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October 14, 2021

United States Senate
Committee on Environment
and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

United States Senate
Committee on Energy
and Natural Resources
304 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Carper, Chairman Manchin, Ranking Member Capito, and Ranking Member Barrasso:

This winter, as natural gas prices surge, Americans will face costly heating bills. The National Energy Assistance Directors Association predicts that natural gas bills could be 30% higher this winter than last.[1] Heating bills in some markets could spike even higher. These soaring prices will add to the steep amounts—the highest since 2014—that Americans are paying at the pump. And all these price jumps come after a COVID-19 pandemic that caused utility arrearages to reach record levels. In short, Americans are hurting.

Given all this, we would expect Congress to be focused on affordable energy solutions. Yet Congress is instead considering imposing additional fees on the oil and gas industry. In the Senate, the Methane Emissions Reduction Act proposes to charge oil and gas producers $1,800 per ton of methane emissions beginning in 2023. A similar provision in the House's version of the Build Back Better Act proposes a $1,500 "fee"—really, a tax—for each ton of methane emissions.

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[1] *See* Mark Harrington, *Higher Energy Prices Could Be Ahead for Customers This Winter*, NEWSDAY (Oct. 4, 2021), *available at* https://nwsdy.li/3FrhONn.

This new tax will damage our economy. Industry experts estimate that the Senate version would impose a $14.4 billion cost and affect as many as 155,000 jobs.[2] Retail gas prices would go up; the American Gas Association estimates that increases to consumer natural gas bills could range from 12% to 34%.[3] And because natural gas and oil play such a central role in the U.S. economy, these price increases could feed inflation in other sectors. The inflation rate is already running at a 30-year high.

The proposed tax is neither necessary nor appropriate. At President Biden's direction, the Environmental Protection Agency is developing a new Oil and Natural Gas Methane Rule. The EPA's requirements will operate on top of existing federal and state regulations on methane. And regulations aside, oil and gas producers are motivated to limit methane emissions because that gas can be captured and sold as a commodity. So we question why oil and gas producers should be regulated both *directly* and *indirectly* by both *federal* and *state* authorities when they are successfully working to limit methane emissions as it is.

Worse still, Congress plans to effect its two-way squeeze on these industries by deriving the new tax from inscrutable formulas and calculations. Laws and administrative regulations should be written clearly,[4] but nothing is clear about these bills. The Senate bill provides two ways to calculate the "fee." Here is one:

> the sum obtained by adding—(I) the product obtained by multiplying—(aa) the difference between—(AA) the percentage of volume lost to the atmosphere in the basin during the calendar year; and (BB) 0.2 percent; (bb) the total quantity of natural gas produced or released and lost to the atmosphere during oil or natural gas production by the company in the basin during the calendar year; and (cc) the methane fee factor for the applicable calendar year [$1,800 for 2023 and increasing by a separate formula each year thereafter]; and (II) the product obtained by multiplying— (aa) the difference between (AA) the percentage of volume lost to the atmosphere in the basin during the calendar year; and (BB)

[2] *See* Letter from Oil and Natural Gas Industry Stakeholders to Senate Leadership (Sept. 7, 2021), *available at* https://bit.ly/2Yxydz2.

[3] *See* Letter from American Gas Association and Other Gas Associations to Senate Leadership (Sept. 7, 2021), *available at* https://bit.ly/3iFIS1S.

[4] *See Pfaff v. HUD*, 88 F.3d 739, 749 (9th Cir. 1996) (criticizing an agency for having done "so little to enlighten the public" in an "especially complex area of the law"); *Dong Sik Kwon v. INS*, 646 F.2d 909, 919 (5th Cir. 1981) (suggesting that a regulation "should be so written as to be comprehensible by intelligent laymen and unspecialized lawyers without the aid of both lexicon and inner-circle guide); *see also Dantran, Inc. v. U.S. Dep't of Lab.*, 171 F.3d 58, 76 (1st Cir. 1999) (Cudahy, J., concurring in part and dissenting in part) ("The best we can do is leave the subject scratching our heads and concluding that the regulations are indecipherable. If that is the case, they are unenforceable.").

> 0.1 percent; (bb) the total quantity of natural gas gathered, processed, or transmitted by the company in the basin during the calendar year; and (cc) the methane fee factor for the applicable calendar year.

The House bill is no better. It instructs a covered facility to multiply $1,500 by the tons of methane reported for that facility under the EPA's mandatory greenhouse gas reporting program above a given threshold. Compared to the Senate bill, that approach might sound simple enough. But here is an example of the dozens of calculations the reporting program requires:

$$E_s = \sum_{p=1}^{W} \left[V_p \times \left(\left(0.37 \times 10^{-3}\right) \times \mathrm{CD}_p^2 \times \mathrm{WD}_p \times \mathrm{SP}_p \right) + \sum_{q=1}^{V_p} \left(\mathrm{SFR}_p \times \left(\mathrm{HR}_{p,q} - 1.0 \right) \times Z_{p,q} \right) \right]$$

Our laws should make it easy for energy professionals to innovate—not task them with solving labyrinthine puzzles like these.

We also fear that this legislation will inspire more methane-focused taxes. Especially given that some draft legislation incorporates administrative standards by reference, we can imagine the EPA taking the "initiative" to extend the tax to other sectors. "[G]overnment agencies have a tendency to swell, not shrink, and are likely to have an expansive view of their mission."[5]

Indeed, by limiting the tax to the oil and gas sectors, the present bills invite mission creep. Agricultural operations, landfills, and coal mining produce methane, too. We have no confidence that the EPA will abstain from extending the tax to those sectors; we hardly need remind you how the agency applied its mandate aggressively (and illegally) in implementing the Clean Power Plan. We expect a bill like this one to soften the ground for similar aggressive and illegal bills from Congress down the road. In fact, we see this "methane fee" as a potential step toward a broader carbon tax.

We support reasonable and lawful measures to reduce methane emissions. But a de facto tax administered through an onerous administrative regime is not that. We urge you to reject any methane tax and save American energy consumers from ever more painful price increases.

[5] *Hi-Craft Clothing Co. v. NLRB*, 660 F.2d 910, 916 (3d Cir. 1981); *see also Lubrizol Corp. v. EPA*, 562 F.2d 807, 819 (D.C. Cir. 1977) (noting the "seemingly growing popular conviction that government agencies too often transgress the statutorily imposed boundaries of their authority"); *United States v. Parkinson*, 240 F.2d 918, 921 (9th Cir. 1956) ("The record of the past few decades is replete with examples of the tendency of executive agencies to expand their field of operations. A passion and a zeal to crusade affects their operations.").

Sincerely,

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