

Statement by the Honorable Steve Womack

Third District, Arkansas

United States House of Representatives

Before the Subcommittee on Water, Power, and Oceans

Committee on Natural Resources

H.R. 3062, to prohibit the use of eminent domain in carrying out certain projects, “Assuring Private Property Rights Over Vast Access to Land (APPROVAL) Act”

October 28, 2015

Good afternoon Chairman Fleming, Ranking Member Huffman, colleagues. I come before you today to discuss H.R. 3062, the Assuring Private Property Rights Over Vast Access to Land or APPROVAL Act. I introduced this legislation, accompanied by the rest of the Arkansas delegation on July 14th of this year. The same legislation was introduced shortly before that by my colleagues in the Senate, Mr. Boozman and Mr. Cotton, and it’s a pleasure to have Mr. Boozman join us back over here in the House today. My colleague and I clearly share the same passion for the rights of our constituency and a misguided process that we believe should change with regard to this unprecedented authority here in question.

Our timeline began with the passage of the Energy Policy Act of 2005, before my time in the House, and during a different time in the age of electric transmission. Since then, the landscape of such projects has greatly changed. While I can certainly say that I understand congestion on the grid exists, I believe that I speak for my fellow sponsors of this bill when I say that in no way do we intend to stand for harming any utility or the customers they serve. I can also tell you that the stance we have taken on Section 1222 authority is in direct response to its lack of addressing congestion on the grid, the wishes of utilities and ratepayers, and the rights that private property owners have over those of a private company.

For those who have not ever heard of Section 1222 of the Energy Policy Act, that’s likely because this mechanism is one that has yet to be used in its ten years of statutory existence. Now, this law has come into question following an announcement by the Department of Energy (DOE) to entertain a partnership with a private company, Clean Line Energy, seeking to route a transmission line from Oklahoma, across Arkansas, and into Tennessee. Initially, this company was denied a Certificate of Public Convenience and Necessity to exist as a utility in the state of Arkansas by the Public Utility Commission, because the project was determined not to be in the best interest of Arkansans. As a result, DOE is in the process of considering a new type of partnership, potentially usurping the state’s role, ignoring the lack of necessity for transmission in the region, and setting a dangerous precedent for the future of federal authority.

With that in mind, what would the APPROVAL Act seek to change? Simply, this bill makes a small adjustment to the approval proceedings for interstate transmission projects which will then allow governors and state public service commissions to have a say in the process prior to DOE exercising any federal eminent domain power. Building on the idea of a fair stake in the claim, tribal governments would be approached for input and federal agencies, including the Bureau of Land Management, the U.S. Forest Service, the Bureau of

Reclamation, and the U.S. Army Corps of Engineers, would be consulted for access to land. What this bill would not do is reverse this new ability to form partnerships between DOE and a private company, but it would instead improve it by calling upon the states to give proper input into a process that they can understand better than all.

Now why would we seek to alter this authority? That too is simple. As I previously referenced, electric transmission permitting and siting has historically been a matter for states to handle. These days, even addressing interstate transmission, states are better equipped to communicate and coordinate through the major expansion of Regional Transmission Organizations (RTOs) that facilitate just this. From zoning, to the environment, to scenic and even safety concerns, it has been consistently demonstrated that state and local governments are perfectly positioned to weigh the hands-on factors that go into the planning process. And what's more revealing is that history has strongly supported this right of the states to approve of a project, policy, etc. through laws such as the Food and Agriculture Act of 1962, the Federal Energy Administration Act of 1974, the Public Utility Regulatory Policies Act of 1978, the Trade and Tariff Act of 1984 and many other bills that have passed through our Chambers.

The fact of the matter is that this legislation is the culmination of concern surrounding states' rights that are held at the will of a closed-door process with the claim of support for jobs and necessary infrastructure at the helm. Don't allow off-base claims to the contrary to blind a deep assessment of this never-before-used process. I come before you all today to champion what history has shown to be successful, to stand for the expertise that only those on the ground locally can have in these matters, and to make sure that clarity in a process that if undertaken will set new precedent is most important. I look forward to my colleagues gaining a deeper understanding of this bill and what lies behind it and I welcome your support of H.R. 3062, the APPROVAL Act.