

ONE HUNDRED TWELFTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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February 14, 2011

The Honorable Fred Upton
Chairman
House Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable John Shimkus
Chairman
Subcommittee on Environment and Economy
House Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Upton and Chairman Shimkus:

We are writing to raise a concern about the witnesses scheduled to testify on Tuesday before the Environment and Economy Subcommittee. We do not believe the witnesses scheduled to testify will present balanced testimony.

We have no concerns about panel 1, which will discuss the relationship between environmental regulation and the economy. Four witnesses are scheduled to appear: three majority witnesses and one minority witness. Even though we have only one witness on this panel, the minority witness, Rena Steinzor of the University of Maryland School of Law, has a deep expertise in the subject and can ensure the members receive a balanced perspective.

The problem arises with panel 2. The majority has invited three witnesses to testify on the second panel. We have been advised that each of these three witnesses will present a "case study" of conflict between environment regulation and economic growth and that each case study will involve a different and complex law under the subcommittee's jurisdiction: the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Resources Conservation Recovery Act (RCRA), and the Toxic Substances Control Act (TSCA). To the best of our knowledge, there is no single minority witness who has sufficient knowledge

The Honorable Fred Upton
The Honorable John Shimkus
February 14, 2011
Page 2

to address the three case studies, so we requested a minority witness for each area. This request was denied.

The result is that the second panel will be one-sided. The witnesses invited by the majority will complain in detail about specific environmental regulations. There is another side to the issues they will raise, but members will not be allowed to hear it because witnesses that we proposed who have a different viewpoint are not being invited.

This is not a fair manner to proceed, and it is markedly different from the precedents the Committee followed last Congress.

Last Congress, Chairman Waxman's practice was that if there was a legitimate perspective that was not represented at hearing, a witness representing that perspective should be invited. While there were often negotiations between the majority and minority staffs about the composition of witnesses at hearings, Chairman Waxman never denied a minority request for a witness that was brought to his attention.

As a result, during the 111th Congress, the minority was well-represented in our hearings. On the Energy and Environment Subcommittee, for instance:

- Many hearing panels were developed on a bipartisan, consensus basis;¹
- Numerous hearings featured multiple minority witnesses on a panel;²
- In one case, the minority selected four out of the eight witnesses invited.³

¹ House Committee on Energy and Commerce, *The Future of the Grid: Proposals for Reforming National Transmission Policy* (June 11, 2009); House Committee on Energy and Commerce, *Protecting the Electric Grid* (Oct. 23, 2009); House Committee on Energy and Commerce, *Impacts of HR 3795: The Over the Counter Derivatives Markets Act of 2009, on Energy Markets* (Dec. 2, 2009); House Committee on Energy and Commerce, *The Exxon-XTO Merger: Impacts of U.S. Energy Markets*, 111th Cong. (Jan. 15, 2010); House Committee on Energy and Commerce, *Combating the BP Oil Spill* (May 27, 2010); House Committee on Energy and Commerce, *Pipeline Safety Oversight and Legislation* (Sept. 23, 2010).

² House Committee on Energy and Commerce, *Energy Efficiency: Complementary Policies for Climate Legislation* (Feb. 24, 2009); House Committee on Energy and Commerce, *The Role of Offsets in Climate Legislation* (Mar. 3, 2009); House Committee on Energy and Commerce, *The Future of Coal Under Climate Legislation* (Mar. 10, 2009); House Committee on Energy and Commerce, *Preparing for Climate Change: Adaptation Policies and Programs* (Mar. 25, 2009).

The Honorable Fred Upton
The Honorable John Shimkus
February 14, 2011
Page 3

- In another case, the number of minority witnesses actually outnumbered the majority witnesses, by four to three.⁴
- We even agreed, on a last-minute basis, to add a panel to a hearing in order to accommodate a minority-requested witness, delaying the testimony of other witnesses invited by the majority.⁵

When we were in the majority, we proceeded in a manner that ensured hearing topics were examined fairly. We are disappointed that the first hearing of the Environment and Economy Subcommittee will not meet this standard and will provide members with a skewed perspective.

We request that you reconsider your approach and add the witnesses requested by the minority to tomorrow's hearing.

Sincerely,



Henry A. Waxman
Ranking Member



Gene Green
Ranking Member
Environment and Economy Subcommittee

³ House Committee on Energy and Commerce, *Allowance Allocation Policies in Climate Legislation* (June 9, 2009).

⁴ House Committee on Energy and Commerce, *The American Clean Energy and Security Act of 2009*, day 2, panel 3 (Apr. 22, 2009).

⁵ House Committee on Energy and Commerce, *The American Clean Energy and Security Act of 2009*, day 4, panel 2 (Apr. 24, 2009).