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Lift #NeverNeeded Regulations that Make Energy More Expensive

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Low-income households, which are more likely to suffer from unemployment and other stresses during the COVID-19 crisis, spend much more of their household budget on energy costs than more affluent ones. Therefore, regulations that increase the cost of energy have a particularly harsh effect on the most vulnerable. Federal and state regulations that increase the cost of energy for households should be rescinded or, at minimum, suspended.

Taking a broader view of the subject, abundant, affordable, reliable energy is the lifeblood of modern economies.[1] Energy prices are very low today but that is due to demand destruction rather than to economically sustainable, pro-growth energy policies. Prior to the coronavirus pandemic and associated lockdowns, the shale revolution boosted U.S. GDP, job creation, and competitiveness while lowering consumer energy costs. It is critical that when America is ready to go back to work, government policies do not impose new regulatory and tax burdens on market-driven energy. The following recommendations provide more detail.

Lift Federal, State, and Local Regulatory Obstacles to Energy Infrastructure Projects

Political impediments to energy infrastructure jobs artificially raise energy prices, which harms all consumers—residential, commercial, and industrial—and the overall competitiveness of the U.S. economy. In addition, energy infrastructure construction projects boost private investment, job creation, and local economic development.

A 2011 U.S. Chamber of Commerce study found that approval and construction of 351 proposed renewable, fossil, nuclear, and energy transmission projects, which had been "delayed or canceled" due to regulatory barriers and litigation, could generate $577 billion in direct investment, $1.1 trillion in additional GDP from indirect and induced effects, including $352 billion in employment earnings. The study also estimated that 1.9 million jobs would be required for each year of construction and that operation of the projects would generate $99 billion in direct annual output, further boosting GDP by $145 billion and supporting 791,000 jobs per year of operation.[2]

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Repeal State Energy Mandates

The politically mandated production quota schemes called renewable electricity standards (RES) force consumers to rely on more expensive and less reliable electricity than private firms could build in a competitive marketplace. Affordable, reliable electricity directly benefits residential, commercial, and industrial ratepayers while helping U.S. firms compete globally.

Some states with aggressive RES programs—Texas, Oregon, and Washington—have low electricity prices, but that is because those states have abundant supplies of affordable, reliable power from sources other than wind and solar power—natural gas in Texas and hydropower in Oregon and Washington. Other states with aggressive RES programs—California, Vermont, Connecticut, New Hampshire, Massachusetts, and New York—have electricity rates substantially higher than the national average, while states with no renewable electricity mandates or goals have rates below the national average.[3]

Removing political constraints that inflate energy prices will help families pay their bills and businesses survive and create jobs in these perilous times. Ultimately, states should repeal RES programs and allow wind and solar to compete for investment on their own merits. During the current crisis and the ensuing economic recovery, states should allow utilities to generate or purchase power from the most affordable sources.

Do Not Renew or Expand Tax Subsidies for Any Type of Energy Production or Use

Tax subsidies like the wind production tax credit (PTC) and solar investment tax credit (ITC) enrich special interests at taxpayers' expense, divert capital from self-sustaining energy projects to politically mandated projects, and divert talent and resources from innovation to cronyism and lobbying.[4]

Wind and solar power are no longer "infant" industries and their advocates repeatedly claim renewable generation is fully competitive with fossil generation. The wind PTC was originally established by the Energy Policy Act of 1992 and set to expire 1999.[5] The ITC was originally established by the Energy Policy Act of 2005 and set to expire in 2007.[6] However, lawmakers have repeatedly renewed these subsidies.

The wind and solar power industries have already received targeted relief. On December 20, 2019, President Trump signed the Taxpayer Certainty and Disaster Tax Relief Act, which grants a PTC of 60 percent for construction of wind facilities starting in 2020.[7] In 2015 Congress extended the ITC at 30 percent of the cost of a residential or commercial solar system, with a progressively declining rate until reaching 10 percent from 2022 onwards.[8]

Congress should not renew these subsidies or expand them to other technologies. At most, Congress should extend the applicability of the current credits by the same number of months it postpones income tax payments.

End or Preempt Shale Fracking Bans and Natural Gas Pipeline Restrictions

In many areas of the country, shale fracking and natural gas pipelines have created hundreds of thousands of jobs, added hundreds of billions of dollars to GDP, generated tens of billions in state and local tax revenues, enhanced the competitiveness of U.S. manufacturers, and lowered average consumer energy costs by $2,500 annually for a family of four.[9]

In some New England states, pipeline projects that have been canceled would probably have helped reduce winter energy costs, which are usually higher in that region.[10] States that have instituted fracking bans have proved less resilient to unemployment and have denied income streams to hard-pressed farmers. With international supply chains for oil and gas under stress as the world returns to normal, domestic energy production and distribution will be very important. Shale and pipeline bans should be overturned at the state level or preempted at the federal level.

Encourage New Resource Production and Manufacturing

With global supply chains seriously disrupted by the crisis and international policy reactions to it, it is vital for America to be able to extract resources and reboot manufacturing. Several rules will need to be amended to allow this to happen rapidly:

- Expedite completion of the proposed National Environmental Policy Act (NEPA) rule changes to streamline permitting for infrastructure projects.[11]
- Congress should pass more fundamental reforms to NEPA that would require the environmental impact statement process to be expedited to allow infrastructure projects to move forward.
- The Waters of the United States (WOTUS) replacement rule is final but will be in litigation for several years. To mitigate the problems associated with the original WOTUS rule, Congress should enact a new definition of jurisdictional wetlands that is constitutional and legal and does not assert federal claims of jurisdiction as far as they can be extended, but instead draws a bright legal line between what is regulated and what is not.[12]
- Congress should stop state governments' misuse of the Clean Water Act to block infrastructure projects for purposes unrelated to water quality.[13]
- Reduce Endangered Species Act critical habitat designations that threaten economic activity in entire regions and for major industries.[14]

Limit Litigation over Infrastructure Projects

Congress can limit the extent of litigation allowed for almost anything. This power could be applied widely and retroactively to free up private infrastructure projects stalled by litigation that could put many thousands of Americans back to work. For example, when Congress passed legislation to authorize building of the Trans-Alaska Pipeline in 1973, it deemed as sufficient the work that had been done on an environmental impact statement—because NEPA was already being used to delay projects to death—and required that any lawsuits had to be filed within 60 days and in one district court in Alaska.[15]

Notes

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[13] Mario Loyola, "Stop State Government Abuse of Clean Water Act," OpenMarket, Competitive Enterprise Institute, October 21, 2019, https://cei.org/blog/stop-state-government-abuse-clean-water-act.
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