

ONE HUNDRED FIFTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115

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**MEMORANDUM**

**March 27, 2017**

**To: Subcommittee on Energy Democratic Members and Staff**

**Fr: Committee on Energy and Commerce Democratic Staff**

**Re: Hearing on “Federal Energy Related Tax Policy and its Effects on Markets, Prices, and Consumers”**

On Wednesday, March 29, 2017, at 10:15 a.m. in room 2322 of the Rayburn House Office Building, the Subcommittee on Energy will hold a hearing entitled “Federal Energy Related Tax Policy and its Effects on Markets, Prices, and Consumers.”

**I. BACKGROUND**

The House Energy and Commerce Committee maintains jurisdiction over key statutes that regulate the utility sector (e.g. the Federal Power Act, the Public Utility Regulatory Policies Act). However, tax policy has long provided Congress with an additional tool for affecting change in the electricity sector.

Instances of government forgoing revenue or tax expenditures are referred to as “indirect subsidies” and they vastly outweigh “direct subsidies” such as federal spending on behalf of the sector.<sup>1</sup> Indirect subsidies can include specially targeted exemptions, allowances, deductions, credits, or even treasury grants that allow recipients to monetize tax credits. Together with direct subsidies and regulatory subsidies, indirect subsidies can have important impacts on the competitiveness of a particular player or technology in the marketplace.

Non-monetary or regulatory subsidies are comprised of policies that provide exclusive benefits to one industry sector or technology over another. Examples of regulatory subsidies

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<sup>1</sup> Environment and Energy Study Institute (EESI), *Fossil Fuel Subsidies: A Closer Look at Tax Breaks, Special Accounting, and Societal Costs* (June 2011) ([www.eesi.org/papers/view/issue-brief-fossil-fuel-subsidies-a-closer-look](http://www.eesi.org/papers/view/issue-brief-fossil-fuel-subsidies-a-closer-look)).

might include the exemption of oil and gas products and waste from liability under Superfund, or the exemption of hydraulic fracturing from Safe Drinking Water Act regulation.

### **A. Historical Perspective**

Tax subsidies for the energy sector have been in existence almost since the nation's founding. Wood and coal were the early beneficiaries of energy subsidies, which included an import tariff designed to benefit domestic coal producers enacted in the late 1700s.<sup>2</sup> Domestic coal continued to benefit from a number of federal and state policies designed to increase both its production and consumption (including the government-supported growth of coal-fueled rail transportation).

While the revenue losses associated with energy tax provisions in the late 1970s and early 1980s are similar to those in the 2000s, their composition has changed significantly.<sup>3</sup> In the late 1970s through the mid-1980s, nearly all the revenue forgone through energy tax breaks accrued to the oil and gas industry. And in the 2000s, revenue losses associated with renewable energy began to make up a larger portion, as did unconventional fuel production credits that benefitted synthetic coal producers. In the late 2000s, the majority of revenue losses have been associated with incentives designed to promote alternative fuels and biofuels. It was not until 2010 that tax incentives for renewables resulted in revenue losses that exceeded those associated with fossil fuels.<sup>4</sup>

### **B. Fossil Fuel Subsidies**

The fossil fuel industries -- including coal, oil, and natural gas -- receive substantial subsidies in the forms of grants, unpriced costs, tax credits, royalty relief, and accounting allowances. The Environmental and Energy Study Institute calculated that these benefits would amount to roughly \$50 billion over the course of this decade.<sup>5</sup> Questions have been raised as to whether these benefits are still appropriate for mature and profitable industries, which also happen to be major contributors to negative public health and environmental impacts.

Oil and gas firms benefit from a number of indirect subsidies that increase their profitability. These operators can be organized as master limited partnerships, a corporate form used primarily by fossil fuel companies, that permits them to pass profits on to partners without paying corporate income tax. Additionally, these MLPs are eligible to register as entities that

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<sup>2</sup> Nancy Pfund and Ben Healey, *What Would Jefferson Do?* (September 2011) ([www.dblpartners.vc/resource/what-would-jefferson-do](http://www.dblpartners.vc/resource/what-would-jefferson-do)).

<sup>3</sup> Molly F. Sherlock, Congressional Research Service (CRS), *Energy Tax Policy: Historical Perspectives on and Current Status of Energy Tax Expenditures* (R41227) (May 2, 2011) ([www.crs.gov/Reports/R41227?source=author](http://www.crs.gov/Reports/R41227?source=author)).

<sup>4</sup> *Id.*

<sup>5</sup> EESI, *Fossil Fuel Subsidies: A Closer Look at Tax Breaks, Special Accounting, and Societal Costs* (Jun. 2011) ([www.eesi.org/files/fossil\\_fuel\\_subsidies\\_062311a.pdf](http://www.eesi.org/files/fossil_fuel_subsidies_062311a.pdf)).

may be traded on public securities markets.<sup>6</sup> The federal government lost a projected \$1.5 billion in revenue between 2010 and 2015 as a result of this pass-through tax break.<sup>7</sup> Other subsidies for these industries include the expensing of percentage over cost depletion, a \$5.2 billion cost between 2016 and 2020. None of these subsidies are scheduled to expire or sunset.<sup>8</sup>

The coal industry receives multiple subsidies even though coal-related operations create significant public costs. Researchers from Harvard's School of Public Health have estimated these costs at "a third to over one-half of a trillion dollars annually[.]"<sup>9</sup> The industry receives Coal Production Credits, which will cost the federal government \$200 million between 2016 and 2020, credits for investing in clean coal facilities, which will cost \$1 billion between 2016 and 2020, and amortization of air and pollution control facilities, a cost of \$4.2 billion over the same five-year period.<sup>10</sup>

### C. Renewable Energy Tax Preferences

Roughly three-quarters of the cost of tax preferences for energy in 2015, amounting to \$11.5 billion, went towards renewable energy and energy efficiency. This figure will change in the future due to the temporary nature of certain renewable energy tax credits. While most tax preferences for fossil fuels are permanent, most of the preferences for renewable energy are set to expire in the coming years.<sup>11</sup>

The largest tax incentive for renewable electricity is the production tax credit (PTC), which is Section 45 of the Internal Revenue Code and applies to wind projects that begin construction by the end of 2019.<sup>12</sup> Another popular renewable energy tax credit is the investment tax credit (ITC). For solar energy, the ITC has been extended through 2021 with a credit equaling 30 percent of the investment, with a phase down beginning in 2019.

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<sup>6</sup> Stockholm Environment Institute, *Effect of Government Subsidies for Upstream Oil Infrastructure on U.S. Oil Production and Global CO<sub>2</sub> Emissions* (Jan. 2017) ([earthtrack.net/sites/default/files/uploaded\\_files/SEI-WP-2017-02-US-oil-and-gas-production-subsidies.pdf](http://earthtrack.net/sites/default/files/uploaded_files/SEI-WP-2017-02-US-oil-and-gas-production-subsidies.pdf)).

<sup>7</sup> *It Pays to Own an Energy Pipeline. Thanks, Tax Code*, Bloomberg (Jan. 24, 2013) ([www.bloomberg.com/news/articles/2013-01-24/it-pays-to-own-an-energy-pipeline-dot-thanks-tax-code](http://www.bloomberg.com/news/articles/2013-01-24/it-pays-to-own-an-energy-pipeline-dot-thanks-tax-code)).

<sup>8</sup> Memorandum from Molly Sherlock, Specialist in Public Finance, CRS to U.S. House Committee on Energy and Commerce, Energy Tax Provisions (Mar. 23, 2017).

<sup>9</sup> Annals of the New York Academy of Sciences, *Full Cost Accounting for the Life Cycle of Coal* (2011) ([www.chgeharvard.org/sites/default/files/epstein\\_full%20cost%20of%20coal.pdf](http://www.chgeharvard.org/sites/default/files/epstein_full%20cost%20of%20coal.pdf)).

<sup>10</sup> Memorandum from Molly Sherlock, Specialist in Public Finance, CRS to U.S. House Committee on Energy and Commerce, Energy Tax Provisions (Mar. 23, 2017).

<sup>11</sup> Congressional Budget Office, *Federal Support for the Development, Production, and Use of Fuels and Energy Technologies* (Nov. 2013).

<sup>12</sup> Congressional Research Service, *Energy Tax Policy: Issues in the 114<sup>th</sup> Congress* (June 15, 2016) (R43206).

## **II. WITNESSES**

The following witnesses have been invited to testify:

**Joseph E. Aldy**

Associate Professor of Public Policy  
Harvard Kennedy School

**Steve Clemmer**

Director of Energy Research and Analysis  
Union of Concerned Scientists

**Terry Dinan, Ph.D.**

Senior Advisor  
Congressional Budget Office

**Devin Hartman**

Electricity Policy Manager  
R Street Institute

**Robert Murphy, Ph.D.**

Senior Economist  
Institute for Energy Research

**Ben Zycher, Ph.D.**

Resident Scholar and John G. Searle Chair  
American Enterprise Institute