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ONE HUNDRED ELEVENTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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April 27, 2009

The Honorable Joe Barton
Ranking Member
House Energy and Commerce Committee
2322-A Rayburn House Office Building
Washington, D.C. 20515

The Honorable Fred Upton
Ranking Member
Subcommittee on Energy and Environment
2183 Rayburn House Office Building
Washington, D.C. 20515

Dear Ranking Members Barton and Upton:

This letter responds to the April 24, 2009, request from you and your Republican colleagues on the Committee for additional day of hearings on the American Clean Energy and Security Act of 2009 (ACES). Your request was surprising given the extensive hearings the Committee has held on energy policy and legislation. Our extensive hearings and the many accommodations we have provided to the minority far surpass the process you provided Democrats when you and your Republican predecessors controlled the Committee.

In the past two and a half years, this Committee has held dozens of hearings on energy and climate change policy that have informed the development of the ACES text and built a detailed factual record regarding the need for action on this matter. These hearings included:

- Subcommittee on Energy and Air Quality, *Hearing on Addressing Climate Change – Views from Private Sector Panels* (Feb. 13, 2007);
- Subcommittee on Energy and Air Quality, *Hearing on a Review of the Administration's Proposal for the Transportation Sector* (Feb. 28, 2007);
- Subcommittee on Energy and Air Quality, *Hearing on Carbon Capture and Sequestration; An Overview* (Mar. 6, 2007);

- Subcommittee on Energy and Air Quality, *Hearing on Climate Change: Are Greenhouse Gas Emissions from Human Activities Contributing to a Warming of the Planet?* (Mar. 7, 2007);
- Subcommittee on Energy and Air Quality, *The Environmental Protection Agency's Fiscal Year 2008 Budget Request* (Mar. 8, 2007);
- Subcommittee on Energy and Air Quality, *Hearing on Climate Change and Energy Security: Perspectives from the Automobile Industry* (Mar. 14, 2007);
- Subcommittee on Energy and Air Quality, *Hearing on Climate Change: State and Local Perspectives* (Mar. 15, 2007);
- Subcommittee on Energy and Air Quality, *Hearing on Climate Change: Perspectives of Utility CEOs* (Mar. 20, 2007);
- Subcommittee on Energy and Air Quality, *Hearing on Perspectives on Climate Change* (Mar. 21, 2007);
- Subcommittee on Energy and Air Quality, *Hearing on Climate Change – International Issues, Engaging Developing Countries* (Mar. 27, 2007);
- Subcommittee on Energy and Air Quality, *Hearing on Climate Change – Lessons Learned from Existing Cap-and-Trade Programs* (Mar. 29, 2007);
- Subcommittee on Energy and Air Quality, *Hearing on Alternative Transportation Fuels: An Overview* (Apr. 18, 2007);
- Subcommittee on Energy and Air Quality, *Hearing on Implementation of the EPACT 2005 Loan Guarantee Programs by the Department of Energy* (Apr. 24, 2007);
- Subcommittee on Energy and Air Quality, *Hearing on Achieving — At Long Last — Appliance Efficiency Standards* (May 1, 2007);
- Subcommittee on Energy and Air Quality, *Hearing on Facilitating the Transition to a Smart Electric Grid* (May 3, 2007);
- Subcommittee on Energy and Air Quality, *Hearing on Alternative Fuels: Current Status, Proposals for New Standards, and Related Infrastructure Issues* (May 8, 2007);
- Subcommittee on Energy and Air Quality, *Hearing on Legislative Hearing on Discussion Drafts concerning Energy Efficiency, Smart Electricity Grid, Energy Policy Act of 2005 Title XVII Loan Guarantees, and Standby Loans for Coal-to-Liquids Projects* (May 24, 2007);
- Subcommittee on Energy and Air Quality, *Hearing on Legislative Hearing on Discussion Draft Concerning Alternative Fuels, Infrastructure, and Vehicles* (June 7, 2007);
- Subcommittee on Energy and Air Quality, *Hearing on Administration Perspectives on United Nations Climate Change Conference in Bali* (Jan. 17, 2008);
- Subcommittee on Energy and Air Quality, *Hearing on Climate Change: Competitiveness Concerns and Prospects for Engaging Developing Countries* (Mar. 5, 2008);
- Subcommittee on Energy and Air Quality, *Hearing on Strengths and Weaknesses of Regulating Greenhouse Gas Emissions Using Existing Clean Air Act Authorities* (Apr. 10, 2008);

- Subcommittee on Energy and Air Quality, *Hearing on the Renewable Fuels Standard: Issues, Implementation, and Opportunities* (May 6, 2008);
- Subcommittee on Energy and Air Quality, *Hearing on Legislative Proposals to Reduce Greenhouse Gas Emissions: An Overview* (June 19, 2008);
- Subcommittee on Energy and Air Quality, *Hearing on Climate Change: Costs of Inaction* (June 26, 2008);
- Subcommittee on Energy and Air Quality, *Hearing on H.R. 6258, the Carbon Capture and Storage Early Deployment Act* (July 10, 2008);
- Subcommittee on Energy and Air Quality, *Hearing on Climate Benefits of Improved Building Energy Efficiency* (July 17, 2008);
- Subcommittee on Environment and Hazardous Materials, *Carbon Sequestration: Risks, Opportunities, and Protection of Drinking Water* (July 24, 2008);
- Committee on Energy and Commerce, *Hearing on the U.S. Climate Action Partnership* (Jan. 15, 2009);
- Subcommittee on Energy and the Environment, *Hearing on the Climate Crisis: National Security, Economic, and Public Health Threats* (Feb. 12, 2009);
- Subcommittee on Energy and the Environment, *Hearing on Energy Efficiency: Complementary Policies for Climate Legislation* (Feb. 24, 2009);
- Subcommittee on Energy and the Environment, *Hearing on Renewable Energy: Complementary Policies for Climate Legislation* (Feb. 26, 2009);
- Subcommittee on Energy and the Environment, *Hearing on the Role of Offsets in Climate Legislation* (Mar. 5, 2009);
- Subcommittee on Energy and the Environment, *Hearing on the Future of Coal Under Climate Legislation* (Mar. 10, 2009);
- Subcommittee on Energy and the Environment, *Hearing on Consumer Protection Provisions in Climate Legislation* (Mar. 12, 2009);
- Subcommittee on Energy and the Environment, *Hearing on Competitiveness and Climate Policy: Avoiding Leakage of Jobs and Emissions* (Mar. 18, 2009); and
- Subcommittee on Energy and the Environment, *Hearing on Preparing for Climate Change: Adaptation Policies and Programs* (Mar. 25, 2009).

In addition, the Committee held four days of legislative hearings from April 21 to 24, 2009, specifically on the draft ACES text. We also released the draft text three weeks in advance of these legislative hearings to ensure that both majority and minority Committee members, as well as outside experts, had substantial time to review the text prior to these legislative hearings.

In total, the Committee has held over 40 days of hearings on energy and climate change policy over the past two Congresses. During these hearings, over 300 witnesses testified, including 130 in this year alone. These hearings have included testimony from numerous minority witnesses and have involved accommodations for the minority that are not required under House or Committee rules. For example, 14 witnesses requested by the minority testified

in the legislative hearings on ACES from April 22 to 24, 2009. On both April 22 and 24, the Committee scheduled new panels during the middle of the day to accommodate last-minute minority witness requests, pushing majority witness panels into the evening hours on those days.

Our approach to this legislation stands in stark contrast to the approach you and your Republican predecessors adopted in previous Congresses on legislation that affected millions of Americans and involved expenditure of substantial taxpayer dollars. Consider these examples:

- **The "Medicare Prescription Drug and Modernization Act of 2003" (H.R. 2473):** In the 108th Congress, this Committee considered H.R. 2473, which provided for a new trillion dollar prescription drug coverage program under Medicare. Despite the sweeping policy and cost consequences of this measure, the Committee held no public hearings on the legislation. There was no subcommittee markup. Democrats did not receive a copy of the legislation until late Friday afternoon before a Tuesday markup.[1]

- **The "Gasoline for America's Security Act of 2005" (H.R. 3893):** In the 109th Congress, the Committee considered H.R. 3893, which codified controversial Clean Air Act "new source review" regulations of the Bush Administration and provided for the expenditure of hundreds of millions of dollars for programs relating to the supply and use of petroleum and other energy products. The Committee held no legislative hearings on the legislation and no subcommittee markup. Instead, the bill was released on a Friday night at 10:00 p.m., allowing only two business days for its evaluation before a full Committee markup the following Wednesday.[2]

- **The "National Uniformity for Food Act of 2005" (H.R. 4167):** In the 109th Congress, the Committee considered H.R. 4167, which preempted virtually every state and local law that protected consumers from contaminated foods. The Committee held no hearings on the legislation and no subcommittee markup.[3]

- **The "Refinery Permit Process Schedule Act" (H.R. 5254):** In the 109th Congress, the House considered H.R. 5254, a bill that directed the President to designate no less than three closed military installations as suitable for refinery construction and required states

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[1] House Committee on Energy and Commerce, *Report on Medicare Prescription Drug and Modernization Act of 2003* (June 25, 2003) (H.Rept. 108-178, Part 1).

[2] House Committee on Energy and Commerce, *Report on Gasoline for America's Security Act of 2005* (Oct. 6, 2005) (H.Rept. 109-244).

[3] House Committee on Energy and Commerce, *Report on the National Uniformity for Food Act of 2005* (Feb. 28, 2006) (H.Rept. 109-379).

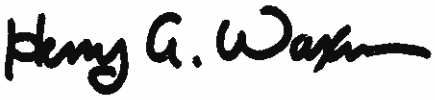
to meet a federal schedule for issuing refinery construction permits. H.R. 5254 was put on the House suspension calendar, a procedure normally reserved for non-controversial bills, and brought up on the House floor just one day after its May 2, 2006, introduction, without the benefit of any legislative hearings or markup by the Committee.[4] One month later, still without having held any legislative hearings or markup on this bill, the Committee brought H.R. 5254 back to the House floor under a rule that permitted no amendments.[5]

- **The "Energy Policy Act of 2002" (H.R. 4):** In the 107th Congress, Rep. Barton introduced H.R. 3406, which would have made controversial changes to federal laws governing the electricity sector. This bill was never marked up or reported out of subcommittee or the full Committee due to its lack of support among Committee members, and these provisions were not included in the broad energy policy bill, H.R. 4, that was considered by the House. Nevertheless, when H.R. 4 went to conference, then-Committee Chairman Tauzin and Rep. Barton announced that the House would take H.R. 3406 into the conference as the House position.[6]

These are just a few of many examples of how Republicans abdicated regular order when they controlled this Committee. This track record makes it particularly difficult to see any reasonable basis for Committee Republican complaints about the thorough, fair, and deliberate process we are employing to consider the ACES measure.

Nevertheless, we want to continue to take into consideration issues raised by all members of the Committee as we proceed with this measure. We therefore will provide for an additional day of Committee hearings on the ACES draft on Friday, May 1, 2009.

Sincerely,



Henry A. Waxman
Chairman
Committee on Energy and Commerce

Edward J. Markey
Chairman
Subcommittee on Energy and Environment

cc Members of the Committee on Energy and Commerce

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[4] *See* Congressional Record, H1999-2007 (May 3, 2006).

[5] *See* H. Res. 842 (109th Cong.); Congressional Record, H3467-3478 (June 7, 2006).

[6] *See, e.g., Energy Policy: Daschle: ANWR, CAFE Deserve No Time In Energy Conference,* Environment and Energy Daily (June 24, 2002).