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An Energy Policy Agenda for the Energy Consumer

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KEY TAKEAWAYS

Affordable, reliable energy is essential for American households and businesses.

Government intervention in energy markets often wastes taxpayer resources, encourages government dependence, distorts investment flows, and invites cronyism.

Policymakers should eliminate favoritism and open access to markets to drive innovation and competition.

Energy is an essential input for nearly everything Americans make, use, and do. And yet, too often energy policy ignores the people who derive the most value from it: consumers. Americans want affordable, reliable energy and a clean, healthy, and safe environment. Free, competitive energy markets can deliver on both.

Energy policy should focus on how to best deliver benefits to consumers (by empowering them with choice) and to producers (by removing barriers to competition and innovation), such that the U.S. continues to be home to a dynamic energy sector. Households and businesses have different priorities and preferences, and energy is no different. Some may value affordability, while others may place a higher value on reliability. Others may care about where their energy comes from or place a higher value on energy efficiency for a car or a dishwasher. Whether

it is a major industrial manufacturer or a family of four, markets will best meet the heterogeneous preferences of energy consumers. Technology and energy-source-neutral competition allow the endless creativity of people to meet those needs while protecting customers and taxpayers from unwise investments.

Conversely, government intervention rewards political connections and stymies innovation. Regulations in which the costs outweigh the benefits drive energy prices higher. When politicians advocate for bans, tariffs, and other barriers, they are promoting policies that increase prices on Americans and remove decision-making from individuals in favor of a select few. As a new Congress and Administration address policy reforms in 2021, energy policy should eliminate preferential treatment for all energy sources, open access to markets, and reform the regulatory state for economic and environment progress to flourish.

First Problem: Government Intervention

The government intervenes in energy markets through a number of policies that award preferential treatment, including: targeted tax credits, government spending programs, mandates to produce specific energy sources, and the outright ownership of land and energy resources. Collectively, these policies waste taxpayer resources, encourage government dependence, distort investment flows, and invite cronyism.

While subsidies may appear to benefit the recipients, any advantages are short-term, at best. Once the subsidy expires and the energy company is subject to the realities of the marketplace, the company will likely struggle. If it is profitable, it most likely did not need the subsidy in the first place. Far too often, subsidies for "infant" technologies become permanent fixtures in U.S. energy policy.

Perhaps the biggest problem with government subsidies for energy sources and technologies is that they distort how investors allocate their money. The government's picking of winners and losers steers public and private financing to projects that have political support. Doing so takes labor and capital away from potentially more promising endeavors. Innovative companies that do not receive a government subsidy face an additional barrier to entry because the federal government is protecting their competitors. To eliminate government intervention in energy markets, policymakers should first "do no harm" and prohibit any extensions of subsidies. Furthermore, Congress and the Administration should wind down existing subsidies.

Recommendations. Specifically, policymakers should:

- **Prevent the extension of targeted tax credits, and sunset existing ones.** Targeted tax credits have become a popular method for the government to award preferential treatment to certain energy industries. Special tax treatment serves the same purpose as a subsidy that favors one industry. Such special tax treatments should be eliminated.

- **Prohibit energy-specific bailouts as part of a pandemic response.** Like many other sectors across the country, companies in the energy sector are struggling, and that deserves Congress' attention. However, this is not a justifiable reason for bailouts and handouts. As a response to COVID-19, policymakers have floated the ideas of a green stimulus, an extension of existing tax credits, bailouts for electricity providers at the expense of their customers,[1] and tariffs on imported oil to help domestic producers. These policies would entrench favoritism that could last years beyond the pandemic. Any further relief funds should be broad-based, not industry-specific.

- **Eliminate government loan guarantees.** Both economic failures and successes illustrate why the federal government should not use taxpayer-backed loans to intervene in market investment decisions.[2] In some instances, the Department of Energy (DOE) has lent taxpayer dollars to projects that could not survive, even with policies trying to prop up favored technologies. In other instances, the DOE has awarded money to very profitable, well-established companies or ones that benefit from the great number of federal, state, and local subsidies at their disposal. These companies' current and long-term success depends on receiving even more subsidies. When companies have innovative, money-making technologies, private actors should bear the full risk (and reap the benefits) of investing in such endeavors.[3] The federal government should not privatize profits and socialize losses with taxpayer-backed loans.

- **Repeal the Renewable Fuel Standard (RFS).** To rationalize the RFS, policymakers promised reduced dependence on foreign oil, a new source of cleaner energy to lower gas prices, a stronger economy, and an improved environment. None of these have materialized. Instead, the RFS caters to special interest groups and has adverse effects on the economy and the environment. Tinkering around

the edges will not fix this unworkable policy. Moreover, the federal government should not mandate which type of fuel motorists use in the first place.

- **Restructure public power and bring the Tennessee Valley Authority (TVA) under the rigors of market forces.** Four federal utilities known as Power Marketing Administrations (PMAs) were set up to provide cheap electricity to rural areas. They can sell electricity at below-market rates because of their favorable financing terms, such as federal tax exemptions and loans at below-market interest rates. Their construction, rehabilitation, operation, and maintenance costs are financed through the DOE budget, offsetting collections, subsidized financing, and reimbursable agreements with the Bureau of Reclamation. The PMAs and TVA fulfilled their purpose for rural electrification long ago, and their standing outside of either normal market competition or regulatory oversight has led to unnecessary economic and environmental costs. Administrations of both parties have supported measures to remove these assets from the DOE.

- **Repeal the Public Utilities Regulatory Policies Act.** The electricity sector would benefit from competition—rather than current policy forcing utilities to purchase qualifying renewable energy and arbitrarily limiting renewable energy capacity to small-scale projects or geographic proximity. Technology and energy-source-neutral competition in the electricity sector encourages companies to meet unique customer energy needs and preferences while protecting customers from unwise investments. Competitive markets have also resulted in the efficient exit of older, expensive units and the entry of innovative technologies.[4]

- **Restructure socialized insurance and risk mitigation for energy projects.** Several government programs offer taxpayer-backed liability insurance schemes for specific industries. Proponents argue that these programs support industries that are vital to the national interest but are so high-risk that they would be unprofitable without subsidies. Two examples are the $75 million liability cap for offshore oil and gas operations and the Price–Anderson Nuclear Industries Indemnity Act of 1957, which provides a liability regime for the nuclear industry through 2025. After decades of innovation in both the energy and financial industries, the time is ripe for reform. A free-market

solution would eliminate these subsidies, but given the broken tort system and increasingly onerous federal regulation, these subsidies often offset government-created risks.

Second Problem: Barriers to Market Access

Ensuring market access is another policy principle that empowers consumers, as opposed to government officials. Market access, broadly defined, encompasses many aspects of energy policy aiming to give customers the widest array of choice and providers the widest opportunity to reach customers. Regrettably, all levels of government restrict opportunities to allow customers to choose energy products and businesses reach new customers.

At the federal level, laws and regulations restrict access in ways that adversely affect resource development, trade, investment, and innovation. Barriers to market access take the form of overt bans on certain energy resources, tariffs, and restrictions on energy exploration. But they also show up in more subtle forms, such as protection of incumbent monopoly providers from innovative competitors and legislative definitions or regulatory standards tailored to certain technologies or companies.

Importantly, access to markets empowers energy producers and consumers to respond to price signals and preferences for a more robust, dynamic market. For instance, higher oil prices at the pump incentivize investments to explore and produce more oil and develop alternative fuel sources. Higher prices at the pump incentivize consumers to consider the value of a more fuel-efficient vehicle or an electric car.

The same holds true for electricity markets. Technologies such as blockchain have huge potential to reduce inefficiencies in electricity delivery, move decisions about energy use closer to customers, and reduce costs. The incentive for electricity companies to develop and provide these innovative services to customers is strong in regions of the country where competitive retail electricity markets are allowed.[5] In contrast, entrenched monopoly electricity providers have been far more resistant to technological innovations that reduce costs.

Prices alone do not guide consumer preferences or a company's decisions. A family may want to pay a premium for an eco-friendly option while an industrial energy user may pay a premium for reliability. Consumers benefit most when companies have access and opportunities to compete for those customers in order to meet their varying preferences. Moreover, owners and investors may have their own non-monetary objectives. Businesses

could be responding to shareholder, social, or consumer pressures to make certain investments. Whether on the producer side or the consumer side, open markets provide greater opportunities to meet those needs.

Recommendations. To that end, the next Congress and Administration should:

- **Refrain from banning natural resource production on federal lands and open federal lease auctions to competitive bidding from all market participants.** The federal government prohibits resource development in many parts of the country and off its coasts. Further, only energy companies can bid on lease auctions, and the federal government requires leaseholders to demonstrate intent to extract the natural resource. Prohibiting new leases for natural resource development on federal lands restricts Americans, particularly in the west, access to jobs and economic activity. It also denies the ability for states to collect revenues from royalties, rents, and bonus bids that companies pay to extract resources on federal lands. States receive nearly half that money, which can help fund hospitals, schools, infrastructure, and conservation programs.

  Companies should have the chance to safely and responsibly develop America's resources, whether conventional sources of energy, critical minerals, or renewable power. Congress should also allow conservationists, recreationists, alternative energy companies, ranchers, or environmentalists to bid on federal lands as they may value the land more than oil and gas developers. Opening the leasing process to all interested parties would not only create more competition but also potentially more cooperation for productive uses for the land and the resources below it.

- **Open access to generate more innovation from America's National Laboratories.** The Department of Energy's national laboratories and scientific research facilities should focus on conducting the basic research needed to meet national objectives that the private sector would not undertake. Too often, advocates of government spending on technology-specific activities tout the federal government's involvement in commercial successes, such as the Internet or the global positioning system. Yet the initial purpose for these government projects was not any private commercial need. Entrepreneurs saw a *commercial* opportunity in these defense technologies and developed commercially viable products. Creating pathways that allow the

private sector (using private funds) to tap into basic research would help spur innovation more responsive to market needs than political ones. Furthermore, if national lab directors and lab employees have more autonomy (without violating conflict-of-interest rules), they can drive fundamental research to private-sector applications.

- **Revise and clarify access to foreign investment and ownership of nuclear power plants.** Congress prohibits the Nuclear Regulatory Commission (NRC) from granting licenses to nuclear facilities "owned, controlled, or dominated" by a foreign entity or to an entity which "would be inimical to the common defense and security or to the health and safety of the public," according to the Atomic Energy Act.[6] However, the NRC has taken an unnecessarily restrictive interpretation of this standard and blocked investment by American allies committed to nonproliferation. At a minimum, the NRC should clarify guidance with a position on what meets the Atomic Energy Act's standard. Ideally, such guidance would follow the clear intent of the Atomic Energy Act to advance nonproliferation objectives while achieving energy goals. The NRC could maintain a case-by-case approach that permits even complete foreign ownership—provided that national security interests are protected—separating the concepts of ownership, construction, and operation.

- **Open access to international markets**. Tariffs on certain solar panels, steel, and aluminum drive up the price of solar projects and energy infrastructure in the U.S. For example, removing tariffs on imported solar panels could reduce total system costs by 30 percent.[7] Tariffs limit the ability of American companies to shop for the most competitive products. Tariffs and the threat of tariffs also create unnecessary market uncertainty, leaving projects and investment in limbo as companies wait to determine whether the costs of projects will become uneconomical under a change in policy.

  Unless a legitimate national security concern exists, borders should not dictate whether a company can buy or sell energy, materials necessary for energy projects, or energy projects themselves. The Trump Administration should work to open new markets for biofuels where tariffs and import quotas currently are imposed on American companies.[8] It should also eliminate restrictive "Buy American" mandates that unnecessarily disqualify companies from bidding on government projects.[9]

- **Provide access to long-term nuclear waste storage and empower nuclear waste producers to manage their own spent fuel.** One of the biggest hurdles to nuclear waste management and robust nuclear industry is that the federal government, per the 1982 Nuclear Waste Policy Act, is responsible for managing and disposing of the nuclear waste produced by private businesses. The incentives for action (or, more often, inaction, in the case of nuclear waste) within a government bureaucracy are far different than in the private sector. The natural outcome is that the federal government has done little to fulfill its legal obligation to collect and manage waste, let alone develop innovative technologies for waste management. Empowering the nuclear industry to take responsibility for its own spent fuel would reverse a fatal misalignment in America's nuclear industry.

- **Promote fuel- and technology-neutral competition.** Policymakers should defend competitive markets and eliminate policies that created market unfairness in the first place. A government-centric approach uses policy to guarantee that some, if not all, costs of service are covered, thus reducing incentives to cut costs beyond what is politically necessary. In contrast, competitive markets force power suppliers and investors to consider the costs and benefits to their customers and incentivize discipline to be more efficient—in operations, investments, and regulatory compliance—than competitors. It empowers greater customer choice not only in the form of resources (renewables, conventional fuels, or a mix) but also in financial products (such as fixed rates, risk preferences, indexed rates, or short- or long-term contracts).

  In the end, because electricity providers have to work for their customers, prices are competitive and quality improves. The Federal Energy Regulatory Commission should aggressively defend competition and, along with greater reforms from Congress, reduce distortions through the Public Utility Regulatory Policies Act that both shut out and over-price renewables.

- **Repeal the Jones Act.** Section 27 of the Merchant Marine Act of 1920, colloquially known as the Jones Act, requires that shipments between two U.S. ports be on U.S.-built, U.S.-manned, and U.S.-owned vessels. The Jones Act drives up shipping costs, increases energy costs, stifles competition, and hampers innovation in the U.S. shipping industry. Originally enacted to sustain the U.S. Merchant Marine, the law has

instead fostered stagnation in the U.S. maritime shipping industry. Furthermore, the Jones Act fleet is unable to meet the needs of the U.S. military, which routinely charters foreign-built ships to fulfill additional sealift needs. The U.S. economy and the U.S. military would be better served without the Jones Act.[10]

- **Repeal the Foreign Dredge Act.** America's ports are important hubs of economic activity. On U.S. coasts and on inland waterways, such as lakes and rivers, ports are critical to move goods and connect businesses with consumers in the U.S. and around the world. Serving as an essential conduit for exports and imports, U.S. ports support many jobs and provide tremendous economic value for cities and communities. The Foreign Dredge Act of 1906 prohibits any foreign-built or chartered ships from dredging in the U.S. The result is to exclude the world's largest dredging companies that could provide better and cheaper service for dredging projects.

  While U.S. competitors have all deepened and widened their ports to accommodate state-of-the-art container ships, bulk carriers, and tank ships that significantly reduce transportation costs, the U.S has lagged far behind. The Foreign Dredge Act is a classic case of concentrated benefits and diffused costs in which a few politically connected companies benefit at the expense of shippers, exporters, consumers, and the ports themselves. Repealing or amending the Foreign Dredge Act is an infrastructure modernization reform that will save taxpayers money, stimulate new investment, and create jobs.[11]

Third Problem: Burdensome Regulations That Set Back Economic and Environmental Progress

Americans want a healthy environment and they want to leave the planet in a better place. They want policies that sufficiently protect public health and safety and want to hold polluters accountable. Unfortunately, a heavy-handed regulatory approach has had unintended outcomes that set back economic and environmental progress. Too many regulations are written with the premise that *any* amount of risk is too much or that energy production and use are incompatible with environmental stewardship. As a result, agencies tend to increase the stringency of existing regulations at great economic cost, despite negligible direct environmental benefits.

These costly regulations adversely affect all energy industries and ultimately the consumer. Unreasonably lengthy permitting processes and lawsuits stall construction of projects that would reduce energy bills and reduce emissions. However, larger businesses may go along with excessive regulations because the regulations inhibit entry of new energy products and services into the market and disproportionately hurt their smaller rivals. Excessively stringent regulations and other anti-growth policies create an unfriendly investment climate, which can have the unintended consequence of offshoring pollution and emissions to parts of the world where environmental standards are not as strict.

Such policies that inhibit innovation and needlessly drive up the cost of energy hurt all Americans and disproportionately harm low-income families. According to a 2015 survey conducted by the U.S. Energy Information Administration, more than 20 percent of families went without basic necessities like food and health care to pay for their energy bills at some point in the year.[12] Eleven percent of respondents kept their homes at unsafe or unhealthy temperatures. Policies that needlessly drive up the cost of energy would only exacerbate these problems.

In contrast, access to affordable, reliable energy is catalyzed by principles of economic freedom, and itself drives innovation and efficiencies that reduce energy poverty and are good for the environment. Together, these have powerful positive ramifications for opportunity, education and jobs, social mobility, housing, and health care.

Policymakers must not consider only what policy measures are most effective in protecting the environment, but also at what level of government. Congress and the Administration should recognize that state and local governments are closer to most environmental issues than Washington—and can more effectively promote environmental protection and economic growth.

To improve the regulatory state, Congress and the Administration should work to remove burdensome regulations that provide little benefit to Americans, and instead should strengthen the application of principles of economic freedom.

Recommendations. Congress and the Administration should:

- **Delegate authority to states for environmental review and the permitting of energy projects on federal lands within their borders.** The sheer size and diversity of federal lands and resources are too much for distant federal bureaucracies and an overextended federal budget to manage effectively. Allowing states to regulate the

energy resources on federal lands would enable more efficient and accountable management and would free federal resources for more pressing issues. States have the regulatory structures to manage federal lands within their boundaries. Short of returning land ownership to private individuals, the federal government should transfer the responsibility of management to the states, which would benefit from energy sources and technologies, including renewable sources that face onerously long permitting time frames.

- **End the use of the social cost of carbon (SCC) in cost-benefit analyses.** Congress should prohibit any agency from using regulatory analysis metrics with the SCC or the "social cost" of other greenhouse-gas emissions in any cost-benefit analysis or environmental review. As has been extensively documented in research by Heritage Foundation analysts, the statistical models on which the federal government relies to estimate the so-called social cost of greenhouse gases are highly prone to user manipulation—and are thus not credible tools for policymaking. If federal courts force regulators to estimate the costs of climate change, they should not use SCC, but the Model for the Assessment of Greenhouse Gas Induced Climate Change to calculate the global temperature change of regulations or new infrastructure.

  If the purpose of climate-change regulation is to slow warming, regulators should measure the benefits through the regulation's project impact on warming rather than aggregate emissions reduced, which mislead the public about the benefits of the policy. The Model for the Assessment of Greenhouse Gas Induced Climate Change provides more useful information for regulators, Congress, and the public when assessing the climate benefits of greenhouse-gas regulation.[13]

- **Repeal New Source Review (NSR).** NSR is a vaguely written rule that disincentivizes efficiency improvements in power plants and other major industrial plants. In areas that meet air-quality standards, plants must follow Prevention of Significant Deterioration (PSD) rules to demonstrate that the construction and operation of new projects and major modifications will not increase emissions above a specified threshold.

  There are several problems with NSR and PSD. What constitutes a significant modification is subjective under the rules. The amendment excludes routine maintenance, repair, and replacement, but what falls

under the definition of "significant modification" remains murky, despite multiple administrative attempts to clarify the meaning. Plant upgrades can improve efficiency and reduce operational costs, thereby lowering electricity costs, increasing reliability, and providing environmental benefits. Nevertheless, NSR requirements for upgrades discourage these activities.

- **Empower families and businesses to drive energy efficiency by eliminating government mandates.** Consumers do not need government mandates, rebate programs, or spending initiatives to be more energy efficient. Consumers will make those choices by themselves, and the government should not override their choices by nudging them toward the government's preferred outcome. Ultimately, Congress should eliminate existing efficiency mandates or restructure them as voluntary standards under which businesses and consumers can choose their level of participation.

- **Reform the current permitting process for offshore energy development.** The current five-year schedule for offshore energy production in the Outer Continental Shelf is a prime example of misguided governance that ignores market realities—such as how companies actually invest in energy and the unpredictability of future energy prices. Modern decisions for leasing have had more to do with political concerns than market demand and have increasingly centralized the review-and-approval process within the federal government. Eliminating the five-year plans and authorizing the Department of Interior to conduct lease sales (if interest for development exists) in consultation with affected states would create a system that is more responsive both to price changes and to the needs and interests of states.

- **Fix major environmental statutes and unnecessary regulations that stall investment in energy development and infrastructure.** America's major environmental statutes like the Clean Air Act, the Clean Water Act, the Endangered Species Act, and the National Environmental Policy Act are in need of modernization.[14] They adversely affect energy production and investment in new infrastructure. While the current Administration has made some progress fixing the regulatory morass and slowing the growth of the regulatory state, policymakers must modernize these laws to comport with the environmental realities of today.[15]

Conclusion

For many households, it is easy to take for granted access to dependable, affordable energy. Unless it is time to pay the bill or to fill the tank, people seldom think about the power supply that heats their homes, the batteries in their cell phones, or the fuel that takes them to the grocery store. However, for far too many American families who live from paycheck to paycheck, the cost of energy is in the front of their minds,[16] especially as a result of the economic downturn driven by the pandemic.[17]

An energy policy that works best is one that meets the various demands of energy consumers. Eliminating subsidies, opening access to markets, and reducing regulatory barriers would supply Americans with dependable energy, expand innovation, and result in a more prosperous society and healthier environment.

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