

**Prepared Remarks
U.S. Senator John Boozman
before the
House Committee on Natural Resources,
Subcommittee on Water, Power, and Oceans
1324 Longworth House Office Building
Wednesday, October 28, 2015, 2:30 pm**

Chairman Fleming, Ranking Member Huffman, and
Members of the Subcommittee:

Thank you for today's hearing. And thank you for receiving testimony on the APPROVAL Act, legislation to make a small change to Section 1222 of the *Energy Policy Act of 2005*.

Earlier this year, Congressmen Womack, Crawford, Hill, and Westerman joined Senator Cotton and I in introducing companion versions of this bill in the House and Senate.

The APPROVAL Act would make a small, modest change to ensure that affected states and tribes can weigh-in before the federal government partners in transmission projects.

This is especially important because the Department may try to use Section 1222 to take private property for the benefit of private companies. Transmission has historically been approved at the state level, and state involvement is important.

In a report on transmission, the Congressional Research

Service notes that (quote) “the location and permitting of facilities used to transmit electricity to residential and commercial customers have been the province of the states – with limited exceptions – for virtually the entire history of the electricity industry.”

CRS goes on that (quote) “state and local governments are well positioned to weigh the local factors that go into siting decisions, including environmental and scenery concerns, zoning issues, development plans, and safety concerns.” (end quote). This state and local role must be reinforced.

The APPROVAL Act will build grassroots support for renewable energy. States, tribes, and local communities must know their voices will be heard in the transmission permitting process – and that a transparent process will be followed.

When communities have this assurance, they can get behind the renewable projects that our country needs. Unfortunately, due to the current structure of Section 1222, support for such projects has been set-back in Arkansas by a sense that the federal government may force a transmission project for which there is no clear demand or demonstrated need.

Quite frankly, Section 1222 authority has been completely unnecessary so far, and the authority is not limited for

transmission of renewables, so it can be used for any type of project. The provision was enacted in 2005, but it hasn't been used a single time in the decade since for any kind of project.

In 2005, wind power installed capacity was under 9,000 megawatts. Today, installed wind capacity is over 61,000 megawatts. This is a tremendous success story, and I have supported the growth of renewable energy, including wind, solar, biomass, and hydropower. But again, all this new wind capacity was installed without resorting to Section 1222 transmission authority.

In prepared testimony, one of today's witnesses lays out a number of legal and procedural concerns with the Department of Energy's current review of a proposed Section 1222 project that would cross Arkansas. Again, if approved, this will be the first use of Section 1222.

I urge the Committee to listen to the concerns laid out today, particularly the fact that the Department does not provide the kind of transparent, open process that is typically provided at the state level.

While the Administration has not taken a position on our bill, I do want to address one concern that has been raised. Our bill has been labelled "unusual" in that it "would delegate approval over the exercise of federal [eminent domain] authority to individual state or tribal

officers.” This is not unusual. I will submit for the record a list of statutes, prepared by CRS, that provide similar authorities to states and Native American tribes. But I want to highlight one example in particular. The *Public Utility Regulatory Policies Act* states that the Secretary of Energy may acquire certain rights-of-way using eminent domain only if he determines that the Governor of each affected State has approved the project.

Now, for a brief moment, I would like to discuss this proposed project in Arkansas. More than six weeks ago, the Arkansas Delegation sent to the Secretary number of oversight questions related to the Department’s review of this project. These questions were fair and substantive.

While the Department met with our staff last week, we have not received a response from the Department to the questions in our Delegation’s letter. I will provide a copy of this oversight letter, and I ask that it be included in the record. The Department should not use this unprecedented authority, particularly in a manner that lacks transparency, and it should respond to our questions as quickly as possible.

With regard to this particular proposed project, my understanding is that of more than 100 utilities that purchase power from the Southwestern Power Administration, only one has come out in express support of it.

I also want to be clear that support for the **reform** of Section 1222 – as we provide in the APPROVAL Act – does not mean we oppose new infrastructure. Instead, it just means that we believe the local communities and states should have a voice – a seat at the table – as they always have before.

Section 1222 could have adverse impacts in all states where the Southwestern Power Administration operates or where the Western Area Power Administration operates, because the law discriminates against those states in particular, to undermine the traditional role of those states and their local residents.

So we responded – not by proposing to repeal Section 1222 – but by introducing a bill that will provide a small, modest, and feasible change, to restore the traditional seat at the table for the states and Native American tribes.

We strongly encourage the Committee to act quickly, because tribes and residents of many states, including Arkansas, are at tremendous risk of adverse impacts and being cut out of the process.

Our bill is a starting point, and I am open to suggestions for how we can make it better, as long as we ensure that the rights of states and local communities to be heard will be restored.

Again, thank you for today's hearing and allowing me to provide a statement.

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