United States Senate
WASHINGTON, DC 20510

June 15, 2017

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Administrator Pruitt:

We write today to express our serious concern that it appears you still have not provided the Senate Environment and Public Works (EPW) Committee a full accounting of email addresses you used while Attorney General of Oklahoma. According to documents recently released by the Oklahoma Office of the Attorney General, you used an additional business email address—a third, esp@oag.ok.gov—that you never disclosed to the Committee despite multiple requests and opportunities to do so. This is the second time that documents responsive to long-languishing Open Records Act (ORA) requests that you failed to process as Attorney General in your role as open records overseer have revealed that you did not provide truthful responses to Congress.

Having a full accounting of your email use as Oklahoma Attorney General directly bears on the Committee's ability to conduct effective oversight of your conduct as Environmental Protection Agency (EPA) Administrator. It has only been through the public disclosure of your emails that Congress learned of your symbiotic relationship with the energy companies you now regulate as EPA Administrator. In a Pulitzer Prize winning investigation, *The New York Times*[1] documented your practice of raising political funds from energy companies in exchange for advancing their interests through litigation and the regulatory process. Now that you direct much of that litigation and rulemaking as Administrator, a full accounting of communications you have had with that industry is of obvious importance.

The EPW Committee asked you to identify all email addresses you used as Attorney General when it was considering your nomination to be Administrator of the EPA. After providing an initial incorrect response, you corrected your answer. Then you had to correct your answer again with a second email address. Now it appears you will have to correct the record a third time. The Oklahoma Bar Association is already investigating whether your testimony to Congress involved "dishonesty, fraud, deceit or misrepresentation" in violation of Oklahoma Rule of Professional Conduct 8.4. This latest omission is plainly relevant to that inquiry.

The following timeline of events documents your continuing pattern of obstruction and evasion on this issue.

January 4, 2017

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[1] Eric Lipton, "Energy Firms in Secretive Alliance with Attorneys General," *New York* Times, December 6, 2014, available at https://www.nytimes.com/2014/12/07/us/politics/energy-firms-in-secretive-alliance-with-attorneys-general.html.

You listed an "@me.com" email address as your only "Business E-Mail" in your EPW questionnaire that you submitted to Congress. (*See* Appendix A)

January 18, 2017

You appeared before the EPW Committee at a hearing on your nomination to be EPA Administrator, and you had the following exchange:

> *Senator Whitehouse:* … [O]n your questionnaire you listed an email address with a me.com domain as your business email. You also have an oag.ok.gov address, are there other email addresses that you have, are there other email address that you use for business other than your me.com and your oag.ok.gov email addresses?
>
> *Scott Pruitt:* The me.com address is not a business email address, I'm not sure why it was designated as such.
>
> *Senator Whitehouse:* Ok well we can just correct the filing on that.
>
> *Scott Pruitt:* There are no other email addresses if that's your question, senator.

January 24, 2017

You responded in writing to questions for the record after your confirmation hearing.

> *Senator Whitehouse (Question 114):* How many email addresses have you used since becoming Attorney General of Oklahoma? How many do you still use? Please provide the domains of all email addresses you've used during your time as Attorney General of Oklahoma, along with the dates used, and note whether they were personal, professional, or both.
>
> *Scott Pruitt:* I have used two e-mail addresses since becoming Attorney General of Oklahoma. I use a personal e-mail address for personal e-mail, and an official e-mail address for official business. The domain of my personal e-mail address is me.com and the domain for my official e-mail address is oag.ok.gov.

February 7, 2017

The Center for Media and Democracy (CMD) filed a lawsuit alleging you violated the Oklahoma Open Records Act for failing to respond to ORA requests for over two years, asking the court to compel the release of responsive documents and block the destruction of emails.

February 10, 2017

In response to CMD's lawsuit, the Oklahoma Attorney General's Office provided 411 documents responsive to a January 2015 ORA request by CMD. You were still Attorney General at the time this disclosure was made. One innocuous email with your personal address was included and none with the esp@oag.ok.gov address.

February 14, 2017

CMD filed a status report alleging the Oklahoma Attorney General's Office had improperly withheld thousands of emails from the February 10 release, describing at least 27 missing emails that your office had provided to *The New York Times* in 2014 that were responsive to its request.

February 16, 2017

The Oklahoma County Court ordered you to release emails improperly withheld from the February 10 release, and ordered you to disclose documents responsive to five other outstanding CMD requests by February 21.

February 17, 2017

You were confirmed by the Senate.

February 21, 2017

The Oklahoma Attorney General's Office provided an additional 7,564 pages of responsive records to January 2015 request. Documents in this disclosure showed that you used your @me.com email address for business purposes, contradicting your January 24 responses to the Committee. Emails to esp@oag.ok.gov were included in this disclosure but did not display your name next to it. This release shows that people outside of your office emailed you at your undisclosed esp@oag.ok.gov email address as far back as 2014 and emailed your personal email address about official business as far back as 2013.

Emails using the @me.com address, attached in Appendix B, included:

- August 14, 2013 email to you from Sarah K. Magruder Lyle, Vice-President of Strategic Initiatives at the American Fuel & Petrochemical Manufacturers (AFPM), copying Clayton Eubanks (your then solicitor general). The email included the AFPM's Renewable Fuels Standard (RFS) waiver petition it filed with EPA and expressed AFPM's interest in Oklahoma "filing a similar waiver requests highlighting the environmental harm caused by the RFS mandate."
- April 16, 2013 email from Amy Kjose Anderson, Civil Justice Task Force Director and Oklahoma Membership Contact at the American Legislative Exchange Council (ALEC) to you, Ashley Olmstead (your former executive assistant), and Melissa Houston (your then chief of staff), copying Derek Albro (Devon Energy), regarding your remarks at an ALEC meeting. (@me.com was redacted)

Emails using the esp@oag.ok.gov address without your name displayed, attached in Appendix C, included:

- March 31, 2014 email from Henry N. Butler (George Mason University School of Law) to you, Roger Nober (BNSF Railways), Shawn Regan (Property and Environment Research Center), Nathan Richardson (Resources for the Future), and Frank Wolak (Stanford) about your participation in a panel discussion "Collateral Damage in the War on Carbon," copying your Melissa Houston (your then chief of staff), Tom Bates (your then First Assistant Attorney General), and others.

February 24, 2017

Oklahoma Fox 25 published a story, "Okla. AG's office confirms Pruitt used private email for state business," and released a video reporting the Oklahoma Attorney General's Office confirmed you used your personal email address for official business.[2] These stories featured emails Fox 25 obtained through an Open Records Act request that was nearly two years old, showing you used your @me.com address to conduct official business.

March 17, 2017

Senators Carper, Sanders, Whitehouse, Markey, and Duckworth asked you to correct the record on emails and commit to transparency at EPA after "recent reporting and long-delayed disclosure of emails and other documents from your time as the Oklahoma Attorney General show that you were not fully forthcoming and truthful with the Committee in advance of your confirmation."[3]

March 21, 2017

University of Oklahoma College of Law Professor Kristen van de Biezenbos and the Center for Biological Diversity filed a complaint with the Oklahoma Bar Association requesting an investigation into whether you violated Oklahoma Rule of Professional Conduct 8.4(c), which states, "[i]t is professional misconduct for a lawyer to ... engage in conduct involving dishonesty, fraud, deceit or misrepresentation," because the emails released after your hearing indicated you had provided untruthful answers to the Committee.[4]

March 28, 2017

The Oklahoma Bar Association indicated it opened an investigation into the complaint against you, and asked you to respond. (*see* Appendix D)

May 5, 2017

After the Oklahoma Bar Association started its investigation of you, you responded to our March 17 letter acknowledging you used your personal email address to conduct official business. You explained your incorrect answers were "based on the best information available at the time and having only four days to complete approximately 1,100 written questions and subparts." You did not explain that your personal email address only came to light after the Oklahoma Attorney General's Office was compelled by court order to release documents responsive to an ORA request from 2015. You also did not explain that the only obligation you were under when responding to questions for the record was to be complete and accurate, and that the decision to

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[2] Phil Cross, "Okla. AG's office confirms Pruitt used private email for state business," *Fox 25*, February 24, 2017, available at http://okcfox.com/news/fox-25-investigates/ags-office-confirms-pruitt-used-private-email-for-state-business.

[3] Letter to EPA Administrator Pruitt from Senators Carper, Sanders, Whitehouse, Markey, and Duckworth. https://www.epw.senate.gov/public/index.cfm/2017/3/carper-leads-senators-in-asking-pruitt-to-correct-the-record-and-commit-to-transparency-at-the-epa. March 21, 2017.

[4] Center for Biological Diversity Oklahoma Bar Association Complaint, March 21, 2017, available at https://www.biologicaldiversity.org/programs/biodiversity/pdfs/2017_03_21_Center_KVDB_to_OBA_Grievance_Pruitt.pdf.

respond in only four days was your own. In your May 5 correction, you still did not acknowledge your third email address, esp@oag.ok.gov.

May 12, 2017

The Oklahoma Office of Attorney General released additional emails – this time in response to a November 2015 CMD ORA requests pertaining to the Clean Power Plan – which for the first time displayed your name next to the email address esp@oag.ok.gov. These emails show that you sent and received email from this address and used it to interact with your senior staff as recently as October 2016. Emails include (*See* Appendix E):

- May 25, 2016 email to you from Will Gattenby (your then press secretary), copying Mike Hunter (current Attorney General of Oklahoma who was First Assistant Attorney General at the time) and several other members of your staff, about your appearance before the House Energy & Commerce Subcommittee on Environment on the "Impact of Clean Power Plan on States." It includes suggested answers to potential questions, including why you had not responded to Open Records Act requests and mentions a "dropbox."
- October 5, 2016 email to you from Lincoln Ferguson (previously your press secretary in the Oklahoma Attorney General's Office and currently an EPA spokesperson) about an interview focused on "discussing federal overreach (Clean Power Plan, DOL, ICANN)" that includes talking points.

Based on these new emails, we again ask you to correct the record and provide a complete and accurate answer to Whitehouse QFR 114 regarding the email addresses you used while serving as Attorney General of Oklahoma. We also request you answer these additional questions:

1) There are dozens of outstanding Oklahoma Open Record Act requests pertaining to your time as the Attorney General of Oklahoma. Does the Oklahoma Attorney General's Office have access to all esp@oag.ok.gov emails, has that address been searched for emails and documents responsive to Open Records Act requests, and will it be searched in response to outstanding requests?
2) Have all emails sent by and received at the esp@oag.ok.gov been retained?
3) An email in Appendix E mentions a "dropbox." Please explain what that is. Has it been searched for emails and documents responsive to Open Records Act requests; will it be searched in response to outstanding requests; and have all documents been retained?
4) Have you informed the Oklahoma Bar Association about your failure to tell the Committee about your esp@oak.ok.gov email address? If so, on what date? If you did so before the date of this letter, why did you disclose this information to the Oklahoma Bar Association and not the Committee? If you have not yet disclosed this information, why not?
5) During your confirmation, you were asked to commit "to notifying the Committee of all of the email addresses you plan to use upon confirmation and within seven days of using a new email address including any aliases or pseudonyms." In response you stated: "I commit to notifying the Committee of the e-mail I use for official business." Since you were confirmed on February 17, you have provided the committee with only one email

address, Pruitt.Scott@epa.gov, which is listed in the public directory. Are you using any other email address at EPA to conduct official business?

6) For any email addresses responsive to the previous question, please confirm that that EPA is searching those addresses to respond to Freedom of Information Act requests requesting electronic communications to and from you.
7) Have you used any other email addresses or other forms of electronic communication since you became EPA Administrator to communicate for any purpose with any entity that has business before EPA, or representatives thereof? If so, please provide those addresses. We emphasize the phrase "for any purpose" because we do not want you limit your answer to this question by narrowly construing what constitutes EPA business.

These continuing revelations raise serious questions about whether you continue to hide information from your time as Oklahoma Attorney General and that you cannot be trusted to inform Congress about your communications as EPA Administrator. The EPW Committee expects, and federal law requires, that you respond to the Committee completely and accurately. We request a prompt and complete response by Thursday, June 22, 2017, as your response will inform next steps that may be appropriate in this matter.

Sincerely,

Sheldon Whitehouse
United States Senator

Thomas R. Carper
United States Senator

Bernard Sanders
United States Senator

Jeffrey A. Merkley
United States Senator

Edward Markey
United States Senator

Tammy Duckworth
United States Senator

Cc: John Barrasso, Chairman, Senate Committee on Environment and Public Works

Gina Hendryx, General Counsel, Oklahoma Bar Association

Appendix A

UNITED STATES SENATE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

UNITED STATES SENATE

COMMITTEE ON ENVIRONMENT
AND PUBLIC WORKS

ROOM 410 DIRKSEN SENATE OFFICE BUILDING
WASHINGTON, DC 20510

INFORMATION

REQUESTED OF PRESIDENTIAL
NOMINEES

In order to assist the Committee in its consideration of nominations, each nominee is requested to complete the attached Statement for completion by Presidential Nominees. The Statement is intended to be publicly available. In the event that a nominee asks that a specific answer be kept confidential, he or she should notify the Chairman and Ranking Member.

The original and forty (40) copies of the requested information should be made available to the Honorable John Barrasso, Chairman, Committee on Environment and Public Works, U.S. Senate, Washington, DC 20510 (Attn: Susan Bodine) as soon as possible.

Name of Nominee: Edward Scott Pruitt

Position to which nominated: Environmental Protection Agency Administrator

Date of Nomination: 12/08/2016

Business Name: Office of the Oklahoma Attorney General

Business Address: 313 N.E. 21st Street

City, State & Zip: Oklahoma City, OK 73105

Business E-mail: scott.pruitt@me.com

Business Phone: 405.522.4396

Full Legal Name: Edward Scott Pruitt

Date of birth: (b) (6) [redacted]

State of residency: Oklahoma

Appendix B

From:	Sarah Magruder Lyle
To:	Scott Pruitt (Scott.pruitt@me.com)
Cc:	Clayton.Eubanks@oag.ok.gov
Subject:	AFPM's 2014 Renewable Fuels Standard Waiver Filed
Date:	08/14/2013 03:48 PM
Attachments:	AFPM RFS Waiver Petition 8.13.2013.pdf

Dear General Pruitt –

I hope you are doing well!

Attached you will find AFPM's 2014 Renewable Fuels Standard (RFS) waiver petition which was filed with the Environmental Protection Agency (EPA) on August 13. While this petition does not address environmental harm, it provides compelling support on the economic harm cause by the ethanol blendwall under the RFS mandate. The filing of this petition starts the statutory 90-day time period within which EPA must respond.

AFPM remains very interested in the prospect of your state filing a similar waiver request highlighting the environmental harm caused by the RFS mandate which we discussed previously. I would be happy to answer any questions you may have. Please feel free to contact me at slyle@afpm.org or at 202.552.4367.

Best,

Sarah K. Magruder Lyle
Vice President, Strategic Initiatives

American
Fuel & Petrochemical
Manufacturers
1667 K Street NW
Suite 700
Washington, DC 20006
202.457.0480 office
202.552.4367 direct

slyle@afpm.org
Learn more about AFPM at afpm.org

CONFIDENTIALITY NOTICE: This electronic message contains information from the American Fuel & Petrochemical Manufacturers that may be confidential or privileged. The information is intended solely for the use of the individual(s) or entity(ies) named above. If you are not the intended recipient, be aware that any disclosure, copying, distribution, or use of the contents of this message is prohibited. If you have received this e-mail in error, please notify us immediately by telephone at (202) 457-0480 or by reply e-mail and permanently delete this e-mail, any attachments, and all copies thereof.

From: Amy Kjose Anderson
To: Ashley.Olmstead@oag.ok.gov; Melissa Houston; Scott PRuitt (scott.pruitt@[redacted]
Cc: Albro, Derek
Subject: ALEC Speaking Engagement
Date: 04/16/2013 11:38 AM

Wanted to provide you with details on General Pruitt's speaking engagement at the May 3rd ALEC meeting. The energy workshop will be in Ballroom DE at the Cox Convention Center and runs from 11am to 12:15 on the 3rd. General Pruitt will be joined by Jack Stark, Continental and Corey Goulet, TransCanada. Corey will be discussing infrastructure, Jack will be talking about fracking technology and safety, and we are looking forward to hearing General Pruitt's remarks on state primacy in oil and gas regulation and the EPA's sue & settle modus operandi. We expect that Corporation Commissioner Douglas will moderate the panel, though this is still underworks. Each panelist will have 15 to 20 minutes, which should leave 15 minutes for Q&A. If he has any questions, don't hesitate to call or email me. I will also be available on the day of at (202) 870-1110.

General Pruitt will be registered to attend any of the ALEC conference he would like. He's welcome to attend the Board Dinner on the evening of the 2nd at the Governor's Mansion (just let me know ahead of time) and we'd love to have him stick around for any of the rest of the conference... there is a reception on the evening of the 3rd at the Petroleum Club from 6 to 8pm. And let me know whether you've considered if he would like to participate as the Civil Justice Task Force Luncheon speaker... would be delightful to have our current legislative members benefit from his experience as a former state legislator, an ALEC member and a now attorney general. Koch Industries is sponsoring that luncheon.

Melissa, would you also like to be registered for the event? I can extend you a complimentary registration.

Best,
Amy

Amy Kjose Anderson
Civil Justice Task Force Director and Oklahoma Membership Contact
American Legislative Exchange Council
(p) (202) 742-8510
(m) (202) 870-1110
alec.org/CivilJustice

Appendix C

Subject: Panel Discussion on "Collateral Damage in the War on Carbon" -- April 7, George Mason University
From: Henry N Butler <hnbutler@gmu.edu>
Date: 3/31/2014 7:43 PM
To: "esp@oag.ok.gov" <esp@oag.ok.gov>, "roger.nober@bnsf.com" <roger.nober@bnsf.com>, "shawn@perc.org" <shawn@perc.org>, "Richardson, Nathan" <richardson@rff.org>, "Wolak, Frank A" <wolak@stanford.edu>
CC: "Katie.Dark@oag.ok.gov" <Katie.Dark@oag.ok.gov>, "melissa.houston@oag.ok.gov" <melissa.houston@oag.ok.gov>, "tom.bates@oag.ok.gov" <tom.bates@oag.ok.gov>, "ann.lawler@bnsf.com" <ann.lawler@bnsf.com>, Jeffrey Smith <jsmithq@gmu.edu>, Richard Faulk <rfaulk@gmu.edu>

Dear Panelists,

We're looking forward to your panel on Monday at 3:40. As you can see from the attached agenda, we have allocated almost 2 hours for your presentations.

For purposes of our discussion, please assume that there is a war on carbon and that there are some benefits to the reduction in carbon emissions. What is often missing from the policy discussion is the costs.

I will moderate your panel. We will have a brief panel discussion after each presentation. I suggest the following order and timing:

General Pruitt – will open with a broad discussion of the impact of current policies on federalism, jobs, the rule of law, etc. (20 to 25 minutes for presentation)

Roger Nober – will address some of the special challenges that BNSF and the industries its serves are facing (15 minutes for presentation)

Shawn Regan – will discuss his research on the adverse consequences of current policies for Native Americans (15 minutes for presentation)

Nathan Richardson – will share his views on the benefits of current policies and the relevance (or irrelevance) of the previous presentations. (15 minutes for presentation)

Frank Wolak – will compare and contrast the views presented from the economic perspective he will have offered in the keynote opening lecture.

Time permitting, all of this will be followed by a moderated Q&A with the audience.

I'm looking forward to a dynamic and interactive panel.

If possible, please submit your PowerPoints (not required) by Friday at noon.

Please contact Jeff Smith at 703-993-8382 with any questions.

Thank you.

Sincerely,

Henry

Henry N. Butler
GMU Foundation Professor of Law
Executive Director, Law & Economics Center
George Mason University School of Law
3301 Fairfax Drive
Arlington, VA 22201
703.993.8644 (direct)
224.330.0540 (mobile)
hnbutler@gmu.edu
www.MasonLEC.org

--- Attachments: ---

FINAL AGENDA -- LEC Public Policy Conference on Energy and the Environment April 7 2014.pdf	137 KB

GEORGE MASON UNIVERSITY SCHOOL OF LAW

LAW & ECONOMICS CENTER

Energy and the Environment: Old Fuels, New Technologies, and Market Dynamics

LEC Public Policy Conference
LEC Initiative for Energy and the Environment

George Mason University School of Law
Arlington, Virginia

Monday, April 7, 2014

8:00 – 8:30 am	**Breakfast**, *Gallery*
8:30 – 8:40 am	**Welcoming Remarks, Richard O. Faulk**, Senior Director, Initiative for Energy and the Environment, Law & Economics Center
8:40 – 9:40 am	**Keynote Address: "The Future of Fossil Fuels in the United States"** **Frank A. Wolak**, Holbrook Working Professor of Commodity Price Studies and Director, Program on Energy & Sustainable Development, Stanford University
10:00 – 11:00 am	**Life after The War on Coal: Clean Coal Technology, Carbon Sequestration, and Exportation of Coal** **Richard O. Faulk** (Moderator) **Paul Bailey**, Senior Vice President for Federal Affairs and Policy, American Coalition for Clean Coal Electricity **Jacob A. Williams**, Vice President, Global Energy Analytics, Peabody Energy
11:20 am 12:30 pm	**Hydraulic Fracturing: Oil and Gas Industry Dynamics** **Henry N. Butler** (Moderator), GMU Professor of Law and Executive Director, Law & Economics Center, George Mason University School of Law **Christopher A. Wright**, CEO, Liberty Resources LLC, Denver **Erica Bowman**, Vice President of Research and Policy Analysis & Chief Economist, America's Natural Gas Alliance (ANGA) **John A. Arrell, Jr.**, Manager, Market Development and New Products, ATK Defense Group, Missile Products Division
12:30 – 1:40 pm	**Lunch and Luncheon Address**, *Multipurpose Room* **The Honorable Tim C. Fox**, Attorney General of Montana
2:00 – 3:20 pm	**Who Should Regulate Hydraulic Fracturing?** **Richard O. Faulk** (Moderator) **Thomas W. Merrill**, Charles Evans Hughes Professor, Columbia Law School **Michael L. Krancer**, Partner, Blank Rome, LLP **Sharon Buccino**, Director, Land and Wildlife Program, Natural Resources Defense Council
3:40 – 5:30 pm	**Roundtable Discussion: Collateral Damage in the War on Carbon** Jobs and the Economy? Free Trade? Federalism? The Rule of Law? Public Health: Wealthier is Healthier? Owners of Natural Resources? Native Americans? World Peace? The Environment? **Henry N. Butler** (Moderator) **The Honorable E. Scott Pruitt**, Attorney General of Oklahoma **Roger Nober**, Executive Vice President, Law and Secretary, BNSF **Shawn Regan**, Research Fellow, PERC – The Property and Environment Research Center **Nathan D. Richardson**, Visiting Scholar, Resources for the Future **Frank A. Wolak**, Holbrook Working Professor of Commodity Price Studies and Director, Program on Energy & Sustainable Development, Stanford University

Appendix D

OKLAHOMA BAR ASSOCIATION

Office of the General Counsel

March 28, 2017

Kristen van de Biezenbos
c/o The University of Oklahoma College of Law
300 Timberdell Rd.
Norman, OK 73019

RE: Grievance against Edward Scott Pruitt, DC-17-70

Dear Ms. Biezenbos:

We are in receipt of your complaint against the above-named attorney. We have on this date opened this matter for investigation and written the attorney asking for a response to the grievance. We will then conduct whatever further investigation we feel is needed.

After the matter has been fully investigated, your grievance, along with the response of the attorney and the results of our investigation, will be presented to the Professional Responsibility Commission. The Commission will then decide what further action, if any, to take.

Under the Rules of the Oklahoma Bar Association as promulgated by the Supreme Court of the State of Oklahoma, our investigation must remain confidential. Our investigation is strictly limited to the ethical and professional conduct of the lawyer. We cannot provide legal advice nor can we represent you in any pending litigation. It is therefore essential that you continue to protect your own legal interests. You will be notified in writing of the disposition of this matter. If at any time you have any further information you wish to be considered or investigated regarding your grievance, please feel free to provide the information to us.

It is imperative that you keep us advised of any change in your address. If you are unavailable to testify as a witness in the event of a trial, your grievance may be dismissed.

Sincerely,

Gina Hendryx
General Counsel

GLH/mlc

1901 North Lincoln Blvd.
P.O. Box 53036
Oklahoma City, OK 73152-3036
office 405.416.7007
fax 405.416.7003
toll free 800.522.8065

Appendix E

Subject: Testimony Q&A prep
From: Will Gattenby <will.gattenby@oag.ok.gov>
Date: 5/25/2016 7:49 PM
To: Scott Pruitt <esp@oag.ok.gov>
CC: Mike Hunter <mike.hunter@oag.ok.gov>, Lincoln Ferguson <lincoln.ferguson@oag.ok.gov>, Michelle Hale <michelle.hale@oag.ok.gov>, Johnny Moyer <johnny.moyer@oag.ok.gov>

GP – attached (and in your dropbox shortly) are a couple pages of prep material to consider for the Q&A portion of your testimony.

PW has contributed a significant portion, and CR has contributed on questions that may arise from the Open Records Act request.

-WG

Will Gattenby
Press Secretary
Oklahoma Attorney General Scott Pruitt
Direct: (405) 522-0166
Cell: (405) 291-0865
will.gattenby@oag.ok.gov

Attachments:

House CPP Testimony - Q and A prep 5-26-16.docx 24.5 KB

ORR CMD 11/5/15 Request 00176

Testimony Prep: House – Subcommittee on Environment

Thursday, May 26 at 9:30 AM ET

RE: Impact of Clean Power Plan on States

**NOTE:* Below are some general notes that PW thought would be helpful. Also below are:

- Notes from only other CPP hearing in this subcommittee
- Stats about CPP impact in Oklahoma and the country
- Potential questions & notes from opposing viewpoints re: CPP
- Potential Quesstions & Notes re: Open records Request from Takano

Other witnesses:
Charles McConnell, Executive Director of Energy and Environment Initiative at Rice University
Brianne Gorod, Chief Counsel for the Constitutional Accountability Center

**Committee staff estimates 10-12 committee members will be present (~4 w/ from minority)*

Summary of comments/tactics of Subcommittee Members at a previous CPP hearing:

Suzanne Bonamici, Ranking Member (D-OR-01):

- Talking about impacts of climate change and cost if we do not address climate change
- Will try to make a point of the co-benefits of the Clean Power Plan and that Clean power Plan will be modest accompanied with long-term benefits

Alan Grayson (D-FL-09):

- Cites extensive studies in an attempt to disprove any estimates that CPP may increase costs or to discredit the research of anyone who did not consider the health benefits of CPP regulations

DID NOT ATTEND LAST HEARING ON CLEAN POWER PLAN:

Mark Takano (D-CA-41)
Donna Edwards (D-MD-04)
Ami Bera (D-CA-07)
Bill Foster (D-IL-11)

ORR CMD 11/5/15 Request 00177

***(From PW)* - Additional notes that might be handy in response to questions:**

The Rule violates anti-commandeering principles by forcing States and state officials to exercise their sovereign powers by revamping their utility sectors. Under the Rule, state actors will be the ones to account for the Rule's impact on electric reliability, 40 C.F.R. § 60.5745(a)(7), through such means as "[public utility commission] orders," 80 Fed. Reg. at 64,848, and "state measures" that make unregulated renewable energy generators "responsible for compliance and liable for violations" if they do not fill the gap, 40 C.F.R. § 60.5780(a)(5)(iii). Indeed, the Rule pushes substantial duties on even those States that "decline" to administer it. A federal plan's mandate to retire coal-fired plants or reduce their utilization (including by requiring the purchase of emissions allowances) would force state utility and electricity regulators to respond in the same way as if the State itself had ordered the retirements. Likewise, if EPA orders through a federal plan that power-plant owners construct new electric generating capacity, state officials will be forced to review siting decisions, grant permit applications, and issue certificates of public convenience for EPA's preferred generation sources and for the associated new transmission lines that EPA's transformation of the power sector will require.

And political accountability will be frustrated because it is these state officials who "will bear the brunt of public disapproval" for increased costs and lost jobs, because they appear to retain exclusive authority under state law over electricity generation but cannot regulate in accordance with the views of the local electorate.

EPA's response is simply to assert that no State action is required to implement the Rule. 80 Fed. Reg. at 64,881-82. But even under a federal implementation plan, state agencies will have to be involved in decommissioning coal-fired plants, addressing replacement capacity, addressing transmission and integration issues, and undertaking all manner of related regulatory proceedings.43 See id. at 64,678; supra pp. 20-21. In fact, EPA's proposed federal plan expressly relies on state authorities to address reliability issues caused by the Rule. 80 Fed. Reg. at 64,981.

In short, while EPA makes much of the purported flexibility States have in implementing the Rule, see, e.g., 80 Fed. Reg. at 64,665, the Constitution requires the federal government to allow States the choice to "decline to administer the federal program," not a multitude of choices of how to administer the federal program.

ORR CMD 11/5/15 Request 00178

Stats about CPP and Impact on Oklahoma consumers

- Oklahoma's energy generation mix: Coal – 40%; nat gas – 38%; wind – 17%
- Choices available under CPP will cause OK to shutter coal-fired plants and will drastically increase costs for consumers
- Estimated to increase the typical household's annual electricity and natural gas bills by $680, or 35%, by 2020, with costs only escalating each year thereafter as EPA regulations grow more stringent.
- Will hurt most vulnerable in our state the most – poor, single mothers, elderly, minorities
    - Households earning less than $10,000 per year already spend an astounding 60-80 percent of income on energy costs, and those earning $10,000 to $30,000 per year spend greater than 20 percent of their income on energy

Potential Question re: Clean Power Plan

1) **Has 111(d) ever been used "Outside-the-fence-line?"**
    a. Nothing even like this has ever occurred. It is truly an unprecedented approach
    b. Even supporters of the CPP admit that the EPA is expanding their authority to regulate "outside-the-fence" where statutorily they are limited to "inside-the-fence" solutions
    c. 5 rules have been developed within 111(d) since 1990 – not one, until now, has been an outside-the-fence regulation
2) **Doesn't the CPP give states the ability to create their own plans to meet the goals and timelines of the CPP?**
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    b. The EPA will reject our plan if we do not curtail fossil-fuel-generated electricity generation – if the plan does not meet the objective of their federal will – then will enforce a Federal Implementation Plan
    c. If this is such a cooperative effort – why would they generate a FIP
        i. Sounds like the proverbial gun to the head
    d. Example: regional haze rule

ORR CMD 11/5/15 Request 00179

3) **Is CPP consistent with the 10th Amendment?**
   a. Less about 10th amendment – more about the a case of statutory construction
   b. That conversation shouldn't be a novel idea
   c. Flexibility should be key in implementation of EPA goals – with CPP that is not the case.
4) **Do you recognize man-made climate change? Is it a problem anywhere in the world?**
   a. My job is as the chief legal officer of Oklahoma, not to debate the policy merits of the climate change or whether it should be addressed.
   b. Process matters and the ways
5) **What is Oklahoma doing at the local level to address carbon pollution and climate change?**
   a. Oklahoma has engaged in robust balancing effort (wind – 17%)
   b. BUT… question of whether or not Oklahoma is addressing climate change is not an issue for the EPA to decide unless Congress gives them the authority to do so
   c. That has not happened.

<u>Questions re: Oklahoma Open Records Act request</u> *(input from CR)*:

1) **Why haven't you given me the docs I requested?**
   a. According to the Oklahoma Open Records Act, which is what you have requested records under, agencies can establish reasonable procedures in responding to requests
   b. My office handles requests numerous requests from citizens, the press and law firms. To ensure fairness, we handle those in the order they come in.
   c. We have placed your request in line and will respond when it has been completed.
   d. Your request gave us an arbitrary 3 business days to respond, BUT
   e. OK Law only requires prompt, reasonable access – does not mandate arbitrary deadlines like the one you have set

ORR CMD 11/5/15 Request 00180

2) **The New York Times cites multiple letters where oil and gas executives provided draft letters and you submitted them on their behalf. Is this true?**
   a. My Office receives numerous requests from citizens, state agencies and various industries to sign-on to letters, amicus briefs, multistate litigation and comments to proposed rules.
   b. We research the issue at hand and the law pertaining to the matter, and if it aligns with the interests of the citizens and state of Oklahoma, we then determine the level of participation.
   c. We decline the majority of the requests we receive – BUT it is the content of the request not the source of the request that matters.

3) **Do you think that behavior is appropriate? Was it a mistake for her to be involved in this matter?**
   a. It is my job to defend the interests and well-being of the citizens and state of Oklahoma
   b. Energy sector is a major driver of the Oklahoma economy
      i. 4th in natural gas production in 2013
      ii. 5th in crude oil production in 2013.
      iii. thousands of jobs
      iv. hundreds of millions of dollars in tax revenue for the state.
   c. FRANKLY - Energy industry has been targeted unfairly by this administration through unlawful and overly burdensome regulations.

4) **ALSO**
   a. My office seeks input from the energy industry to determine real-life harm stemming from proposed federal regulations or actions.
   b. This even helps bolster the chance of success of a lawsuit.
   c. When the impact is confirmed and the legal and practical interests align, my office has often taken action.

ORR CMD 11/5/15 Request 00181

Testimony Prep: House – Subcommittee on Environment

Thursday, May 26 at 9:30 AM ET

RE: Impact of Clean Power Plan on States

**NOTE:* Below are some general notes that PW thought would be helpful. Also below are:

- Notes from only other CPP hearing in this subcommittee
- Stats about CPP impact in Oklahoma and the country
- Potential questions & notes from opposing viewpoints re: CPP
- Potential Quesstions & Notes re: Open records Request from Takano

Other witnesses:
Charles McConnell, Executive Director of Energy and Environment Initiative at Rice University
Brianne Gorod, Chief Counsel for the Constitutional Accountability Center

**Committee staff estimates 10-12 committee members will be present (~4 w/ from minority)*

Summary of comments/tactics of Subcommittee Members at a previous CPP hearing:

Suzanne Bonamici, Ranking Member (D-OR-01):

- Talking about impacts of climate change and cost if we do not address climate change
- Will try to make a point of the co-benefits of the Clean Power Plan and that Clean power Plan will be modest accompanied with long-term benefits

Alan Grayson (D-FL-09):

- Cites extensive studies in an attempt to disprove any estimates that CPP may increase costs or to discredit the research of anyone who did not consider the health benefits of CPP regulations

DID NOT ATTEND LAST HEARING ON CLEAN POWER PLAN:

Mark Takano (D-CA-41)
Donna Edwards (D-MD-04)
Ami Bera (D-CA-07)
Bill Foster (D-IL-11)

ORR CMD 11/5/15 Request 00182

(From PW) - **Additional notes that might be handy in response to questions:**

The Rule violates anti-commandeering principles by forcing States and state officials to exercise their sovereign powers by revamping their utility sectors. Under the Rule, state actors will be the ones to account for the Rule's impact on electric reliability, 40 C.F.R. § 60.5745(a)(7), through such means as "[public utility commission] orders," 80 Fed. Reg. at 64,848, and "state measures" that make unregulated renewable energy generators "responsible for compliance and liable for violations" if they do not fill the gap, 40 C.F.R. § 60.5780(a)(5)(iii). Indeed, the Rule pushes substantial duties on even those States that "decline" to administer it. A federal plan's mandate to retire coal-fired plants or reduce their utilization (including by requiring the purchase of emissions allowances) would force state utility and electricity regulators to respond in the same way as if the State itself had ordered the retirements. Likewise, if EPA orders through a federal plan that power-plant owners construct new electric generating capacity, state officials will be forced to review siting decisions, grant permit applications, and issue certificates of public convenience for EPA's preferred generation sources and for the associated new transmission lines that EPA's transformation of the power sector will require.

And political accountability will be frustrated because it is these state officials who "will bear the brunt of public disapproval" for increased costs and lost jobs, because they appear to retain exclusive authority under state law over electricity generation but cannot regulate in accordance with the views of the local electorate.

EPA's response is simply to assert that no State action is required to implement the Rule. 80 Fed. Reg. at 64,881-82. But even under a federal implementation plan, state agencies will have to be involved in decommissioning coal-fired plants, addressing replacement capacity, addressing transmission and integration issues, and undertaking all manner of related regulatory proceedings.43 See id. at 64,678; supra pp. 20-21. In fact, EPA's proposed federal plan expressly relies on state authorities to address reliability issues caused by the Rule. 80 Fed. Reg. at 64,981.

In short, while EPA makes much of the purported flexibility States have in implementing the Rule, see, e.g., 80 Fed. Reg. at 64,665, the Constitution requires the federal government to allow States the choice to "decline to administer the federal program," not a multitude of choices of how to administer the federal program.

ORR CMD 11/5/15 Request 00183

Stats about CPP and Impact on Oklahoma consumers

- Oklahoma's energy generation mix: Coal – 40%; nat gas – 38%; wind – 17%
- Choices available under CPP will cause OK to shutter coal-fired plants and will drastically increase costs for consumers
- Estimated to increase the typical household's annual electricity and natural gas bills by $680, or 35%, by 2020, with costs only escalating each year thereafter as EPA regulations grow more stringent.
- Will hurt most vulnerable in our state the most – poor, single mothers, elderly, minorities
    - Households earning less than $10,000 per year already spend an astounding 60-80 percent of income on energy costs, and those earning $10,000 to $30,000 per year spend greater than 20 percent of their income on energy

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ORR CMD 11/5/15 Request 00184

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ORR CMD 11/5/15 Request 00185

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ORR CMD 11/5/15 Request 00186

Subject: KOKC interview tomorrow
From: Lincoln Ferguson <lincoln.ferguson@oag.ok.gov>
Date: 10/5/2016 4:01 PM
To: Scott Pruitt <esp@oag.ok.gov>

GP -

Want to make sure you are up to speed for tomorrow morning's interview. The majority of the time will be spent discussing federal overreach (Clean Power Plan, DOL, ICANN).

You will also discuss the latest round of Safe Oklahoma Grant recipients (OCPD being one of them). We are sending a press release on the latest grant tomorrow, so this will be the first the public has heard of the latest recipients. I have included a list of recipients on your talking points, but I thought you could use the interview to "announce" to the listeners that OKC and several surrounding communities were selected for the award.

Thanks,
LF

Lincoln Ferguson
Press Secretary
Oklahoma Attorney General Scott Pruitt
Direct: (405) 522-2283
Cell: (405) 250-8792
Lincoln.Ferguson@oag.ok.gov

Attachments:

AG Pruitt Awards Safe Oklahoma Grants 4-10-15.docx 15.2 KB

Radio Interview – KOKC with Trebor Worthen

Thursday, 10/6 @ 8:00am CST (18 min.)

Call-in: (405) 478-1520

Topics: Fedreal Overreach, Lawsuits, Safe Oklahoma Grant

Clean Power Plan –

- Was in DC last week to attend oral arguments – full day
- OK has devoted substantial resources to the constitutional questions
- SCOTUS granted a stay last February – halting implementation of the plan
  - Appeals court expected to rule by the end of the year
- EPA wants to reduce power plant carbon dioxide emissions by 32 percent from 2005 by 2030.
  - Impacts consumers in a very personal way
  - OK has already made strides, without heavy hand of the EPA
  - Standards will drive up electric rates, threaten the power grid and create economic havoc
- Scalia's final decision from the bench

DOL Overtime –

- OK is one of 21 states challenging the new overtime rule.
- Not arguing the policy discussion – that is ongoing at Congressional and state levels through meaningful debate.
- President is stopping the debate by imposing his own policies – arbitrarily and unlawfully.
  - Does not have authority to dictate to OK or any state how they budget state employees salaries.
- Detrimental to working families:
  - Face increased hardships: reduced hours, slashed salaries, unrecognized overtime
- Ultimately costs Americans their jobs and states millions of dollars.

ICANN Lawsuit

- Oklahoma, Arizona, Nevada and Texas filed lawsuit challenging the Obama administration's decision to hand over Internet control to an independent, private organization.

- ***Here's why:***
  - 1) Violates the Property Clause of the U.S. Constitution
    - By giving away government property without Congressional authorization
  - 2) Violates the First Amendment of the U.S. Constitution
    - By allowing a private corporation to effectively provide or deny access to large blocks of the Internet, the Freedom of Speech is no longer guaranteed.
  - 3) Violates the Administrative Procedure Act
    - APA has a requirement that the public be given notice and the opportunity to comment prior to the government taking such actions.

- In today's age, the Internet is a critical state infrastructure used to communicate with and provide services to citizens
  - State domains (.gov)

- What is at stake cannot be understated:
  - Like the printing press before it, the Internet has been one of the greatest instruments of free speech and the exchange of ideas in history.

- The President's decision cedes control of this infrastructure to an opaque body subject to international control.
  - This comes at a time when cyber security remains a great threat to our country.
  - Vital that the management and control of the Internet remains in U.S. hands

- How it worked before Oct. 1:
  - The Internet Corporation for Assigned Names and Numbers (ICANN) was overseen by the U.S. Commerce Department.
  - ICANN is now fully independent – current contract expired 9/30.
  - ICANN now will manage core Internet infrastructure without any direct oversight.

- ***What's next:***
  - OK, AZ, NV, TX lawsuit sought declaratory or injunctive relief – denied by U.S. District Court in Southern District of Texas.

  - States looking at possible next steps.

- Evaluating whether the "bell can be un-rung"
- If we think we can unravel what has already been done, we will continue to pursue.
- Its business as usual for the Obama Administration – continue to undermine the rule of law and make unlawful decisions.

Safe Oklahoma Grant

- Just notified recipients of the grant this week – this is the second round of 2016 grants.
- Announcing for the first time this morning – we were able to provide an additional $1.4 million to law enforcement agencies across the state:
  - In the OKC metro area: ***OKCPD – more than $700,000, Moore PD, Blanchard PD, Newcastle PD, Spencer PD, Minco PD – as well as others around the state.***
  - Provides additional funding for law enforcement agencies
    - Assist in reducing and preventing violent crimes in cities/towns across OK
    - Evidence-based practices and deployment tactics
    - Neighborhood targeting
    - Community partnerships
  - Some of the factors considered during grant review: violent crime rate, usage of grant funds, and demonstration of need.
- During a difficult budget year, these funds help ease the burden on our law enforcement agencies and help ensure our communities continue to grow safer.
- Excited about this list of awardees – both urban and rural – large and small – all making Oklahoma a safe place for our children and families.

Recent issues in the media:

- OK Supreme Court abortion ruling:

"It is disappointing that the Oklahoma Supreme Court would come to this conclusion. Designed to better protect the health and safety of women, the State Legislature passed this law on the heels of a local abortion provider's arrest for prescribing abortion-inducing drugs to women who were not actually pregnant. This law would have given law enforcement the ability to more easily prosecute sexual assaults of children that are discovered when a child under 14 has an abortion. The Attorney General's Office remains committed to defending laws aimed at protecting the safety and well-being of Oklahoma women."

- OAG Audit:

"The state auditor's office conducted the audit with diligence and professionalism. I appreciate the efforts expended by the auditor's office, working closely with my staff, to ensure an independent review and assessment of agency operations, confirming that state dollars are being collected, managed, and dispersed appropriately. Both recommendations in the operational audit report have already been addressed and resolved."