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ANALYSIS OF SENATE ENERGY LEGISLATION

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Senate Bill Larded with Giveaways to Fossil Fuel, Nuclear Industries

Consumers Put at Risk as Congress Moves to Further Deregulate Electricity

Senate energy legislation (S.14), sponsored by Republican Sen. Pete Domenici of New Mexico and approved by the Senate Energy and Natural Resources Committee, is larded with huge subsidies for harmful fossil fuel and nuclear industries and puts consumers at risk by promoting electricity deregulation. At a time when America needs safe, clean, affordable energy, this bill is harmful to consumers and the environment. Rather than pandering to the interests of energy industry executives, lawmakers should reject this package and work toward forward-looking policy that invests in conservation, efficiency and renewables.

Damn the Enrons, Full Speed Ahead with Deregulation

- **Title XI, Subtitle B endorses regional electricity markets, encouraging the Federal Energy Regulatory Commission (FERC) to take control of areas previously regulated by states**
- **Title XI, Subtitle C does not go far enough to ensure that utilities will be guaranteed that their transmission lines - paid for by ratepayers - will be available to serve retail consumers.**
- **Title XI, Subtitle E repeals the Public Utility Holding Company Act (PUHCA), an important consumer protection, without offering an effective replacement.**

The Senate bill repeals important consumer protections in the electricity market, paving the way for more Enron-type disasters. Deregulation has failed to provide consumers with affordable and reliable energy. Congress' response should be to strengthen consumer protections, not erode them by accelerating deregulation. Subtitle B preempts local control over the regulation of transmission lines, promotes deregulation and leaves consumers vulnerable. Specifically, Section 1122 promotes Regional Transmission Organizations (RTOs), which grants the Federal Energy Regulatory Commission (FERC) regulatory authority over most power line assets - a job that is currently left to states. While RTO proponents claim that the multi-state markets created by regional transmission companies will increase competition, the lack of competition in both wholesale and retail markets in places like Texas, the Midwest ISO and in the Northeast proves otherwise. None of these regional markets have been able to successfully address the same market power issues

found in California. Sen. Domenici's bill proposes replacing the authority of state officials directly accountable to voters with the same five-member commission in Washington, DC that approved of and oversaw the California energy crisis, making a mockery of the accountability so desperately needed in the energy sector and robbing states of the ability to protect consumers from Enron-style price gouging. Indeed, Section 1124 of Domenici's bill only allows states to have a "discussion" with FERC - and FERC is not bound to adopt the state's concerns. All three of Bush's FERC appointees - constituting a majority of the Commission's seats - have ties to Enron. It is unfortunate that the legislation sent to the full Senate will delegate the deregulation agenda to an agency that continues to be beholden to energy companies at the expense of consumers.

Subtitle E repeals the government's most important consumer protection - the Public Utility Holding Company Act - and provides inadequate consumer protections as a replacement. PUHCA has historically prohibited holding companies from investing in business ventures that will not directly contribute to low bills and reliable service (out-of-region power plants or non-electricity industries such as water and telecommunications). PUHCA has lost much of its teeth over the decades, however, as a result of deregulation, Enron’s lobbying, and decisions by the SEC to simply ignore the law. These loopholes have already resulted in a significant increase in utility consolidation and decreased accountability. In 1992 (prior to the passage of the loophole-creating Energy Policy Act) the largest 10 utilities owned one-third of the national generating capacity. By 2000, the top 10 owned half of all capacity, while the top 20 owned 75%. These numbers will become more concentrated if PUHCA is repealed. Given that America’s electricity markets are currently noncompetitive, increased corporate consolidation will make a bad situation even worse. PUHCA’s protections are needed today more than ever.

New Nuclear Reactors … At Taxpayers’ Expense

- **Sections 421-424 provide for federal financing of up to half the development and construction costs new nuclear power reactors.**
- **Section 942(c) directs the DOE to pursue *Nuclear Power 2010,* a program to promote the construction of new nuclear power reactors within this decade through “industry/government cost sharing.”**
- **Section 941 authorizes $1.76 billion over the next five years for nuclear energy research, development, demonstration, and commercial application activities.**

The Senate energy bill directs the Department of Energy to promote the Bush administration’s misdirected *Nuclear Power 2010* program and “aggressively pursue activities that will result… in the construction and start-up of new nuclear power plants in the United States by 2010.” Title IV specifically mandates federal loan guarantees and power purchase agreements to finance half the costs of bringing online an additional 8,400 megawatts of nuclear energy – amounting to an estimated taxpayer liability of $14-16 billion.[1] Title IX, broadly authorizes the Department of Energy’s misguided *Nuclear Power 2010* program, which contemplates a series of unusual and open-ended federal subsidies for new nuclear reactors, including federal preferred equity, lines of credit and government power-purchase agreements at above market rates. Blueprint documents for this program adopt the nuclear industry’s goal of 50,000 megawatts of new nuclear generating capacity (ie. as many as 50 new reactors) by 2020. New nuclear power plants would burden the public with expenses and potential liabilities while imposing additional safety and security threats and exacerbating the nuclear

[1] *Congressional Research Service estimate.*

waste problem. Moreover, these unfair subsidies to a mature industry distort electricity markets by granting nuclear power a competitive advantage over safe, clean energy alternatives.

The bill also promotes other expensive nuclear research and development programs, including the Nuclear Energy Research Initiative (NERI), the "Generation IV" initiative to develop new reactor designs, and nuclear energy plant optimization (NEPO), a joint government/industry program to increase generating capacity (i.e. profit margins) at commercial nuclear plants.

Nuclear-generated Hydrogen: A Clean Energy Travesty

- **Sections 431-435 provide $1.1 billion to develop a nuclear reactor that generates both hydrogen and electricity.**
- **Section 942(e) authorizes research and development of reactor production of hydrogen.**

The bill establishes the Advanced Hydrogen Reactor Co-generation Project and authorizes spending $635 million over the next five years on related research and development, plus $500 million on reactor construction by 2010. Hydrogen fuel offers the potential for abundant, affordable, clean and safe energy, but its promise is thwarted if tied to hazardous nuclear power. In contrast, the more forward-looking Hydrogen Fuel Cell Act of 2003 (S.461), introduced by Sen. Byron Dorgan (D-N.D.), promotes renewable generation of hydrogen and stipulates benchmarks for the implementation of this energy transition.

Price-Anderson: An Insurance Scam for the Nuclear Industry

- **Sections 401-410 permanently reauthorize the Price-Anderson Act, extending insurance subsidies to proposed new nuclear power plants.**

Permanently reauthorizing the Price-Anderson Act is not only risky but also incongruous with congressional efforts to promote corporate accountability. By allowing nuclear operators to insure commercial reactors at levels far below the calculated cost of serious accidents, the Price-Anderson Act leaves the public unprotected, power plant owners unaccountable and taxpayers on the hook for potentially billions of dollars in the event of a nuclear catastrophe. This indirect subsidy is estimated to be worth between $3.5 million and $33 million per reactor per year in terms of insurance premiums that nuclear utilities don't have to pay. While existing reactors are already covered through a grandfather clause, reauthorizing the Price-Anderson Act would shield proposed new reactors from liability and offer special treatment for untested "modular" reactor designs. The Price-Anderson Act was originally enacted in 1957 as a temporary measure to assist the fledgling nuclear industry. Nearly half a century later, there is no justification for continuing to subsidize this mature industry. If proposed new reactors are as safe and viable as the industry claims, operators should be able to buy insurance on the open market.

Reprocessing: Compounding Nuclear Waste Risks

- **Sections 941 and 943 reverse long-standing U.S. policy against nuclear waste reprocessing, needlessly augmenting security and environmental threats, at a cost of $865 million.**

In apparent contradiction to the government's Homeland Security efforts, the energy bill would promote technologies for reprocessing irradiated nuclear fuel. The bill allocates $865 million over the next five years to fund the Department of Energy's new Advanced Fuel Cycle Initiative, which

aims to deploy commercial nuclear fuel reprocessing technologies by 2015. Rejected by U.S. non-proliferation policy since the 1970s, these costly technologies can be used to separate weapons-usable plutonium from high-level radioactive waste. Reversing the U.S. ban on reprocessing would set a dangerous precedent, encouraging other countries to create plutonium industries and adding hundreds of tons to global plutonium stockpiles that already pose serious proliferation and security risks. Reprocessing and other "spent fuel technologies" will not solve the nuclear waste problem. In fact, these messy processes create their own hazardous waste streams – liquids and gases that are even more difficult to manage than waste that has not been reprocessed.

Senate Bestows Subsidies on Oil, Gas and Coal Corporations

- **Section 103 allows the Bush administration wide discretion to accept in-kind, rather than cash, payments for drilling on federal land.**
- **Sections 106-107 and 109 reduce or eliminate royalty payments from oil and natural gas produced from offshore sources.**
- **Section 121 establishes an Office of Federal Energy Permit Coordination, which will act to gut environmental and other permitting regulations for energy projects on federal land.**
- **Sections 202-14 provide $1.8 billion for coal R&D from 2003-11.**
- **Section 532 provides $125 million over five years for the Biomass Commercial Utilization Program.**

Over the past few years, large oil companies have admitted underreporting volumes of oil extracted from public land. In response to losing multimillion-dollar lawsuits involving the royalties, oil companies are seeking to undermine the cash royalty system. One such example is the oil industry's proposal to replace the cash royalty system with an in-kind system, which places more risk on the federal government to fetch adequate returns on in-kind contributions of oil. The second strategy, as adopted by the Senate proposal, would have major oil and natural gas companies like ExxonMobil, ChevronTexaco and ConocoPhillips paying taxpayers less money (or nothing at all) for the privilege of drilling on public land. Providing financial incentives to these same companies that are enjoying record profits makes no sense.

Another way the domestic oil industry seeks to boost its profits at the public's expense is through a "streamlining" of the permitting process. Extensive research demonstrates that economic barriers, not environmental laws, preclude corporate investment for increased drilling in federal lands. But complying with sensible public health and environmental regulations is a cost that the oil companies' friends in the Senate would like to see reduced, regardless of whether it will result in increased production (or more likely, simply increased profits).

The United States is currently the world's third largest producer of crude oil. Throwing production subsidies to a wealthy domestic oil industry will do nothing to achieve energy independence for America because no matter how much we produce, we will never drill enough oil in the United States to make a dent in our oil imports. That's because our rate of oil consumption outstrips any additional production gained from these incentives. All these subsidies do is fork over taxpayer money to an industry that doesn't need the government's help.

If there's another industry not deserving of taxpayer handouts, it's the coal industry. Americans suffer an array of negative health effects from the burning of coal for electricity, and the environmental devastation of coal mining permanently ruins our ecosystems. But that doesn't stop the Senate from

proposing billions in new subsidies to the coal industry. Some of the funding is in the form of sweetheart loans, and the total $1.8 billion amount doesn't include the value of grants the Bush administration will provide to universities for coal research. Spending billions on dirty fuels like coal doesn't make sense when the money is needed to fully fund research into wind, solar and other renewable energy. And if that isn't bad enough, the Senate proposes to spend $125 million providing financing for biomass projects that will emit more harmful emissions than burning coal.

Backpedaling on Fuel Economy

- **Section 711 erodes fuel economy standards by requiring reviews on "passenger safety" and "U.S. employment" in considering revising fuel economy standards.**
- **Section 712 extends ineffective "duel fuel" credit program for automakers.**

The bill backpedals on automobile fuel economy by adding additional hoops and hurdles for the Department of Transportation to jump through before it can raise fuel economy standards for cars and light trucks. The new hurdles, in the form of new decision criteria on safety and employment, are an invitation for industry to sue to delay any new rules, which could tie up standards for years to come. Crucially, the bill also misses a key opportunity to make meaningful improvements in fuel economy, which would benefit safety by creating incentives to downweight behemoth SUVs and pick-ups that crush other vehicles in crashes, save consumers dollars at the gas pump, and reduce cancer-causing emissions in our air. This missed chance will increase U.S. dependence on foreign oil at a time of war, and flies in the face of studies by the National Academy of Sciences and many others that show off-the-shelf technology is available now that could dramatically improve the fuel economy of automobiles and light trucks to as high as 40 miles per gallon by 2015.

Sec. 712 of the bill extends a harmful program that provides automakers with "duel fuel" credits for manufacturing automobiles capable of running on alternative fuels. This boondoggle program actually increases overall gas consumption by providing auto manufacturers credit for vehicles that never run on alternative fuels, which is only available at some 130 gas stations nationwide. A U.S. DOT study shows that dual-fuel vehicles use gasoline, rather than ethanol, over 99 percent of the time. If the manufacturers take full advantage of these phantom dual-fuel credits and use levels remain the same, extending this program will cost the U.S. an additional 9 billion gallons of gasoline between 2005 and 2008. Rather than extending these faux credits, which are a black eye for alternative fuels and a naked subsidy to automakers, Congress should fix the program or scrap it altogether.

Conclusion

These anti-consumer and fiscally and environmentally irresponsible proposals far outweigh the paltry support granted to clean energy technology in this bill. Although the legislation provides limited incentives for energy efficient buildings and appliances and provides some funding to renewable-generated hydrogen, it fails to tap the vast potential of renewable energies, conservation, and efficiency technologies. For instance, the bill tops short of mandating benchmarks for increasing renewable generation and improving fuel efficiency standards in the transportation sector. As such, this backwards legislation will provide billions of dollars in benefits to the fossil fuel and nuclear industries without securing a sustainable energy base.