later in 2011, OG&E and its members were named 2011 Utility of the Year in North America by Electric Light & Power Magazine. We're proud of those accomplishments.

My company and I appreciate the opportunity to come before you today and speak about the unnecessary and burdensome Federal Regulations that are affecting our industry. Our electric industry is the most capital intensive industry in the U.S. economy, a reality which necessitates that we have a multi-decade plan on the horizon.

But the recent suite of EPA rules affecting issues such as Regional Haze, visibility, maximum achievable controlled technology, best technology available for cooling water intake structures and disposal and handling of coal combustion residuals make cost effective, capital investment planning by utilities, such as ours, very difficult, extremely costly.

The required compliance that began with EPA's new rules effectively compels OG&E to make a premature and illogical choice about expensive capital investments that determine, long term, how we will generate electricity.

We are not faced with the situation where one alternative is costly and another is not. Rather, all of the compelled choices required by EPA's rules are expensive and are made more difficult due to their technical complexity and uncertainty.

To put the Regional Haze cost quandary that you heard something about this morning in perspective, the estimated capital cost of installing scrubbers on four of OG&E's five coal units, as ordered by the EPA in its Federal Implementation Plan, is over one billion dollars.

Chairman ISSA. Say that again.

Ms. HORN. It is over one billion dollars for our company alone. And that doesn't even include the O&N on the—that would be annual between \$70 and \$150 million.

On the other hand, the other choice faced by OG&E is if we replace its coal units with natural gas generation, we would face a capital cost of replacing, retiring and converting coal units baseload capacity and the related natural gas fuel costs. We estimate that that switch to natural gas would even be more expensive than installing scrubbers and also leave our generation fleet with no fuel diversity, something we talked about this morning that we feel is very important.

Both of these options involve unprecedented rate implications for our customers, and would commence, what we believe, an adverse ripple effect on our Oklahoma economy and the ability of our State to create jobs.

Aside from the cost implication, we are troubled by the justifications and the analysis that EPA provides for implementing these regulations, whether old regulations or new. EPA overrode a State implementation Plan for Regional Haze that was a product of intensive good faith negotiations with the entire range of Oklahoma interest. That said, achieved the visibility objectives at a fraction of the cost of the Federal Implementation Plan.

Similarly, EPA has also determined that Oklahoma should be included in the Cross-State Air Pollution rule, a rule that came out in late 2011 and included Oklahoma almost as an afterthought.

Based on what? Based on our air emissions affecting a county in Michigan that was in attainment status.

We are encouraged that the Federal Courts have issued stays in both the Regional Haze case and across state matters pending the considerations of those merits of our appeals. Until those legal processes reach an end, OG&E must face the possibility of eventually complying with these very extensive rules which threaten our ability to invest, create jobs and provide Oklahomans a cost-effective power for both their homes and their businesses.

But those are not our only regulatory threats. EPA is considering a proposed Clean Water Act rule that, in the name of protecting fish, bait fish and minnows, from impingement in attainment, would require us to incur millions of dollars in additional capital and operating costs to retrofit the water intake structures in our cooling water lakes at three of our facilities.

We have pointed out to the EPA that the Oklahoma Department of Wildlife Conservation ranks these lakes currently among the top fishing venues. And they have found no material adverse impact on the fishery resources of those lakes.

Why would anyone order us to spend tens of millions of dollars to reconfigure when there's no demonstrated harm to the fish in those lakes?

I could go on about the coal combustion residuals, as well. It offers the same story and concerns.

Finally, I'd like to note that, aside from the EPA's regulatory excesses, the energy sector is very concerned about the possible listing of the Lesser Prairie-Chicken, which you've heard today.

It would affect our wind farm developments, our electric transmission projects, our natural gas gathering and transportation pipelines. Those could be blocked or seriously delayed, which means that energy resources, jobs and beneficial economic activity associated with those projects would be in jeopardy.

Our written testimony describes the alternative ways of protecting the Lesser Prairie-Chicken that we are looking at, and we are working with numerous other Oklahoma agencies and companies to actively engage our state wildlife experts to do just that.

In all these matters, the EPA and the Federal agencies would be well served by an understanding of the implications and the affected interests prior to taking action. And to take a rational and harmonized course of action designed to minimize the impact to en-

ergy development, which is a critical economic engine for our State and for the nation.

Thank you for allowing me to be here to present my views.

Chairman ISSA. Thank you.

[Prepared statement of Ms. Horn follows:]

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Statement of Patricia D. Horn
Vice President, Governance and EH&S; Corporate Secretary
Oklahoma Gas and Electric Company

Hearing before the Oversight and Government Reform Committee

July 13, 2012

America's Energy Future Part I:
A Review of Unnecessary and Burdensome Regulations

My name is Patricia D. Horn. I am Vice President of Governance and Environmental Health & Safety and Corporate Secretary for Oklahoma Gas and Electric Company ("OG&E"), an electric utility headquartered in Oklahoma City. A wholly-owned subsidiary of OGE Energy Corp. ("OGE"), OG&E serves approximately 790,000 customers in 268 communities in Oklahoma and western Arkansas. Our fossil-fuel generation capacity mix is approximately 52% natural gas-fired, 38% coal-fired, and we currently have wind power capacity of 780 megawatts or roughly 10% of our total generating capacity.

My company and I appreciate the opportunity to come before you today to provide an overview of the regulatory climate and how it affects our generation of electricity and its effect upon our customers. My statement will try to provide you with some insight into the challenges OG&E and our corporate affiliates face in light of a myriad of recently proposed or finalized federal rules, including the Environmental Protection Agency's action to implement the Regional Haze rule in Oklahoma, the Cross State Air Pollution Rule, the Hazardous Air Pollution rule (also known as "Utility MACT"), and the Interior Department's proposed listings under the Endangered Species Act. However, before I begin talking about the EPA rules and their challenges to us, I believe it is appropriate to provide some background about OG&E.

I. Who is OG&E?

As you know, all utilities are not alike. They vary in many important ways: in terms of size, weather demands, financial resources, generation mix, renewable resources, and of course their state regulatory and political environment in which they operate. While the largest electric utility in Oklahoma, OG&E is considered a medium to small sized investor owned utility and lacks the resources possessed by other larger utilities.

As a state-regulated utility, OG&E bears the responsibility of its "obligation to serve" all electricity customers in its service area and we take this obligation seriously. This obligation to serve carries with it the requirement to provide reliable electric power at a reasonable cost to our customers. But beyond that, OG&E strongly believes that it is incumbent on us as a good corporate citizen to produce reliable and low cost power for our customers in an environmentally responsible manner.

A perfect example of our commitment to customers is our "2020 Goal." In 2007, OGE's CEO, Pete Delaney, challenged us with a goal of reaching the year 2020 without adding any new fossil-fuel generation. This was and is a significant endeavor because OG&E continues to experience steady growth in customer demand. OG&E's 2020 Goal represented a radical departure from the electric industry business model that served customers well since at least the 1930s. Simply stated, building power plants to serve current and anticipated load growth made certain sense in meeting demands for electricity --- especially when fuel was cheaper and there were more plentiful construction resources and relatively inexpensive solutions to meet environmental requirements. Today, utilities cannot simply build power plants to meet growing demand. OG&E's leadership recognized in 2007 that continuation of the old approach to simply build additional generation capacity is not in the best interest of our customers, our shareowners and the local economies that we serve.

First and foremost, the 2020 Goal is premised on continued commitment to investment in the day to day business of providing safe and reliable electric service, improving our operational efficiencies and engaging our customers. The 2020 Goal focuses on: increased energy efficiency programs; increased demand response through

new and expanded programs that are enabled by new smart meter technology; adding renewable wind energy; and building new transmission to bolster reliability and to support wind power. Over time, we've recognized that achieving the goal can be enhanced by a number of other initiatives, including consideration of the retirement or replacement of existing generation, changing our wholesale contract business and smart grid deployment.

OG&E's commitment to customers and its innovative thinking are paying off and have been duly recognized by significant industry observers. In 2011, OG&E was named best in class by J.D. Power and Associates for customer satisfaction. Also, I am very proud to report that OG&E was named by Electric Light and Power magazine as the 2011 Utility of the Year in North America.

A. OG&E and Wind Power:

I can report firsthand to you that the interest in environmentally friendly energy and energy conservation-oriented consumer behavior certainly exists in Oklahoma. In the western part of our state, wind farms seem to be popping up everywhere. Oklahoma has gone from virtually no wind power just a few years ago to currently being ranked 8th nationally in existing installed wind power generation capacity. By the end of 2011, OG&E had increased its wind generation to 780 MW, which represents approximately 10% of our generation portfolio. This wind energy replaces and complements fossil fuel generation and will result in more than \$1 billion in estimated customer savings over the life of those facilities. OG&E has also constructed new transmission lines between western and central Oklahoma to allow renewable power being developed in sparsely populated western Oklahoma to reach our customers and others in more heavily populated parts of our service areas in Oklahoma and Arkansas. And I might emphasize that all of these achievements in developing renewable generation are occurring without any state or federal mandates.

B. OG&E and Demand Side Management and Efficiency:

In addition to wind power, we are renewing our interest and focus on demand side management ("DSM") programs aimed at reducing energy use. OG&E has been

focusing on energy efficiency and demand response to achieve reductions in both demand and our customers' overall energy costs. OG&E has undertaken efforts to expand its traditional demand response programs and has received approval to expand its energy efficiency programs in both the Oklahoma and Arkansas jurisdictions. With additional customer education, better technology such as smart meters, and other programs, we believe that there are growing opportunities for even greater energy savings.

In 2010, OG&E began implementing its Smart Grid program, and today is viewed as a national leader in deployment of this technology. Smart Grid is critical to the success of the DSM effort and a reduction in future customer costs associated with the avoidance of additional generation capacity. In 2007, OG&E began evaluating intelligent digital meters and advanced metering infrastructure. After a successful demonstration of Smart Grid technology in northwest Oklahoma City during 2008, OG&E decided to expand Smart Grid by deploying the technology in the Norman, Oklahoma service area. The results of that pilot program convinced us of the merits of expanding our Smart Grid project system-wide. On July 1, 2010, the Oklahoma Corporation Commission issued an order approving the Company's plan to move forward with deployment of Smart Grid in Oklahoma.¹ This past spring, the Arkansas Public Service Commission authorized OG&E to implement Smart Grid in Arkansas. As of the end of June 2012, I am pleased to report that OG&E has over 654,000 smart meters installed or just over 80% of the system-wide deployment of smart meters. With the installation of the smart meter technology, the Company is now able to propose additional tariff options, along with an enhanced suite of on-line customer tools, to further empower customers to manage their electric bills. The early results from our Smart Grid project have been very encouraging. Based on two consumer behavior studies, residential customers are now shifting as much as 1.9 kW of demand (per participant) from the peak near 5:00 PM to off system peak during the summer. These same customers saved around \$200 on average for the year.

OG&E's goal is to reduce its capacity needs by approximately 500 MW by 2020 through its DSM and energy efficiency programs.

¹ OG&E's system-wide Smart Grid program was financed on a cost share basis with OG&E and its customers paying for 64.5% and the balance defrayed through a \$130 million federal grant from DOE, which was made subject to the finalization of all administrative and contractual requirements, including completion of deployment by December, 2012. OG&E was the only investor-owned electric utility in Oklahoma and Arkansas that received a DOE grant.

C. OG&E and Fuel:

OG&E's electricity rates are below the national average. OG&E's low electricity rates are largely attributable to the favorable cost implications of having a diverse generation portfolio. As stated above, OG&E's current generation capacity mix is approximately 52% natural gas-fired, 38% coal-fired, 10% wind power. This diverse fuel mix allows OG&E to maintain electricity rates below the national average because it shields customers from being too vulnerable to the price of any one particular fuel. For example, natural gas prices have recently dropped to very low levels. However, there was a time as recently as early 2010 when natural gas prices spiked to higher than expected levels. OG&E's diverse generation mix enabled OG&E's electricity rates to remain stable during this volatile period when the market forces created a wide swing in natural gas prices.

Coal is both abundant domestically and historically cheaper than natural gas. Over the past five years, OG&E's average delivered price of coal has been \$1.54 (\$/MMBtu), while the average delivered price of natural gas has been \$5.51 (\$/MMBtu). In the past few months, OG&E's delivered price of natural gas has dropped, reaching approximately \$3.82 (\$/MMBtu) in January 2012 and is still above the historic price of coal. Having a diverse fuel mix has allowed customers to benefit from this differential in fuel costs. While approximately 38 percent of our generation capacity is from coal-fired generating units, those coal units have produced approximately 60 percent of the energy, with natural gas typically being used for the balance of baseload generation and for peaking demand. We use low sulfur Powder River Basin coal which has kept both our emissions and our electricity rates to our customers low, which in turn has contributed very significantly to Oklahoma's economic viability and competitiveness. As a major gas producing state, Oklahoma's economy, and the OGE businesses benefit from the exploration and production of natural gas locally. However, if natural gas prices rise, the price advantage of coal for use in generating electricity grows. At the same time, continued use of coal brings with it significant challenges with regard to compliance with pending EPA rules.

II. Specific Challenges from Pending EPA Rules

As discussed above, OG&E has an obligation to serve and provides reliable electric power at a reasonable cost to our customers in an environmentally responsible manner. OG&E's efforts to increase wind farm development and an increased emphasis on demand side management and energy efficiency programs are examples of OG&E's commitment to reducing reliance on fossil fuel generation and reducing costs to customers. However, the recent suite of EPA rules constitutes a challenge to OG&E's efforts because they effectively force OG&E to make capital intensive additions in the very near term that determine long term choices regarding its generation fleet.

With regard to meeting Regional Haze SO₂ emission limits, OG&E may be forced to choose whether to (i) install costly scrubber technology on its coal plants (all of which are still only halfway through their useful lives) or (ii) discontinue coal generation from units that still have much life in them and move closer to a primarily all natural gas fleet. I emphasize that this is not a set of choices in which one alternative is costly and the other is not. Each of these options alone is extremely expensive for OG&E and ultimately our customers. On top of these requirements for Regional Haze SO₂ issues, other EPA rules are further complicating the decision by creating new emission limits for NO_x, acid gases, particulate matter, and mercury.

To put the cost quandary into perspective, OG&E hired leading industry consultants to provide cost estimates of installing scrubbers on four of OG&E's five coal units. The estimated capital cost is over \$1 billion with an increase to annual O&M of between \$70 and \$150 million. This would translate into the largest rate increase in the history of the company. In July 2011, OG&E looked at the customer impact of a scenario where dry scrubbers, low NO_x burners and Activated Carbon Injection are all installed on OG&E's five coal units. The analysis showed that residential customers could see a 23 percent increase on the average customer's monthly bill (*i.e.*, an increase from \$100 to \$123 in the monthly bill). Also, the average monthly bill for a large industrial customer could increase by as much as \$50,000 (which represents a 26 percent increase from the current average monthly bill).

If OG&E replaced its five coal units with natural gas generation, OG&E would face the capital costs of retiring, converting or replacing the coal units' baseload capacity and the related fuel costs stemming from more natural gas being purchased and burned. In July 2011, OG&E also looked at the customer impact of a scenario where OG&E replaced its five coal units with natural gas generation. Using our January 2011 forecast of natural gas prices, OG&E estimated that such a switch to natural gas would be even more expensive for customers than installation of five scrubbers and would lead to greater vulnerability to the price volatility of natural gas. The analysis showed that residential customers could see a 37 percent increase on the average customer's monthly bill (*i.e.*, an increase from \$100 to \$137 in the monthly bill). Also, the average monthly bill for a large industrial customer could increase by as much as \$100,000 per month (which represents a 56 percent increase from the average monthly bill).

As you can readily see, either of these options involves serious rate shock for customers and would commence an adverse ripple effect on our Oklahoma economy. In our view, it is incumbent on us to work with the Oklahoma Department of Environmental Quality ("DEQ") and the EPA to develop a more common sense solution that avoids such rate shock for customers, while achieving the objectives of the major EPA rules.

A. Regional Haze Rule:

On July 6, 2005, the EPA issued its final Regional Haze Rule. This Rule requires that states submit state implementation plans ("SIPs") to address regional haze visibility impairment in 156 federally-protected parks and wilderness areas. Among other things, the EPA regulations require states over approximately a 50 year period to eliminate man-made impacts on visibility in federally protected parks and wilderness areas around the United States.

The Regional Haze Rule includes a requirement that certain large stationary sources install Best Available Retrofit Technology ("BART") to control regulated emissions such as SO₂ and NO_x. Sources that may be required to install BART are those sources: (i) that were put in place between August 7, 1962 and August 7, 1977; (ii) that have the potential to emit 250 tons or more of a visibility-impairing air pollutant; and (iii)

whose operations fall within one or more of twenty-six listed categories, including electric power generation. OG&E has several generating units that are “BART-eligible” under the regional haze regulations, including four coal-fired units and three gas-fired units.

In January 2010, OG&E and the DEQ entered into a regional haze agreement to address the requirement of BART at OG&E’s Sooners, Muskogee and Seminole Generating Stations and finalized the Oklahoma SIP. Our state’s solution was to require OG&E to continue to burn low sulfur coal because the installation of scrubbers was not cost effective for controlling SO₂ emissions. In the Oklahoma SIP, the DEQ recognized that the cost for dry scrubbers is too high and the benefit too low. If EPA disagreed with that BART determination, the State SIP’s solution would give OG&E the option to either (i) achieve SO₂ emission reductions consistent with the installation of 4 scrubbers by 2018; or (ii) achieve SO₂ emission reductions consistent with 2 scrubbers and 2 complete conversions to natural gas by 2026. This flexible Oklahoma solution provided optionality to OG&E, minimized the impact on customers and the state economy, and retained increased natural gas use as an alternative. Most importantly, this solution met the visibility improvement goals of the Regional Haze rule.

In December 2011, EPA disapproved the portions of Oklahoma’s regional haze SIP that address BART for SO₂ and issued a Federal Implementation Plan (“FIP”) that directs OG&E to meet SO₂ emission limits within 5 years by either installing scrubbers on four coal units or switching that generation capacity to natural gas.

The portion of the Oklahoma SIP approved by the EPA involves installation of low NO_x burners on four OG&E coal-fired units and three OG&E gas-fired units to control the NO_x emissions. OG&E is in the process of moving forward with such installations, but we do so recognizing a considerable element of uncertainty since it remains to be seen whether the permitting process for such retrofits or other coming rules could implicate even greater controls. Also, the timing for the installation of the low NO_x burners is five years under Regional Haze, while other rules may require acceleration on the timeline.

OG&E is studying the feasibility and cost-effectiveness of other potential ways to achieve the mandated SO₂ emission reductions under the Regional Haze FIP, including

installation of Dry Sorbent Injection (“DSI”) on its coal units. Since this is relatively new technology and is not currently being used on a widespread basis on larger units, a substantial amount of testing will be required. Based on current information, OG&E believes that DSI may be significantly less expensive to install and operate than scrubbers. OG&E continues to evaluate this DSI technology, but significant operational questions remain unanswered. It could be that DSI leads to additional controls that eliminate any cost savings, but it is not clear at this point. OG&E needs additional time to evaluate whether a lower cost alternative such as DSI would be effective, but the compliance deadlines from EPA and the lead-time needed to procure, permit and construct scrubbers significantly hampers our ability to consider alternative solutions that may prove to be reasonable.

In February 2012, the State of Oklahoma, OG&E and other parties filed an appeal with the Federal Court of Appeals for the 10th Circuit challenging the EPA’s FIP. In addition, in early March, the State and OG&E requested a stay of the FIP while the appeal was pending. In a most relevant and recent development, on June 22, 2012, the Court of Appeals issued an order finding that the appellants had satisfied the requirements for a stay and did indeed issue a stay of the EPA FIP pending the resolution of the appeal. This stay decision brings a sense of optimism that eventually the court will overturn EPA’s FIP and create a basis for implementing the State SIP or a regime more in keeping with the intent of the State SIP’s approach. Until that legal process reaches its culmination, though, OG&E must face the possibility of eventually complying with this very expensive rule.

B. Maximum Achievable Control Technology/HAPS (MACT):

On December 16, 2011, the EPA signed the Maximum Achievable Control Technology (MACT) regulations governing emissions of certain hazardous air pollutants from electric generating units. The final rule includes numerical standards for particulate matter (as a surrogate for toxic metals), hydrogen chloride and mercury emissions from coal-fired boilers. Compliance is required within three years after the April 2012 effective date of the rule with a possibility of a one year extension. This final rule has

also been appealed by the industry. OG&E cannot predict the outcome of any such appeals and is evaluating the regulations and what emission controls would be necessary to meet the standards and the associated costs.

OG&E believes that both scrubbers and DSI could be viable technologies for meeting the hydrogen chloride limits contained in the MACT rule. However, as stated above, additional testing is required for DSI and the three-year clock (with possible one additional year extension of the compliance deadline) essentially limits OG&E's ability to fully understand the DSI technology before making a decision on whether or not to commit to that technology for compliance. Also, the cost of DSI varies widely depending on whether DSI leads to other emission level increases that would require additional and expensive control technology. In addition to DSI to meet the MACT requirements, OG&E believes that Activated Carbon Injection ("ACT") is necessary to meet the mercury limits contained in the rule. ACT would cost approximately \$20 million to install on our five coal-fired units, plus significant annual O&M costs. However, OG&E is hesitant to invest those millions on its coal units if other regulations such as those identified elsewhere in my testimony are going to push us toward retirement or conversion of those units in the near future.

C. Cross State Air Pollution Rule: CSAPR

On July 7, 2011, the EPA finalized its Cross-State Air Pollution Rule ("CSAPR") to replace the former Clean Air Interstate Rule that was remanded by a Federal court as a result of legal challenges. The final rule requires 27 states to reduce power plant emissions that contribute to ozone and particulate matter pollution in other states. On December 27, 2011, the EPA published a supplemental rule which makes six additional states, including Oklahoma, subject to the Cross-State Air Pollution Rule for NOx emissions during the ozone-season from May 1 through September 30. Under the rule, OG&E would be required to reduce ozone-season NOx emissions from its electrical generating units within the state beginning in 2012. The Cross-State Air Pollution Rule is currently being challenged in court by numerous states (including Oklahoma) and power generators. On December 30, 2011, the U.S. Court of Appeals issued a stay of the rule and later stated that the supplemental rule applicable to Oklahoma is included in the

stay of the main CSAPR rule. The argument on the merits of the main CSAPR rule was heard by the court in April 2012.

OG&E has also appealed the inclusion of Oklahoma in the supplemental CSAPR rule and this appeal process is currently on hold pending the decision of the court on the main CSAPR rule. Specifically, the basis for OG&E's inclusion in the supplemental rule is based on air emission modeling that suggests Oklahoma sources impact a single county in Michigan that actually is currently in attainment with the ambient air quality standards.

OG&E cannot predict the outcome of such challenges and is evaluating what emission controls would be necessary to meet the proposed standards, our ability to comply with the standards in the timeframe proposed by the EPA and the associated costs, which could be significant.

If the CSAPR rules stand, OG&E believes that compliance would be enormously difficult within the timelines proposed by EPA. Compliance would likely require accelerating the installation of low NOx burners and uneconomic dispatch of our generating units during peak periods coupled with reliance on large volumes of purchased power or purchased allowances (assuming that allowances are available for purchase).

D. Other Regulatory Issues

In addition, OG&E is studying the impacts on the company and our customers of various other pending EPA regulations, including changes to the National Ambient Air Quality Standards and potential Greenhouse Gas regulations. Moreover, there a number of non-air emission regulations that complicate the decisions discussed above.

Section 316(b) of the Clean Water Act:

Section 316(b) of the Federal Clean Water Act requires that the location, design, construction and capacity of cooling water intake structures reflect the "best available technology" for minimizing their adverse environmental impact via the impingement and entrainment of aquatic organisms. Based on preliminary studies performed at OG&E's generating stations, it is our opinion that our cooling water intake structures are *not* having an adverse impact to the fishery populations of the water bodies from which

cooling water is taken. In fact, two of these water bodies---Seminole and Sooner Reservoirs---support robust, healthy fishery populations which consistently meet or exceed state-established lake management goals and are considered two of the premier sport fishery lakes in the State of Oklahoma. In March 2011, the EPA proposed rules to implement Section 316(b) and, on August 18, 2011, OG&E filed comments with the EPA on the proposed rules. In June 2012, EPA published a Notice of Data Availability (NODA) in which it is seeking additional comment on a number of impingement mortality-related issues based on new information received during the initial public comment period. OG&E filed comments regarding the NODA on July 11, 2012. OG&E anticipates that the proposed rules will be finalized later in 2012. In the interim, the State of Oklahoma requires OG&E to implement best management practices related to the operation and maintenance of its existing cooling water intake structures as a condition of renewing its discharge permits. Once the EPA promulgates the final rules, OG&E may incur additional capital and/or operating costs to comply with them. The costs of complying with the final water intake standards are not currently determinable, but could be significant. When these rules are finalized, OG&E will again have to choose whether to invest new capital in existing units whose lives and continued use could be significantly affected by other rules.

Coal Ash:

Another example of a proposed EPA rule is the proposed rule entitled "Hazardous Waste Management System: Identification and Listing of Special Wastes; Disposal of Coal Combustion Residuals ["CCRs"] From Electric Utilities." The Agency is seeking to establish federal regulations designed specifically for the management of CCRs generated by the electric power sector (*i.e.*, electric utilities and independent power producers) that utilize coal to generate electricity. The two primary regulatory options on which the Agency seeks comment include (i) the regulation of CCRs destined for disposal in landfills or surface impoundments as a listed "special waste" under the hazardous waste regulations of Subtitle C of the Resource Conservation and Recovery Act ("RCRA") and (ii) the regulation of CCRs destined for disposal in landfills or surface impoundments as a non-hazardous solid waste under Subtitle D of RCRA. The Agency is also seeking

comment regarding a number of variants under each option, including the Subtitle D "Prime" option which is identical to the Subtitle D option except that it provides for existing CCR surface impoundments to operate for the remainder of their useful lives without having to retrofit with composite liners and leachate collection systems. On November 19, 2010, OG&E submitted comments on the proposed rule. OG&E is currently evaluating how this proposed rule, if finalized, would impact OG&E's existing and future units.

Possible Listing of Lesser Prairie Chicken under Endangered Species Act:

OGE takes its stewardship toward wildlife species very seriously and, as reflected in our management of the fishery resources in our cooling ponds, we enjoy a well-earned good reputation for our efforts to protect Oklahoma's wildlife resources in conducting our energy businesses. In a nutshell, OGE believes that good science and good research will determine the best results for the species and the economy in our state. However, our prior experience with the listing of a species for protection under the Endangered Species Act ("ESA") demonstrated that the evaluation process employed by the Fish and Wildlife Service ("FWS") can be burdensome for impacted parties and that the lengthy review can create substantial business interruption. Several years ago, OGE's midstream pipeline business known as Enogex was unable to proceed with the construction of a pipeline enabling our pipeline customers from getting their natural gas to market due to difficulties associated with concerns for the habitat of another species, the American Burying Beetle. The problem was so acute that we had to cease construction of the pipeline with the result being that the Oklahoma producers had to shut in their wells while we negotiated the ESA process which entailed completion of a biological opinion and an assessment of the species in the area of construction. Given this experience, we have been actively engaged in the current discussion relating to the possible listing of the Lesser Prairie Chicken (LPC) under the ESA since listing that species could have similar significant impact on energy production and transportation in Oklahoma and the surrounding region that is linked to Oklahoma's energy infrastructure.

The scope and immediacy of the potential for interruption of our company's energy development is readily evident. For example, whenever Enogex builds additional

gas gathering or transmission lines in western Oklahoma we anticipate facing the same unfortunate experience with the LPC as we did with the American Burying Beetle. Similarly, our electric utility, OG&E, is currently building and operating electric transmission infrastructure in western and northwestern Oklahoma, some of which area is habitat to the LPC. Over 300 miles of high voltage power lines have been authorized for construction by the Southwest Power Pool. That transmission infrastructure provides Oklahoma customers and customers in the surrounding states with access to Oklahoma's vast wind power potential. The transmission also increases the overall reliability of the electric grid both in western Oklahoma and overall, and helps meet Oklahoma's renewable energy goal of 15%. The investment in this transmission infrastructure creates new economic opportunity for this rural part of the state, providing the many jobs generated by the construction and operation of these lines, and also enables rural communities to realize the income generated by leasing their property for wind farm development. The transmission investment also creates significant property tax revenues that materially benefit the schools and local communities in rural Oklahoma. We are concerned that the listing of the LPC could have serious adverse implications for all this beneficial economic activity.

OGE recognizes that FWS's protection of species under the ESA is an important job. To help in that effort OG&E has worked collaboratively with our state wildlife agency to implement a plan that provides for the protection, preservation and restoration of the LPC and its habitat while allowing us to continue to accomplish our important energy business for our customers, the state and the region. In particular, OG&E has partnered with the Oklahoma Department of Wildlife Conservation ("ODWC")—who we believe are the true experts on species protection in our state—and we provided \$8.65 million in funding for the ODWC's activities regarding the LPC. That OG&E funding, plus matching contributions from others, helped fund land acquisitions which expanded the Packsaddle and Beaver River Wildlife Management Areas (total 10,677 acres), implementation of conservation management plans, the establishment of 11,599 acres of conservation easements, the cost of conservation personnel at the ODWC, the development of an Oklahoma regional LPC conservation plan in association with ODWC, funding for survey research, and a process for selecting transmission routes that

avoid or minimize impact on the LPC. Indeed, at a town hall meeting last year organized by Senator Inhofe and attended by FWS Director Dan Ashe, OGE outlined our concerns and the substantial affirmative action that we and others have been taking in Oklahoma to obviate the need for a listing of the LPC. More recently, we are actively participating with the five-state LPC Interstate Working Group's ongoing work to update the Lesser Prairie Chicken Critical Habitat Assessment Tool (CHAT) and develop a range-wide management plan for the species. We strongly believe that with this kind of collaboration with the private sector, the state and federal agencies can provide appropriate protections for the LPC while avoiding the legal uncertainty and unintended consequences that can cripple the energy sector and deny Oklahomans the many benefits of energy development in our state. In our view, a listing of the LPC is unnecessary and counter-productive to the best interests of the species and to the economies of western Oklahoma, the rest of our state and to the broader region that depends on Oklahoma's energy development.

III. OG&E's Assessment of the regulatory climate

On January 18, 2011, President Obama issued Executive Order 13563. OG&E was encouraged that the direction being given to EPA and the other federal agencies in that Executive Order would have a welcome, therapeutic impact in improving our ability to meet the legitimate environmental objectives that Oklahomans and Americans in general desire. But, when we observe the regulatory landscape that we are facing in 2012 in terms of the gamut of EPA's rulemakings, OG&E does not see EPA successfully balancing the Executive Order's laudable objectives of protecting public health and safety and environmental quality on the one hand with promotion of economic growth, innovation, competitiveness and job creation. OG&E does not see EPA improving its processes by using the best available science or by truly being interested in allowing for meaningful public participation and an open exchange of ideas as called for in the Executive Order. OG&E most certainly does not see EPA's regulatory approach as promoting predictability and reducing uncertainty -- if anything the compliance timelines for multiple rules, final and pending, that I have mentioned have acted to significantly increase unpredictability and uncertainty for utility investment. And OG&E does not

find that EPA has taken into sufficient account the comparative benefits and cost of its regulations from either a quantitative or qualitative perspective.

For example, OG&E does not view the EPA's rejection of Oklahoma's regional haze SIP as being consistent with the Executive Order and achieving the stated environmental results on a more cost-effective or creative basis. Also, EPA's decision to include Oklahoma in CSAPR based upon controversial modeling assumptions that show an impact on a lone county in upstate Michigan does not strike us as the use of best science. We cannot conclude that EPA is promoting economic efficiency, predictability of investment and competition by insisting on an unrealistic time line for compliance with UMACT. As embodied in the Executive Order, we expect the values of cost-effectiveness, good science, fair evaluation of alternatives and the like to be essential elements of how EPA conducts its critical mission.

It is imperative that the Committee understand that we are not wrestling with compliance with EPA's regulations in a vacuum. To the contrary, utilities such as OG&E are dealing every single day with the demands for all-time high investments in new transmission and distribution, renewable generation, efficiency and demand side improvements. These things all produce capital demands on utilities and their ratepayers at unprecedented levels and in a capital market which remains very challenging. In our case, OG&E's current capitalization is \$5.5 billion and its annual operating revenue is \$3.9 billion. Add to that an additional \$1 billion (or more) in scrubbers that EPA would require us to install just to comply with the regional haze FIP, and you can readily see the consequences. Such scrubber investment would be the largest single capital investment in OG&E's history, increase our existing capital commitments by 30 percent, and lead to dramatic increases in customer rates. A mandate to invest over \$1 billion would make it difficult for OG&E to continue focusing on things like wind energy development, energy efficiency and demand side management and will make it more difficult to invest in the base level commitments for maintaining and operating its business.

A switch to natural gas is similarly expensive because of stranded costs, pipeline construction costs, fuel cost fluctuations, and other capital costs for new or retrofitted gas-fired units. From a customer's perspective, the cost of those capital investments and

a likely higher fuel cost would together increase the price customers pay for electricity in the years to come.

OG&E's competitive electric rates are a critical contributor to Oklahoma's economic welfare and competitiveness. Jobs in Oklahoma depend on our ability to provide the energy and energy infrastructure to power the state's economy. We cannot afford to be cavalier with our customers' money, or with the impact such rate increases would have on our state's economy, jobs and competitive viability. If we can achieve the same desired environmental results at a lower cost - which we think was President Obama's laudable intention underlying Executive Order 13563 - we believe we have an obligation to do so. That is the nature of our current regional haze dispute with the EPA. OG&E and all the other interests in the state working with our state agencies came up with a SIP that improved visibility, but did not necessarily entail the expense of scrubbers.

The timetables for implementing the various rules are also creating uncertainty because the rules are not synchronized and harmonized. We can do most anything EPA rules require in a more economically rational manner if we are given enough time to do so. But, the overlay of Regional Haze mandates with potentially different technology demands and related compliance schedules for such items as UMACT, CSAPR, and the soon to be seen greenhouse gas regulations magnify our unpredictability problem significantly. For an industry that makes strategic plans covering 10 to 20 year periods, a three to four year timetable to make these very important decisions on retrofitting or conversion seems very strict.

The strict and unpredictable timetables also could affect the reliability of service. Because almost every utility in the various regions is impacted by some or all of these rules, there needs to be coordination to avoid major regional reliability problems. Not only does maintaining reliability take great care and coordination among many interested parties, it is likely to require time to plan for coordinated construction of emission control technology and the installation of needed transmission system upgrades. These considerations alone could jeopardize utilities' ability to meet EPA's compliance deadlines, not to mention creating significant costs that will be passed on to utility customers.

We want and need - and frankly our customers deserve - to be able to see how all these regulatory obligations will come together in a single regulatory matrix. We need to see all the new rules and evaluate how they relate to one another holistically. This will allow us to create a coordinated, rational plan for selecting compliance strategies from the range of options in a way that makes sense to our state economies, our ratepayers, and the environment. Once we determine what can work and at what cost, we need time to move those decisions through our state public service commissions, which have a rightful and primary role to play in all of this. We also need to coordinate with our Regional Transmission Organizations and the North American Electric Reliability Corporation ("NERC") to ensure limited reliability concerns.

EPA seems to underestimate the significant role that state public service commissions play in our industry, particularly in those states, like Oklahoma, with vertically integrated utilities. Our Oklahoma Corporation Commission and the Arkansas Public Service Commission play a legitimately primary role in reviewing all our capital investments for prudence and for rate impacts. And nothing we do as a utility - literally nothing - is done without extremely careful consideration for what our capital investments may mean for our rates and for the economic impact of those rates on our customers and our state economies. The point is that the uncertainty that EPA's rulemakings generate only prove more frustrating for us when we know we must be able to justify our compliance decisions, the rate impacts, and the prudence of our actions.

We would also appreciate some certainty regarding the development of wind power. Oklahoma has been expanding the amount of the state's wind power generation over the past several years, but the threat of the elimination of the federal Production Tax Credits and the looming threat of the Lesser Prairie Chicken being listed as an endangered species could drastically effect the expansion of wind power in Oklahoma. Wind power development can produce jobs and provide economic development opportunities in our state.

IV. Conclusion

OG&E wants to thank this Committee for allowing us to present our views and provide our perspective. We would hope that the result of the hearing today would be for

the Committee to work together on a bi-partisan basis to see the objectives of President Obama's Executive Order 13563 become elemental drivers of all that EPA, the Fish and Wildlife Service and all the federal agencies do in order to avoid adverse impact on energy production in Oklahoma and throughout the nation. We are pleased to provide any further information that the Committee may think is useful.

Chairman ISSA. Mr. Woodard.

STATEMENT OF BRIAN WOODARD

Mr. WOODARD. Chairman Issa, Chairman Lankford, Congressman Farenthold, my name is Brian Woodard, and I am the Vice President of Regulatory Affairs with the Oklahoma Independent Petroleum Association.

I appreciate the opportunity to testify in my hometown today concerning unnecessary and burdensome regulations which unduly threaten America's energy future.

The OIPA was founded in 1955 and represents, approximately, 2,300 small to large independent operators who are primarily involved with the exploration and production of crude oil and natural gas in the State.

In recent years, assisted by technological advances in horizontal drilling and hydraulic fracturing, Oklahoma oil and gas operators have actively developed sources of natural gas like the Woodford Shale, as well as sources of natural gas liquids and crude oil in the Cleveland, Tonkawa, Granite Wash and Mississippi Lime plays.

Since 2009, Oklahoma's oil and natural gas industry has added nearly 12,000 jobs.

As I hope my testimony reveals, this industry, along with the associated jobs and energy from the fossil fuel it produces, is critical, not just to Oklahoma, but to the nation.

However, as I sit before you today and tout America's current oil and gas renaissance, and as the blueprint has been laid for a true era of U.S. energy independence, the current administration has countered with an equivalent flood of regulatory policies which threaten to undermine this bright energy future.

To elaborate on this, I will briefly discuss two recent Federal air regulations in addition to challenges we, as Oklahomans, face due to recent and unprecedented actions under the Endangered Species Act.

In 2008, Congress directed the EPA to conduct an inventory of greenhouse gas emissions throughout all sectors of the economy. Subpart W is the section of the resultant EPA rule dealing with the onshore oil and natural gas industry.

Although Congress directed the EPA to conduct "an inventory," EPA's rule requires annual reporting on behalf of operators.

According to analyses of past GHG inventories, oil and natural gas production activities were believed to collectively account for two percent of national GHG emissions, with the largest portion of that two percent being vented natural gas itself, or methane.

To place this level of methane emissions into context, EPA's own inventories note that enteric fermentation, or cattle flatulence, contribute substantially higher quantities of methane. However, rather than using simple estimation techniques, EPA created an extremely complex and burdensome regulation that consumed 44 pages in the Federal Register and has led to excessive financial impacts on the order of hundreds of thousands, if not millions, of dollars for some of our larger independent producers.

In a similar fashion to this administration's recent proposal to regulate the practice of hydraulic fracturing prior to the completion of the Hydraulic Fracturing Study, EPA has continued their "regu-

late then validate” trend by crafting an additional air rule which regulates the very emissions for which Subpart W was designed to inventory. While the EPA has commented on the record that this New Source Performance Standard Subpart 0000 rule will be cost-effective for the industry, this statement is not only misleading, but is insulting.

Under this rule, EPA has used methane as a surrogate for volatile organic compounds to justify the economic basis of the rule. In order to be cost effective, the rule should only apply to production streams which contain a meaningful VOC concentration. For sources with significantly low to zero VOC content, such as dry gas shales like the Haynesville and Barnett and others, the cost per ton of emission reductions drastically exceeds historically acceptable levels.

Unfortunately, excessive regulation under the Clean Air Act is only one of many regulatory hurdles, which Oklahoma oil and gas producers face.

Switching to the topic of the Endangered Species Act, in September, 2011, the U.S. Fish and Wildlife Service reached an unprecedented settlement agreement with the two conservation groups.

As a result of the settlement, the Fish and Wildlife Service is required to establish annual work plans that gradually reduce a backlog of greater than 600 candidate species over a six-year period. Of particular concern to Oklahoma, as previously noted, oil and gas operators is a listing and critical habitat designation for the Lesser Prairie-Chicken.

As previously mentioned, Oklahoma has been blessed with rich energy resources including four of this nation’s leading tight oil and gas plays; however, the listing of the Lesser Prairie-Chicken threatens to jeopardize the development and production of this economic boon, as the chicken’s habitat range directly overlies the core acreage of these plays. It is our hope that the Fish and Wildlife Service, working with State and local stakeholders, will recognize and support the extensive voluntary conservation efforts that are currently underway, rather than impeding economic development with a chilling, threatened or endangered listing under the antiquated Endangered Species Act.

And last but not least, I would like to mention a recent ESA development affecting oil and gas producers, among others, throughout the eastern portion of our State. The American Burrowing Beetle was listed as endangered in 1989. At the time, the beetle’s known habitat consisted of two colonies encompassing two counties across the U.S., one of which was Oklahoma’s own Latimer County. The listing was made without the designation of any critical habitat, and the recovery plan hasn’t been updated in over two decades.

However, the beetle has since been recognized to exist by the thousands across many of the southern plains states. With the unveiling of a shocking new Guidance Document in April, overnight, and, again, I’ll say overnight, Guidance Document, the Service had revised the beetle’s habitat range based on new modeling standards and eliminated industry’s only protocol allowing for continued, sustained development within the habitat range.

A revised guidance supporting interim relief measures and protocols for continued development without guidance, construction of oil and gas pad sites, pipelines and roads will continue to be stalled throughout the beetle's habitat range.

In conclusion, we must reduce the insurmountable Federal regulatory hurdles which plague domestic operators and impede our ability to achieve energy independence and freedom from foreign fuels.

This concludes my testimony.

Thank you.

Chairman ISSA. Thank you.

[Prepared statement of Mr. Woodard follows:]

Testimony of Brian Woodard
Vice President of Regulatory Affairs
Oklahoma Independent Petroleum Association
Before the Committee on Oversight and Government Reform
Subcommittee on Technology, Information Policy, Intergovernmental Relations and Procurement
Reform
United States House of Representatives

Hearing entitled, *"America's Energy Future, Part I: A Review of Unnecessary and Burdensome Regulations"*

Edmond, Oklahoma
Friday, July 13th, 2012

Chairman Issa, Subcommittee Chairman Lankford, members of the Subcommittee, my name is Brian Woodard and I am the Vice President of Regulatory Affairs with the Oklahoma Independent Petroleum Association (OIPA). I appreciate the opportunity to testify in my hometown today concerning unnecessary and burdensome regulations which unduly threaten America's energy future.

The OIPA was founded in 1955 and represents approximately 2,300 small to large independent operators who are primarily involved with the exploration and production of crude oil and natural gas in the state. In addition, we represent a number of companies that provide services in support of these activities.

Oklahoma has a long history of oil and gas exploration and production. The first commercial oil well was completed in 1897. Subsequently, more than half of a million oil and gas wells are estimated to have been drilled in the state. They are widely distributed throughout most of the state's 77 counties. In recent years, assisted by technological advances in horizontal drilling and hydraulic fracturing, oil and gas operators have actively developed sources of natural gas like the Woodford Shale as well as sources of natural gas liquids and crude oil from the Cleveland, Tonkawa, Granite Wash and Mississippi Lime plays. According to a recent study conducted by Oklahoma City University, "The oil and natural gas industry continues to be Oklahoma's defining industry." Since 2009, Oklahoma's oil and natural gas industry has added nearly 12,000 jobs. This activity pumps nearly \$1 billion in direct gross production tax payments to the coffers of our state's economy and \$52 billion in gross state product¹. That's one out of every three dollars!

As I hope my testimony reveals, this industry, along with the associated jobs and energy from the fossil fuel it produces, is critical not just to Oklahoma but to the nation. However, as I sit before you today and tout America's current oil and gas renaissance, and as the blueprint has been laid for a true era of U.S. energy independence, the current administration has countered with an equivalent flood of regulatory policies which threaten to undermine this bright energy future.

¹ Steven C. Agee Economic Research & Policy Institute - *Oklahoma's Oil and Natural Gas Industry Economic Impact and Jobs Report*; June 2011.

To elaborate on this, I will briefly discuss two recent federal air regulations in addition to challenges we, as Oklahomans, face due to recent and unprecedented actions under the Endangered Species Act (ESA).

As part of the 2008 Consolidated Appropriations Act, Congress directed EPA to conduct an inventory of greenhouse gas (GHG) emissions above "appropriate thresholds" in all sectors of the economy. Subpart W is the section of the resultant EPA rule dealing with the onshore oil and natural gas industry. Although Congress directed EPA to conduct "an inventory," EPA's rule requires annual reporting on behalf of operators.

According to analyses of past GHG inventories, oil and natural gas production activities were believed to collectively account for 2 percent of national GHG emissions². The largest chunk of that 2 percent being vented natural gas itself (methane), which typically occurs briefly after completing a well until it reaches a volume and concentration that would be sent to production facilities. As such, most established, producing wells would emit much smaller amounts of GHGs, and marginal wells, which make up two-thirds of existing American natural gas wells, would emit drastically less. To place this level of methane emissions into context, EPA's own inventories note that enteric fermentation, or cattle flatulence, contribute substantially higher quantities of methane emissions than does our industry. However, rather than using simple estimation techniques, EPA created an extremely complex and burdensome regulation that consumed 44 pages in the Federal Register and has led to excessive financial impacts on the order of hundreds of thousands if not millions of dollars for some of our larger independent producers. The rule is so complex that companies must integrate production software and new monitoring equipment into their daily operating systems.

In similar fashion to this administration's recent proposal to regulate the practice of hydraulic fracturing prior to the completion of EPA's existing Hydraulic Fracturing Study, EPA has continued their "regulate then validate" trend by crafting a rule which regulates the very emissions for which Subpart W was designed to inventory. While the EPA has commented on the record that their New Source Performance Standard (NSPS) Subpart OOOO rule will be, "cost-effective for the industry," this statement is not only misleading but insulting. NSPS regulations are generally created for the purposes of regulating criteria and hazardous air pollutants; however, under this rule, EPA has used methane as a surrogate for volatile organic compounds (VOC) to justify the economic basis of the rule. In order to be cost effective, the rule should only apply to production streams which contain a meaningful VOC concentration. For sources with significantly low to zero VOC content, such as dry gas shales like the Barnett, Haynesville and others, the cost per ton of emission reductions drastically exceeds historically acceptable levels. This also doesn't contemplate the fact that the emission estimates are severely flawed and that the monitoring, testing and extensive recordkeeping requirements threaten to further undermine any plausible economic benefit of the rule.

Unfortunately, excessive regulation under the Clean Air Act is only one of many regulatory hurdles for which Oklahoma oil and gas producers must deal with. Switching to the topic of the ESA, in September, 2011, the U.S. District Court for the District of Columbia approved an unprecedented settlement agreement between the U.S. Fish and Wildlife Service (FWS) and two conservation groups—Wild Earth Guardians and the Center for Biological Diversity. The settlement, referred to as the multidistrict litigation (MDL), ended years of turmoil over delayed listing decisions under the ESA. Like so many laws in America, the ESA is based on noble intentions. However, in its current form, it is being exploited by activist groups that self-generate income while draining dollars away from resource recovery efforts.

² US EPA - *Inventory of U.S. Greenhouse Gas Emissions and Sinks 1990 – 2008*. April, 2010.

As a result of the MDL settlement, the FWS is required to establish annual work plans that gradually reduce a backlog of greater than 600 candidate species over a six-year period, starting with the 251 species that were candidates for listing in 2010. Of particular concern to Oklahoma oil and gas operators is a proposed listing and critical habitat designation for the Lesser Prairie-Chicken (LPC) that is expected to be published in September, 2012. The LPC's habitat extends across five states, including: Colorado, Kansas, New Mexico, Oklahoma and Texas. Recent surveys have identified a declining population trend across the southern extent of the LPC's habitat while similar efforts have identified an increasing population trend throughout Kansas, a state for which a hunting season remains intact for the species.

As previously mentioned, Oklahoma has been blessed with rich energy resources like the Cleveland, Tonkawa, Granite Wash and Mississippi Lime, four of this nation's leading tight oil and gas plays; however, the listing of the LPC threatens to jeopardize the development and production of this economic boon as the LPC's habitat range directly overlies the core acreage of these plays. It is our hope that the FWS, working with state and local stakeholders, will recognize and support the extensive voluntary conservation efforts that are currently underway, rather than impeding economic development with an economically chilling threatened or endangered listing under the antiquated ESA.

And last but not least, I would like to mention a recent ESA development effecting oil and gas producers, among others, throughout the eastern portion of our state. The American Burying Beetle (ABB) was listed as Endangered in 1989. At the time, the beetle's known habitat consisted of two colonies encompassing two counties across the U.S., one of which was Oklahoma's own Latimer County. The listing was made without the designation of any critical habitat and the recovery plan hasn't been updated for two decades. However, the beetle has since been found nearly everywhere researchers have studied, including the identification of colonies numbering in the thousands across many of the southern plains states. With the unveiling of a shocking new Guidance Document in April, overnight the FWS had revised the ABB's Section 7 Habitat Range based on modeling standards and eliminated industry's only protocol allowing for sustained development within the ABB's habitat range³. This revision was brought on due to "new scientific information" presented within a University of Nebraska PhD candidate's dissertation. The finding suggested that ABB were being consumed at bait-away stations by opossums and the northern leopard frog. Without a revised Guidance supporting interim relief measures and protocols for continued development, construction of oil and gas pad sites, pipelines and roads will continue to be stalled throughout the beetle's habitat range.

In conclusion, we must reduce the insurmountable federal regulatory hurdles which plaque domestic operators and impede our ability to achieve energy independence and freedom from foreign fuels.

This concludes my testimony. Thank you.

³ US Fish and Wildlife Service, Division of Ecological Services, DRAFT American Burying Beetle (*Nicrophorus americanus*) Range Wide Survey Guidance; April 20, 2012.

Chairman ISSA. Mr. Leonard.

STATEMENT OF JOSEPH LEONARD

Mr. LEONARD. Good morning and thank you for providing the opportunity to testify on such an important issue.

My name is Joe Leonard, and I am the Environmental, Health and Safety Engineer for Devon Energy with a particular technical expertise in air quality.

EPA's unreasonable and inappropriate misuse of industry data and bad science leads to unnecessary and burdensome air quality regulations on the oil and gas industry. I would like to focus on two examples of this today.

First, I would like to address EPA's development of an emission factor for well completions by improperly using Natural Gas STAR data. In short, the EPA assumes that gas recovered would have otherwise been flared or vented. However, industry data shows that reduced emission completions account for significantly more gas produced and sold than would be flared or vented during older and less common completion processes.

The figure in my written testimony depicts the comparison between what EPA perceives and what industry data actually shows.

Second, EPA Region 6 recently designated Wise County in the State of Texas, a significant production and transmission area to be in "nonattainment" for ozone. Region 6's argument can best be described as arbitrary and capricious.

Their stance rests only on two data points and their attempt to link The Barnett Shale gas production development. Their science behind the designation is lackluster and relies on methods rejected by other EPA regions.

In regards to flawed completion emissions, EPA continues to state that reduced emission completion estimates are reasonable estimates for gas that would have otherwise been flared or vented - despite a wealth of data showing that those estimates are dramatically overstated. This overstatement is consistent with the latest industry study from API/ANGA of more than 90,000 wells that demonstrated estimates were at least 100% too high across upstream processes. This work follows similar industry work that shows even greater errors.

This is outrageous because EPA, using incorrect assumptions, applying inappropriate data, and then analyzing it improperly, has not only changed its emission estimates for completion operations on a forward-looking basis, but revised all oil and gas completion estimates back to 1990 - a period before the combined use of horizontal drilling and hydraulic fracturing.

Since revising its estimates, EPA submitted those estimates as part of the US input to the UN Intergovernmental Panel on Climate Change, giving it a worldwide audience.

The effect of the revision has allowed for the mischaracterization of natural gas. Non-governmental organizations and university studies have claimed that (on a life-cycle basis) gas-fired electricity generation is no cleaner than coal-fired, and that natural gas-powered vehicles are no cleaner than those running on gasoline.

The ripple effects like these will continue until EPA acknowledges and corrects this inaccurate data. Severe damage has been

inflicted on the many benefits of using natural gas as a clean fuel that will last for years to come. EPA must exercise more scrutiny in their methods for calculating such factors if the oil and gas industry is to be represented fairly. This issue proves that casual efforts on the part of the EPA can have such a strong and negative impact to our industry.

As I mentioned earlier, EPA has recently designated Wise County, Texas, as an ozone non-attainment area contributor. An area is considered "nonattainment" when it exceeds a national air standard, in this case, ozone. The area must then take steps to come to "attain" the standard, or come into "attainment".

That action, in Region 6, was initiated under a since-resigned regional administrator who once likened enforcement action approaches to the oil and gas industry to what might be described as examples by crucifixion.

There are several other concerns when analyzing their justification for nonattainment.

Concern 1: The model used by Region 6 is inadequate for modeling ozone formation and transport. Other regions, specifically, refused to use this method because of its unreliability.

Concern 2: The model only traced two events over four years passing through Wise County, one of which originated in the notoriously nonattainment Tarrant County, which is coincidentally the same county of the only monitor that EPA provided results for. Data shows that winds blow from Wise County into Tarrant County less than three percent of the time. Other EPA regions denied nonattainment considerations based solely on wind occurrences of less than 20% of the time.

Concern 3: We do not know the results from other monitors downstream of the prevailing wind from Wise County. If the EPA Region 6 wanted to justify Wise County as a contributor of ozone, why did they not provide results from more representative monitors? As the Texas Commission of Environmental Quality described, the presented data seems to be "cherry-picked".

The second figure in the written testimony shows a composite of all modeling results done by EPA Region 6, with the two Wise County events highlighted in red.

If Wise County is, in fact, nonattainment, then Devon will diligently comply with the regulations, but we do not believe the EPA's argument, or the data supporting their decision.

In conclusion, it is difficult to adequately capture all of the unnecessary and burdensome air regulations imposed on our industry. I hope that the examples of completion emission estimates and Wise County Nonattainment provide at least some insight into this issue.

This concludes my testimony. Thank you.

Chairman ISSA. Thank you.

[Prepared statement of Mr. Leonard follows:]

Testimony for America's Energy Future, Part I: A Review of Unnecessary and Burdensome Regulations presented by Joe Leonard, Devon Energy Corporation

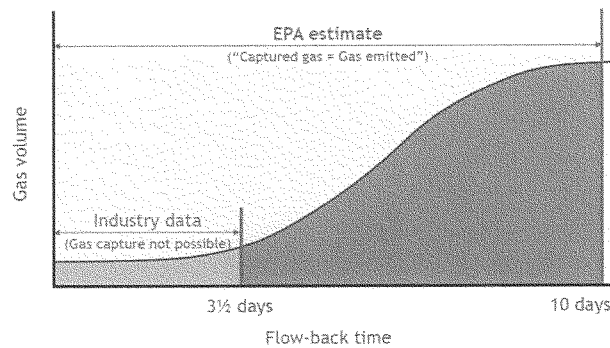
Before The Committee on Oversight and Government Reform on July 13, 2012, Edmond, OK

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Well Emissions: Actual vs. Perceived by EPA



EPA's fundamental misperception of initial gas production from natural gas wells leads to dramatic overestimates of methane emissions.

Second, EPA Region 6 recently designated Wise County in the State of Texas, a significant gas production and transmission area, to be in "nonattainment" for ozone. Region 6's argument can best be described as arbitrary and capricious. Their stance rests on only two data points and their attempt to link Barnett Shale gas production development. The science behind the designation is lackluster, and relies on methods rejected by other EPA regions.

EPA's flawed methane emission estimates continue to mischaracterize natural gas

In regards to flawed completion emissions, EPA continues to state that reduced emission completion estimates are reasonable estimates for gas that would have otherwise been flared or vented - despite a wealth of data showing that those estimates are dramatically overstated. This overstatement is consistent with the latest industry study from API/ANGA of more than 90,000 wells that demonstrated estimates were at least 100% too high across upstream processes. This work follows similar industry work that shows even greater errors.

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The effect of the revision has allowed for the mischaracterization of natural gas. Non-governmental organizations and university studies have claimed that (on a life-cycle basis) gas-fired electricity generation is no cleaner than coal-fired, and that natural gas-powered vehicles are no cleaner than those running on gasoline. The ripple effects like these will continue until EPA acknowledges and corrects this inaccurate data. Severe damage has been inflicted on the many benefits of using natural gas as a clean fuel that will last for years to come. EPA must exercise more scrutiny in their methods for calculating such factors if the oil and gas industry is to be represented fairly. This issue proves that casual efforts on the part of the EPA can have such a strong and negative impact to our industry.

Wise County, TX nonattainment ruling is based on analysis rejected by other regions

As I mentioned earlier, EPA has recently designated Wise County, TX, as an ozone non-attainment area contributor. An area is considered "nonattainment" when it exceeds a national air standard, in this case ozone. The area must then take steps to come to "attain" the standard, or come into "attainment".

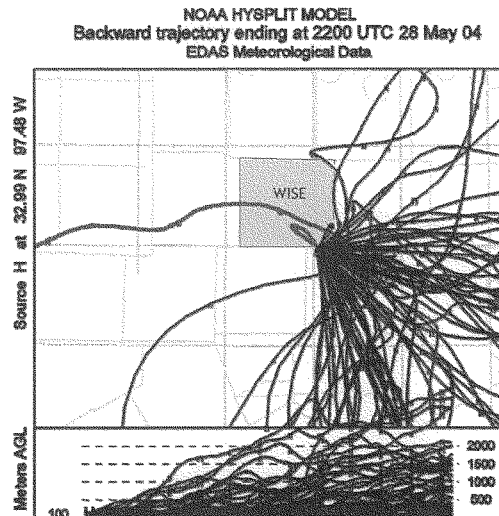
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This concludes my testimony. Thank you.

Joe Leonard - Devon Energy Corporation - 405.552.4740 or joe.leonard@dvn.com

Chairman ISSA. I want to thank all of you for your testimony. We've got more questions than we possibly have time to have answered. So I would ask each of you, the questions we don't get to in this session, will you agree to make your best effort to answer them in writing? Without objection your answers in writing will be also be included, as well in the oral testimony today.

Mr. Leonard, Winston Churchill once said, an appeaser is somebody who feeds crocodiles hoping they will eat him last. Has Congress been effectively, as many of us think, including Mr. Woodard, appeasers by, instead of fighting the, if you will, the cooked books, the flawed science and so on, simply trying to reach a compromise, do a piece of it? Is one of our challenges the fact that we haven't confronted agencies that no matter how clean the air and water is, and no matter how much it would cost to incrementally clean it a little more, we, essentially, try to compromise rather than saying, at what point do we weigh the cost benefits in a different way when the cost to augment is higher. Ms. Horn certainly brought that up with a billion dollar example.

Do you think, in fact, it's time for Congress to stop, as Senator Inhofe might say, appeasing?

Mr. LEONARD. We've actually met with some members of the Government. In regards to completion emission issues, we, quite frankly, feel that we've been stonewalled. We presented both written comments and met with them personally and have not received the feedback that we would deem as adequate.

However, organizations like this seem to be open to communicate, and we sincerely appreciate that.

Thank you.

Chairman ISSA. Ms. Horn, when energy production facilities are put online on behalf of, if you will, the downstream constituency, does EPA, OSHA, everybody else weigh in to every little nuance of detail of how much you're going to put out in order to produce that electricity?

Ms. HORN. No. We don't have everyone weighing in. (Inaudible).

Chairman ISSA. Right. So in order to get a license, your scrubbers and your stacks, your processes, all are evaluated and approved when you get your permit, both Federal and State; isn't that true?

Ms. HORN. Yes, that's true.

Chairman ISSA. So in a sense, when Government comes in during a licensed period, let's say a 30-year period, which is, I think, typical for plants and then relicensing, when they come into the middle of a period, aren't they breaking an implied contract, one in which you know you were online safe, there was an actuarial calculation over the life of that production using coal, what would come out in the way of emissions, isn't the Government, in fact, breaking a promise, a promise that, during that licensed period, you would be able to do certain things?

Ms. HORN. Yes, I agree, they are. It's an implied contract that, based upon how we looked at it at the time, that we're going to conduct it that way.

Chairman ISSA. And with an anticipation of re-licensing your facilities, and your facilities go through re-licensing, you do normally

anticipate that there will be updates, modernization and costs, correct?

Ms. HORN. Yes.

Chairman ISSA. So as members of Congress, trying to figure out where the fair balance is, shouldn't we give you that quiet period of enjoyment unless there is irreparable harm, not anticipated in the permit, so that the taxpayers, in this case, the rate payers, could know that, over that period of time, they could expect—and this is assuming you get the same quality of coal, the same everything else. Isn't that, essentially, the broken promise that you deal with in your industry and boiler MACT and these other new regulations coming in and wanting to grab you for billions of dollars mid-stream.

Ms. HORN. Absolutely. Certainty is something we must have to run our utility business.

Chairman ISSA. Ms. McDonald, you were very convincing of something I'm glad you put it in the record, and that is that the tax treatment that you enjoy is, in fact, tax treatment that every manufacturer, every production, everybody enjoys and the ability to expense labor. But more importantly, the dates you put in. And I want to thank you for that.

Often, in Washington, we lose track of the fact that these aren't some sort of special deal that was struck in under some evil administration, like Ronald Reagan's. In fact, these are ones that FDR didn't see a problem with, and neither did anybody else until, suddenly, they just wanted to find a little more revenue for the Federal coffers and you were as good a villain as anyone.

Mr. MING. Yes, sir. You'll notice in the media and even our opponents in Congress call these things "subsidies." They're not subsidies. The Government does not send us a check I assure you. If they do, I missed out on it, and I'd like to sign up.

Like you said, any manufacturer gets his ordinary and necessary business deductions, and we are—everybody has testified today, we're making great strides in America and North America in energy independence, and that's because of our increased rate in drilling. They do away with these tax provisions, our rig count is going to drop 30 percent. There's no way around it.

Chairman ISSA. It is sort of amazing that a country that prints money wants yours faster than you actually make it.

Mr. MING. That's a good point.

Chairman ISSA. Ms. Douglas, you regulate, among other things, what happens to the water, what's in the water, it goes in for fracking, and what happens to it after it comes out; isn't that correct?

Ms. DOUGLAS. For the most part.

Chairman ISSA. So under your State control, you've, in fact, you and other State agencies, are concerned to make sure that, if, let's just say, a chemical is in the water, you know, in the mixture, if you will, for fracking, when it comes out, you make sure that it doesn't end up in the water supply, in the neighborhoods and the surrounding areas; isn't that correct?

Ms. DOUGLAS. Absolutely. We live here. We drink the water.

Chairman ISSA. And what's the typical well depth in Oklahoma?

Ms. DOUGLAS. It depends. It's gotten a lot deeper with the new technology. You can have wells going two or three miles down and a mile out. So sometimes they go two miles out.

Chairman ISSA. But are there any aquifers below a few thousand feet in Oklahoma?

Ms. DOUGLAS. No. We, at the Commission, make sure that the water supply is protected. And most of the aquifers are much more shallow than where the wells are drilled. So the drilling goes much farther down and farther out. And we make sure that the casing, that everything that is put into the well is protected, protects our water supply.

If we find out that something has happened, if we find a well that was drilled in 1907 or 1910 where there is a problem, we have a procedure, at the State level, to do an immediate plugging so we can protect our water supply.

Chairman ISSA. And I do realize that Oklahoma is often known as a pincushion of the past. You've been drilling here a little longer than other places.

I will note that, having had our first of this series of hearings in Bakersfield, we've got some old wells in California, including one that is under Beverly Hills High. And it's still producing.

I often remind my Congressman Waxman, he has oil production in his district. He hasn't yet been able to shut down.

Mr. Ming, I've run out of time. But I briefly wanted to sort of recognize a question by asking, and you control energy so you deal with your portfolio of oil and natural gas, and, of course, coal; isn't that right?

Mr. MING. (Nods).

Chairman ISSA. And when we look at hydraulic fracking, you're not extracting huge amounts of soil or other activities. So, just briefly, for the record, when we look at the history of taking copper, gold, silver, or, for that matter, coal out of the ground, contrast what the effect of fracking is on the actual disturbance thousands of feet down versus almost any other kind of mineral extraction, just so we can have that in the record.

Mr. MING. Well, to start with, just for the water implications, the water requirements, from start to finish, for the life cycle for natural gas are virtually the lowest of any form of traditional energy. So in that regard, the impact is minimal. As you say, there's no large extractive component to it.

The other side of that, the benefits from natural gas are extraordinary in terms of what they do for the environment in terms of reduced criteria pollutants, reduced carbon emissions, energy efficiency opportunities from natural gas.

The all-in potential of natural gas is what makes this so illogical to me an engineer. We are, essentially, trying to kill the form of energy that holds the most promise for our nation.

Chairman ISSA. Thank you.

Mr. Lankford.

Mr. LANKFORD. Thank you, Mr. Chairman.

I didn't hear from anyone that our problem is supply. I asked, initially, is the problem regulatory or is it supply issues, or is it our efficiency, or is it a combination of all of that. I didn't hear from anyone that we're running out of resources. Is there a perception

here that we're short of supply, that we don't have the resources to meet the needs of our nation?

(Several Witnesses answered no)

Would you have said that 25 years ago? 25 years ago, looking back in time, we didn't have the same technology that we have now, would you have said 25 years ago we don't have the supply; we can't meet it?

(Several Witnesses said "no")

Okay, then, I'm hearing them pretty loud and clear that this is not supply issues; this is something else. Is it State policy that's the problem? And you can go ahead and speak freely. Patrice is right there.

Mr. LEONARD. No.

Mr. LANKFORD. Okay. Then is it Federal policy that's taking this on, because I heard a lot of Federal regulations coming out, one after another.

Mr. MING. Yes.

Mr. LEONARD. Yes.

Mr. LANKFORD. Okay. Let me just ask you a couple of these, then.

First, let me ask about this: The Regional Haze, as you mentioned, over a two billion dollar increase on rate payers is coming down now, a billion in just the Regional Haze bill, why can't the State take primacy in that one and the State make the decision?

Ms. DOUGLAS. The EPA won't let us.

Mr. LANKFORD. Five years ago, was the State making the decision dealing with Regional Haze?

Ms. DOUGLAS. Five years ago, I'm not sure that people were talking about it in the way that they're talking about it now. It's being construed in the way now, it looks to me, it's being construed in a way to meeting an objective that's coming from the top office in the nation.

I think that, if we were permitted to make the regulation in Oklahoma, we could make the regulation in Oklahoma. We can make it with all of the stakeholders at the table. We would remember Oklahomans who live here, we would remember Oklahomans who are going to be paying these utility bills. We would be looking at the natural resources we have, as well as the economic resources.

The Commission is in a unique position. And I want to point this out to you. The Oklahoma Corporation Commission has constitutional authority to regulate these industries. But we also have a statutory mandate to balance and protect both natural resources and economic resources.

So unlike many of these Federal agencies that are only looking at one thing, we have to look at the whole picture. So we have to bring everyone to the table, and we have to talk about how we can best balance natural resources and economic resources.

So a State level regulation better fits the topics we're discussing.

Mr. LANKFORD. This morning, we talked about Regional Haze. That sounds like something you'd never want to breathe and never want to take in. Is this a health issue, Regional Haze?

Mr. McDONALD. Regional Haze is a visibility standard.

Mr. LANKFORD. It's visibility. So this only affects the visibility? There's nothing in the Regional Haze standards that deals with the quality of the air that you actually breathe?

Mr. McDONALD. No. It's only about visibility and——

Mr. LANKFORD. Would you turn up your microphone, please? Yes, your microphone button right there in front of you.

Mr. McDONALD. I apologize.

And it's only in Federal parks. It's protected visibility in Federal parks. That's the whole purpose of the statute.

Mr. LANKFORD. Okay. So is there a Federal park, in particular, that's been identified in Oklahoma?

Mr. McDONALD. We have two areas in Oklahoma that we look at. The Lawton wilderness area, as well as one in Arkansas, as protected areas. But we don't have the same type of parks that some of the other states have.

Mr. LANKFORD. Okay. So, in Oklahoma, our Regional Haze standards are not about health; they aren't anywhere in the nation. And it's about trying to provide better visibility in one State park in Oklahoma. And it will be a billion dollars.

Do you know the difference in that visibility rating that they're talking about? Is it something that I can see with the naked eye, that I can tell if I looked at the park, and what they're recommending, and what we actually have now, could I tell by looking at it, the difference?

Mr. McDONALD. We don't believe you really can tell visibly. We—especially, we—in talking with the Commissioner about what the State could do, the State implementation plan is exactly how the State could take control of this through the Regional Haze. And if EPA would have allowed us to look at our State implementation plan, we could have done this as a State. And in doing that, the plan we came up with would do the same visibility improvement that the Feds would do at a much less, lower cost.

Mr. LANKFORD. The rules that are going down deal with hydraulic fracking, specifically, whether it be air quality coming out of that or whether it would be the water affects on it. Are those science-based at this point? Is there a scientific study completed by EPA or by any agency that says we have to make these decisions because we've done the study, completed it, and so this is the product?

Mr. WOODARD. I'll answer that, Congressman. No. The answer is no. In fact, they've come out and stated that there were issues with hydraulic fracturing now on multiple occasions without the necessary data quality and without the proper testing standards, if you will.

And they recently backtracked on three of those——

Mr. LANKFORD. Yes, Mr. McDonald mentioned three cases where the EPA made an accusation and later came back and said oops, that it really wasn't what it was.

So right now, that you know, there is no study from the Federal Government showing any issues with hydraulic fracking or air or water quality. So these decisions are based on something besides science?

Mr. WOODARD. That's correct.

Mr. LANKFORD. Just as a point of reference, the last time we had an administrator from EPA in front of our Committee, trace, we asked, pointblank, do you know of a single source of water in the country that is contaminated because of hydraulic fracking? And their response to us was, no, we don't know of one, not one source of water that's been contaminated by hydraulic fracking. So that's an interesting interaction on that.

Chairman ISSA. Do you remember how many wells have been drilled in Oklahoma that are fracked? We had that figure at one time. Isn't it in the tens of thousands?

Mr. LANKFORD. It's well in excess of tens of thousands. We have 190,000 wells in Oklahoma right now. And we've been fracking since 1948. So it's a few.

Chairman ISSA. It's a few. It's sort of amazing that you'd almost think that anything else we do, you would have at least a few accidents. So it's sort of one of those things it's so good they've got to stop us from doing it.

Mr. Farenthold.

Mr. FARENTHOLD. Thank you, Mr. Chairman.

I guess I'll start with Mr. Ming. Texas and Oklahoma have a lot in common as oil and gas states and such. And I was at an event with our Attorney General a couple of months ago. And somebody asked him, well, what's your job? And he goes, well, I get up in the morning. I go to the office. I sue the Federal Government. I go home and come back the next day and sue the Federal Government again, trying to get oppressive Federal regulations dealt with or infringements on the various rights that the Attorney General and myself believe that are reserved for the States.

What is Oklahoma doing with respect to defending itself from these regulations?

Mr. MING. Well, right now, if we just look at the hydraulic fracturing, we are closely monitoring what we feel is a clear move by the EPA for regulation to assert primacy over the activities that Commissioner Douglas described.

And I'll quote from an inside EPA wire service. This is an individual, Fred Hauchman, Director of EPA's Office of Science Policy, they are currently, "we're doing a pretty comprehensive look at all the statutes where there are some holes to allow additional regulation."

And while officials from EPA say they have no intention to regulate the States, they don't have the capability to regulate the States, we're clearly seeing actions don't meet words. And so—

Mr. FARENTHOLD. Is that being—do you have a thought as to how that's being driven? I know we had the three points, activism, activists involved in the EPA, bureaucrats trying to protect their job. What was the third one? There was a third one.

Mr. MING. So you have the growth of the Federal bureaucracy; you have activists; and then you have this agenda for Federal preemption of State primacy.

Mr. FARENTHOLD. All right. Let me go to Mr. McDonald for a second. As an oil and gas man, do you drill on Federal lands?

Mr. McDONALD. I do not.

Mr. FARENTHOLD. Is there a reason you don't?

Mr. McDONALD. Yes, sir.

Mr. FARENTHOLD. Would like to share that with us?

Mr. McDONALD. Well, the—you know, the BLM is, I think—maybe Congressman Lankford, one of you all, in your all's introductory remarks, talked about how long it takes to get a permit, and all of the things that you have to do to do that. And I've got a few Indian leases where I've had to deal with that. And I have intentionally, in the last 15 years, not bid on another Indian lease, because I have to interact with the Federal Government.

They tell me now—and I want you to believe this. This is the God's honest truth.

They tell me what I should pay every month. In other words, I'm trying to get the best price I can for natural gas. And they've got a formula, and they come in and tell me, well, you didn't get enough. So you have to pay us \$20, \$30—

Mr. FARENTHOLD. Regardless of the fact—

Mr. McDONALD. Yes.

Mr. FARENTHOLD. Regardless of the fact that gas is now down to what, \$2.70?

Mr. McDONALD. Exactly. It's unbelievable that I wouldn't try to get as much money as I could for my product. But, yet, they impose that on us.

So when those wells are gone, I won't be involved in Federal or Indian land anymore.

Mr. FARENTHOLD. I appreciate that.

I want to go to Ms. Horn for a second. You were talking about the cost of regulation on your company. When the cost of regulation and the cost of doing business goes up, that doesn't come out of your profit. That comes out of what you charge to the people buying electricity; is that not correct?

Ms. HORN. That is how we work as a utility—

Mr. FARENTHOLD. So would it be a fair statement to say that increased regulatory costs, for all practical purposes, are a tax on the low income and middle class Americans?

Ms. HORN. It operates to be a tax, yes.

Mr. FARENTHOLD. I have a lot more questions. But I realize I'm already out of time.

Chairman ISSA. We're going to do a quick second round.

Mr. Leonard, if you were to present to the Federal Government, using known bad results, known flawed science, anecdotal information that you extrapolated to get a result you wanted to get, and then you submitted it into a Government submission for a permit, what would happen to you?

Mr. LEONARD. I would receive a weak response to my comments, thank you for your efforts, a pat on the back, and a thank you very much.

Chairman ISSA. And that's if you didn't get prosecuted for lying to the Government, right?

Mr. LEONARD. That's correct.

Chairman ISSA. So fraud on the Government would be one of the things that could happen if you knowingly delivered false information, extrapolations that weren't true and used that to achieve an agenda to get a permit when, in fact, you shouldn't get one, right?

Mr. LEONARD. Yes, sir. And not only would the Government reprimand me, but so would the press.

Chairman ISSA. So one of my questions to you is, since we're from the Government and we're here to help you, what should we do and how should we change our Washington bureaucrats who knowingly produce and extrapolate and create false documents when we discover that, in fact, they did it with a reason, with malice and forethought in order to get a rule or some agenda that, in fact, was inconsistent with the true science that they knew or could have known?

Mr. LEONARD. Well, I understand it's challenging for the EPA to exercise proper scrutiny on all the calculations and regulations they must make. But they must be open to communication when such concerns are brought to them. And—that's what I think.

Chairman ISSA. Is there a real likelihood that you would simply stop worrying about clean air and clean water if the government went back to it's historical levels of allowing you to regulate?

Ms. DOUGLAS. No. We live here. And I have a constitutional duty. I take office, and I take an oath, and I have a constitutional duty to protect Oklahoma, to protect our natural resources, to protect our economic resources.

So much like you're talking about being prosecuted for information down there, I can get in big trouble, and I, frankly, don't want to be in big trouble. I respect Oklahoma and Oklahomans.

Chairman ISSA. Well, I'm just going to have to ask one closing question. I'll probably just get nods, because it's more of a comment than a question.

If we were able to not send \$300 billion outside the U.S., if we were, in fact, driving down the cost of all our energy, similar to the way natural gas has gotten, wouldn't we, in fact, have tens of hundreds of billions or even trillions of dollars more to put into environmental research, into cleaning up the air, into finding science that would advance all kinds of benefits to mankind? And, in fact, for that matter, helping to educate or people?

Mr. WOODARD. Yes.

(Other Witnesses nod)

Chairman ISSA. So just one closing question to all of you who deal in energy: Shouldn't the greatest obligation of Government be to, in fact, allow and then promote energy, driving the advancement so that the spin-off advancement of a profitable and prosperous country, in fact, is the ability to do all these other things that our taxpayers our American citizens want us to do?

Mr. WOODARD. Definitely.

(All Witnesses nod)

Chairman ISSA. So, lastly, as my red light is on, I'm going to respect the red light.

Is the Government on exactly the wrong track by not considering the cost of benefit in weighing that, as we lower cost of energy, we increase productivity, we create American jobs, and that fuels all of the ability to do the other things that the American people want us to do?

Mr. WOODARD. Yes, sir.

(All Witnesses nod)

Chairman ISSA. I'll take that back with me.

Mr. Lankford.

Mr. LANKFORD. Ms. Douglas, when there's a problem with a well and with any kind of operation, there's a spill that does occasionally happen.

This is not a perfect entity at all. Do you find, typically, that they have violated an existing regulation or that there's some other new problem that has occurred when there's a problem with a well site.

Ms. DOUGLAS. No. It's, typically, an existing regulation that we have already got a solution for and got a regulation at the State level.

Mr. LANKFORD. They're just slapped on the wrist, or they're fined, or they're punished, or reprimanded? What happens?

Ms. DOUGLAS. All of those things. All those things. It depends on the severity of the accident.

Mr. LANKFORD. When something new occurs, hadn't thought about it, hadn't seen, brand new on it, how do States share that or how do States share this, this occurred in our State, and so state-to-state, is there some process already in place to pass this on to the State Regulators?

Ms. DOUGLAS. Absolutely. We pass on all the information we get to other State regulatory bodies. We have a national body called Naylor that's the regulatory commission where we can share information like that.

We also have formulated specific groups to deal with specific problems, like the group called Stronger, which was really addressing oil and gas issues across State lines.

Mr. LANKFORD. And how long does it take to get a new rule in place with them?

Ms. DOUGLAS. On a State level?

Mr. LANKFORD. Right, State level.

Ms. DOUGLAS. At the State level, we started rule making processes in December and had them wrapped up in March, and that was after we took all the input from the stakeholders, and we had technical conferences, as well.

Mr. LANKFORD. It's a little longer than that, in the Federal Government, isn't it?

Ms. DOUGLAS. Yes, sir.

Mr. LANKFORD. That seems a little more agile.

Ms. DOUGLAS. Yes, sir.

Mr. LANKFORD. Mr. Leonard, I want to bring up one of your charts that you have listed there. This is a ten-year flowback chart. We'll see if we can bring that up. Because I want you to be able to explain that when it comes up, and we'll see if the magic of technology can bring it.

There it is. I want you to explain this chart a little bit to me, and talk about—you spoke about this in excellent technical language that probably nine people, totally, got. So I want to walk through this and try to help understand.

This deals with air quality and EPA estimates of how they're trying to determine what the air quality is around sites; is that correct.

Mr. LEONARD. Yes, sir.

Mr. LANKFORD. Okay. So talk us through this chart.

Mr. LEONARD. Okay.

The chart represents the relationship between time and gas volume for a typical well flowback completion. And when a natural gas flow is hydraulically fractured, the first thing that comes out of the hole is water and sand. It must flowback out of the well so that gas may be produced.

And at the initial start of flow, the stream is mostly comprised of this water and sand, with very little gas being able to fit in the pipe. But as more water and sand is recovered, that gas volume increases.

Now, typically, after—results show that, after three and a half days, the gas has recovered much water and sand and is producing enough gas to sustain itself. After those three and a half days, the well is either turned to production or shut in.

Now—and you can see after that, after three-and-a-half-day point, when the well is making enough gas to sustain itself, there is very little water and sand still left downhole, and the gas volume greatly increases.

Now, industry data shows that we're only emitting the gas volume represented by the blue in that three-and-a-half days.

But the EPA assumes that industry is creating emissions from flowback processes up to 10 days. And, therefore, it accounts for both the blue and the red gas volumes as emissions from our industry.

Mr. LANKFORD. Okay. So here's my question: You represent Devon. If Devon were to release all of that red area that you show there just into the air and not capture it and sell it, would that be a wise thing to do or an unwise thing to do?

Mr. LEONARD. Very unwise.

Mr. LANKFORD. I think they'd probably have somebody's job if they let that much gas just into the air on it.

But you're saying EPA assumes, for 10 days, all gas that's coming out from flowback is not captured, is not sold. It's just released into the air?

Mr. LEONARD. Correct.

Mr. LANKFORD. And their data—my point for that is their proof of that is what?

Mr. LEONARD. Their proof of that is an industry study, a voluntary industry study, called the National Gas Star Program. And the National Gas Star Program captured emission reduction efforts from industry. And they captured numbers from green completions. Now green completions are very different from the typical completion processes, which is represented by the blue.

Green completions, gas is captured. And so, during the recompletion process, everything in the red is captured.

But the EPA assumes that that is all emitted.

Mr. LANKFORD. Okay. So you're saying it is actually captured, and the EPA says, no, we think you're actually letting it go instead?

Mr. LEONARD. Yes, sir.

Mr. LANKFORD. Just a quick question, because I see my yellow light is coming on.

Chairman ISSA. Would the gentleman yield for a minute?

Mr. LANKFORD. Absolutely, I would, Mr. Chairman.

Chairman ISSA. I'm originally from Cleveland. So it gets colder there in the winter, kind of like here. But let me just put this in terms of, hopefully, I would understand.

You're sort of saying that, in the winter when you start your car and you don't want to go, you go back in the house for a minute or two while it warms up. And then you drive down the street.

It's like saying that your basic fuel economy on your car was one mile per gallon for that first street, rather than, because it included all the time you idled while it warmed up. And you went back in to get coffee. And that first acceleration going down the street. And it's capturing that and saying, over the life of that tank of gas, you're going to get one mile per gallon.

Mr. LEONARD. Yes, sir, that would be a correct statement.

Chairman ISSA. But there's just, literally, it's cooked books again, right?

Mr. LEONARD. Yes, sir.

Chairman ISSA. Thank you, sir.

Mr. LANKFORD. Actually, in Oklahoma, we go start our cars early in the summer.

A couple of quick comments.

Chairman ISSA. Would the gentleman yield one more time, please?

Mr. LANKFORD. I would.

Chairman ISSA. I would note that I formerly created remote starters, so you push the button, and whether it was hot or cold, the car adjusted before you went out there. But that's a former life.

Mr. LANKFORD. Secretary Ming, you mentioned we are 10 years away from energy independence if we don't mess this up. Do you have a couple of areas that you look at and say these are really the critical areas, or is it just a whole series of things? But a statement to say we're a decade away from energy independence is a pretty strong statement.

Mr. MING. It is a strong statement, but the reality is in the data. And I said that in regard to North America.

Mr. LANKFORD. We'd be in North America.

So Canada, United States, Mexico, take just energy, so we don't need OPEC oil, we don't need Venezuelan oil; we don't need North African oil, just for North America, we can reach energy independence in ten years.

Mr. MING. That's correct. And it's a combination. You have new energy supplies coming from the oil sands of Canada, extraordinary new oil supplies coming from North Dakota and the Bakken shell, and formerly marginal supplies of oil in, essentially, counties in Western Oklahoma that were out of the money just as soon as ten years ago. Everything is back in play now.

So you take those three combinations of supply, and then you take the opportunities around energy efficiency, plus the opportunities of natural gas as a substitution fuel for transportation. All of those, collectively combined, it is very possible that we can be energy independent in the next ten years.

Mr. LANKFORD. Mr. Leonard, I'm going to follow up with additional written questions about Wise County. That is a very serious issue, dealing with what's happened in Wise County, because that can affect us here in Oklahoma City, obviously.

Mr. LEONARD. Yes.

Mr. LANKFORD. And the days to come on that.

And one quick statement from Mr. McDonald about not drilling on Federal lands. My comment on that is, obviously, if other drillers, like you, and I know that has occurred, that the process is now so bulky to drill on Federal lands, and a couple of things, one that reduces income to taxpayer, because the taxpayer is not getting the royalty amount now.

And then in the western part of the United States, where the bulk of the land is BLM lands. In Oklahoma, we have very little Federal lands and crop lands and such. But you get into areas like, Utah and Nevada, and it's up to 90 percent of the real estate in the State is controlled by the Federal Government, that's a tremendous hit to jobs in those areas if other drillers continue to do that.

Mr. McDONALD. That is true. And, also, the Federal Government is taking a lot of that land out of the ability to lease for oil and gas. So you've taken a huge resource that, even if they were to permit it, you know, in those certain areas, they've taken it, and you can't even drill.

Mr. LANKFORD. It is my understanding we're headed to North Dakota, and it will be one of the questions that I have for some of the folks in North Dakota, because they have a mixture of BLM lands and private lands there that I want to ask the timing, how long it takes to get a permit on private, how long it takes to get a permit on Federal lands there.

Mr. McDONALD. The Oklahoma Corporation Commission has got a special provision if I pay a little more money, I can go down there and get a permit in one day if my permit is in proper order. But I've been told by friends six, nine, twelve months a lot of times, for a permit on Federal land.

Mr. LANKFORD. Well, the good news is they make you pay additional money anyway.

Chairman ISSA. Mr. Farenthold.

Mr. FARENTHOLD. Thank you very much.

Mr. Ming, you talked a little bit about natural gas and the abundance of natural gas moving transportation over to natural gas. Is Oklahoma involved in doing anything to promote that or stimulating or working with the private sector to get that to happen more quickly?

Mr. MING. Congressman, I'm really glad you asked that question. Yes, we are. Governor Fallin along with Governor Hickenlooper of Colorado have led an effort among Governors, no offense to Washington, but we feel the States can push this effort forward to do a statewide procurement of natural gas vehicles, which would partner with manufacturers to entice them to build a functional and affordable natural gas vehicle at a price point where consumers can buy it. And as of today, 13 Governors, in a very bipartisan fashion, have signed onto that. And we anticipate releasing a request for a proposal to all the automobile manufacturers here within a couple of weeks.

(Inaudible)

It will actually be auto and truck, yes.

Mr. FARENTHOLD. It's my understanding that part of the problem with natural gas vehicle is getting refueling infrastructure in place

with the gas stations that now sell gasoline, would sell—have some sort of facilities to sell the natural gas for the vehicles.

It's also my understanding that, in typical American entrepreneurial fashion, even the large auto manufacturers in Detroit are realizing that there's a potential market here. And there was a recent Wall Street Journal article that says they're doing combination vehicles that have an eight-gallon gasoline tank, as well as a natural gas tank. So when you're in a location where you cannot refuel in natural gas, you're stuck. And that was done despite the Government involvement with the automobile industry. It was done with a minimal amount of Government help of choosing winners and losers.

Ms. HORN. I want to go back. You were talking about diversity of fuel sources as being a key to the success of the electric energy. And it's my understanding Oklahoma, obviously, has coal and wind, natural gas. I'm assuming there's some nuclear here, as well?

As far as our company, we're a natural gas, coal and wind.

Mr. FARENTHOLD. Okay.

Ms. HORN. Nuclear is over in Arkansas.

Mr. FARENTHOLD. Now, your wind farms, the Endangered Species Act is also, the prairie-chickens, are also an issue with your wind farms. The green folks seem to think that wind is the end all, be all. Can you tell me what the problem is with the prairie-chickens and the wind farms?

Ms. HORN. That's an interesting question, because we were asking that same question. What is it about wind farms that either affects or threatens the species? And right now, we have not heard anything about the structures themselves, that they documented that actually affects the species. So we're looking at what threatens the chickens and making sure that what we do is—

Mr. FARENTHOLD. I think it scares them. They think it's a bird of prey coming after them, is what I've heard.

Let me ask you one more question about EPA.

You indicated the EPA comes in and tells you you've got to do a lot of stuff. Are they good at helping you with exactly what you're going to do? They come in and say, oh, you know, you're in non-compliance on this. Obviously, the next question is: What do we need to do to get in compliance? Are they helpful in that at all.

Ms. HORN. I'll just have to say, most recently, they seem to have an agenda. And that agenda seems to be affecting the way we generate—and the fuel we use to generate electricity. So there seems to be an agenda. While they are very, you know, (inaudible) EPA, overall, it seems to be that they have an agenda in mind or are not willing to compromise.

Mr. FARENTHOLD. All right. Well, I see my yellow light is coming on. Again, I could go on for quite a while, but I will (inaudible).

Chairman ISSA. Thank you.

If there are no further questions, I had one last thing for Mr. McDonald. Now, you did say you're still operating on Tribal lands?

Mr. McDONALD. Yes.

Chairman ISSA. And paying a royalty?

Mr. McDONALD. Yes.

Chairman ISSA. 17 or 18 percent?

Mr. McDONALD. I think it's more like 20 percent.

Chairman ISSA. 20 percent. Now that's on the gross, right?

Mr. McDONALD. Yes, sir.

Chairman ISSA. So Government doesn't actually take a hit for how little you make. If your gross and your net came off—if you, in fact, made not a penny, you'd still pay 20 percent of the gross.

Mr. McDONALD. That is correct.

Chairman ISSA. So your partner on Federal land is a partner that takes first and doesn't worry about whether there's anything left at the end.

Mr. McDONALD. Yes, sir.

Chairman ISSA. I just wanted to make sure we understand the problem you have with Federal lands. I couldn't resist.

It's our goal to make the Federal Government a better partner, one who does protect the American people, and one who, at the same time, recognizes that America's low cost, high quality energy is, in fact, part of the most important difference between the caveman and modern man. And countries who don't understand that do so at their peril.

I travel around. Many of us get to take sometimes what's called junkets, you know, overnight to Afghanistan or Iraq. But I also go to China, and I also go to many of those other countries. And they all have strategic energy plans in which they're trying to make sure that they control their energy future.

It's our commitment on the Committee to take what you've told us today, plus the additional questions you'll answer in writing, put it not just into the record, but put it into an action plan for the next administration.

And with that, again, I thank you for your testimony. Your ability to revise and extend any additional ideas you came up with will also be placed in the record.

And with that, I want to finally thank our audience. You've been extremely good. I've heard neither interruptions through phone ringing nor did I hear any boos.

So with that, we stand adjourned.

[Whereupon, the committee was adjourned.]

