Buyers Up • Congress Watch • Critical Mass • Global Trade Watch • Health Research Group • Litigation Group
Joan Claybrook, President

Section-by-Section Analysis of Key Provisions Affecting Consumers in the Energy Policy Act of 2005,

Passed by the U.S. House of Representatives on April 15, 2005

Title III — Oil & Gas

Subtitle A, Section 304—Suspension of Strategic Petroleum Reserve deliveries
More than a year ago, Public Citizen urged Congress to order the Bush Administration to stop filling the SPR with overpriced oil http://www.citizen.org/documents/oilmergers.pdf as it was contributing to higher prices for consumers. This section would adopt Public Citizen's proposal.

Subtitle B, Section 320—Liquified Natural Gas (LNG)
This section is brand new, as it was not included in the original draft introduced by Barton in February 2005 or in any of the past energy bills, but parts are lifted from other legislation (most recently, HR 359). It radically limits the ability of states to have adequate jurisdiction over the permitting and siting of LNG facilities. The section changes the Natural Gas Act to assign the Federal Energy Regulatory Commission (FERC) as the lead agency to review permitting for such LNG facilities, only giving states the ability to "consult" on permitting, rather than unique regulatory authority to protect their communities. In addition to being designated as the "lead" agency, the language directs that FERC alone "shall establish a schedule" for all federal and state LNG proceedings and maintain the "exclusive record" of the proceedings. The language only requires FERC to "consult with the State commission of the state in which the liquification or gasification natural gas terminal is located" - so if a state disagrees with the procedures and rulings adopted by FERC, FERC can simply ignore the state's concerns. The language also allows states to "conduct safety inspections" only AFTER the facility has been approved by FERC and built. And even then, the state can only conduct such safety inspections after providing written notice to FERC of its intentions and carried out under FERC's (rather than the state's) guidelines - so if a state has tougher safety standards than the federal government, only the weaker federal standard could be enforced.

The language is clearly aimed at a July 2004 lawsuit filed by the State of California claiming that FERC illegally ruled in March 2004 that states have limited jurisdiction over the permitting and siting of LNG facilities inside their borders. The lawsuit is being closely watched by other states, where officials have expressed alarm about the inability of state and local governments to have adequate input into these projects. LNG projects are particularly controversial because liquefied natural gas is extremely volatile and dangerous. Even if one supports increasing the number of

LNG terminals in North America, there is absolutely no justification for limiting the ability of states and local communities to have control over the permitting and siting of these facilities.

See our Liquid Natural Gas section
http://www.citizen.org/cmep/energy_enviro_nuclear/electricity/Oil_and_Gas/lng/

Subtitle B, Section 327—Hydraulic Fracturing
Exempts from the Safe Drinking Water Act a coalbed methane drilling technique called "hydraulic fracturing," a potential polluter of underground drinking water. One of the largest companies employing this technique is Halliburton, for which Vice President Richard Cheney acted as Chief Executive Officer in the 1990s. This exemption would kill lawsuits by Western ranchers who say that drilling for methane gas pollutes groundwater by injecting contaminated fluids underground. Only 16 companies stand to significantly benefit from this exemption from clean water laws. These companies gave nearly $15 million to federal candidates—with more than three-quarters of that total going to Republicans. Moreover, the 16 companies spent more than $70 million lobbying Congress. http://www.citizen.org/documents/section29.pdf

Subtitle B, Section 333—Natural Gas Market Transparency
This section does NOTHING to restore true transparency to natural gas trading markets, because they fail to re-regulate energy trading exchanges. See Public Citizen's testimony http://www.citizen.org/documents/NatGasTestimony10-04.pdf

Subtitle C, Section 346—Compliance with Executive Order 13211; Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution or Use
This section threatens to undermine environmental policies in favor of energy corporations. First, a little background on the history of how the energy industry custom-ordered this Executive Order in the first place. On March 20, 2001, a lobbyist for the American Petroleum Institute emailed Joe Kelliher—then the Department of Energy's liaison to Cheney's Energy Task Force, now a FERC Commissioner—a document titled, "Overview: U.S. Oil and Natural Gas Supply Situation." The third page of this document suggests that Bush "require Executive Branch agencies to avoid significant adverse energy consequences in proposing regulatory other administrative actions." On May 18, 2001, Bush signed an Executive Order http://www.whitehouse.gov/news/releases/2001/05/20010518-6.html mirroring the lobbyist's request to Kelliher: "I [President Bush] am requiring that agencies shall prepare a Statement of Energy Effects when undertaking certain agency actions . . . such Statements of Energy Effects shall describe the effect of certain regulatory actions on energy supply, distribution, or use."

Subtitle D—Refining Revitalization
Provides new regulatory loopholes for the oil industry to more quickly build new refineries. The language erroneously claims that environmental regulations have been a leading reason why no new refineries have been built in the U.S. since 1976. In fact, oil companies have not built any new refineries because tight refinery capacity leads to higher gasoline prices, meaning the industry has made record profits off the lack of adequate refineries and therefore has no economic incentive to build new refineries. Internal oil company memos show that the majors directed a campaign to intentionally drive smaller, independent refineries controlling over

920,000 barrels of oil per day of refinery capacity out of business over the last several years. It is these uncompetitive actions - not environmental regulations - that have led to refinery shortages.

For more, see our report (http://www.citizen.org/documents/oilmergers.pdf) and Congressional testimony (http://www.citizen.org/documents/House_tesimony_Tyson%20S.pdf)

The section accelerates the permitting process by allowing the Secretary of Energy to designate Refinery Revitalization Zones across the country. An oil company seeking to build a refinery in one of these zones can simply ask the Secretary of Energy to have the federal government - rather than the state - act as the lead agency to review and expedite the permitting process. In addition, the section states that if a state rejects the refinery application, the oil company can ask the Secretary of Energy to overturn the state's rejection.

Title IV — Coal

Subtitle A, Section 401—Clean Coal Power Initiative
Authorizes $1.8 billion on polluting coal technology. Much of this money will be direct payments to corporations.

Subtitle B, Section 412—Clean Power Projects, Coal Gasification
Authorizes federal loan guarantees for a coal gasification plant owned by Massey Energy in West Virginia. Massey Energy and its Board of Directors have given nearly $200,000 to federal candidates since 2001; 99 percent of which has gone to Republicans. The company's director, James H. "Buck" Harless, is a "Pioneer" fundraiser for President George W. Bush.

Subtitle B, Section 414—Petroleum Coke Gasification
The original Barton draft released in February designated just one recipient - but the latest version designates at least 5 recipients. We have been able to identify at least 3:

1. Provides hundreds of millions of dollars in federal loan guarantees for a petroleum coke gasification plant owned and operated by three companies: TECO Energy, ChevronTexaco, and Citgo. The plant will be located in Lake Charles, Louisiana. Since 2001, these three companies have given federal candidates nearly $1.8 million in campaign contributions, with three-quarters of this total going to Republicans. These three companies have also spent an additional $14 million lobbying Congress and the White House over this same time period. Moreover, the wisdom of providing hundreds of millions of dollars in taxpayer loan guarantees for a Louisiana power plant must be questioned, especially in light of the fact that TECO Energy may soon be forced to jettison its investment in power plants in Arkansas and Arizona due to their poor earnings in a glutted power market.

2. Dallas-based Sabine Power, which has proposed a petroleum coke gasification plant with the city of Port Arthur, TX. The project has been delayed due to problems with financing, so it wouldn't be surprising to see the federal government finance a project the private market won't touch.

3. In November 2004, Kansas-based Black & Veatch announced it was joining forces with a subsidiary (Uhde) of Germany-based ThyssenKrupp to develop petroleum coke gasification plants in the United States. It may be safe to assume that the timing of this announcement may indicate their consortium will be considered to be a recipient of the taxpayer subsidy.

Subtitle D, Section 441—Clean Air Coal Program
Authorizes $3 billion (up from $2 billion in the previous energy bill) on new coal power plants and pollution control technologies. This is a huge sum of money that would be better spent on renewable technologies (wind and solar) and energy efficiency.

Title VI — Nuclear Matters

Subtitle A, Section 602—Extension of Indemnification Authority
Reauthorizes the Price-Anderson Act for new reactors licensed before December 31, 2025 and for Department of Energy contractors through December 31, 2025. Price-Anderson artificially limits the amount of primary insurance that nuclear operators and DOE contractors must carry and caps the liability of nuclear operators and DOE contractors in the event of a serious accident or attack, leaving taxpayers on the hook. Despite the claims that the next generation of nuclear power plants will be "inherently safe," the industry has stated that it will not build any new plant without limited liability. For more information about Price-Anderson see http://www.citizen.org/documents/priceandersonbackgrounder.pdf

Subtitle A, Section 603—Maximum Assessment
Ostensibly increases the total liability of nuclear operators in the event of an accident from $63 million to $95.8 million, but the Nuclear Regulatory Commission already revised its Price-Anderson regulations to this amount on August 4, 2003. Increases the annual liability cap from $10 million to $15 million. A 1982 federally-funded study, known as CRAC-2, by Sandia National Laboratory estimated that damages from a severe nuclear accident could run as high as $314 billion – or more than $600 billion in 2004 dollars.

Subtitle A, Section 604—Department of Energy Liability Limit
Sets the total liability limit of the federal government at $10 billion (with inflation adjustments) per incident, including covering the legal costs of the DOE contractor. Current law does not set a cap on the government's liability.

Subtitle A, Section 608—Treatment of Module Reactors
Provides incentives for untested "modular" designs by allowing a combination of smaller reactors to be considered one unit, which lowers the amount that the nuclear operator is responsible to pay under Price-Anderson.

Subtitle A, Section 612—Financial Accountability
Adds a new section to Price-Anderson that allows the U.S. Attorney General to sue a DOE contractor for amounts paid by the U.S. government for a nuclear incident that is a result of "intentional misconduct" by the contractor.

Subtitle B, Section 622—NRC Training Program
Authorizes $5 million over 5 years to the Nuclear Regulatory Commission for a training and fellowship program on nuclear safety regulatory skills.

Subtitle B, Section 625—Antitrust Review
Exempts construction or operation license applications to the Nuclear Regulatory Commission from an antitrust review. This would include any combined construction and operation license (COL) applications by nuclear utilities to build new reactors.

Subtitle B, Section 629—Report on Feasibility of Developing Commercial Nuclear Energy Generation Facilities at Existing Department of Energy Sites
Requires DOE to submit a report to Congress on the feasibility of building commercial nuclear power plants at DOE sites. In addition to providing yet another subsidy to the nuclear industry by paying for siting analyses, such a report could encourage the building of a commercial facility on defense property, which would further erode any semblance of separation between civil and military nuclear activities.

Subtitle B, Section 630—Uranium Sales
Weakens constraints on U.S. exports of bomb-grade uranium.

Subtitle B, Section 631—Cooperative Research and Development and Special Demonstration Projects for the Uranium Mining Industry
Authorizes $30 million for research and development of "in situ" leaching mining, which would encourage a method of uranium mining that could pollute drinking water. Unlike last year's energy bill, this funding may not be used in New Mexico.

Subtitle B, Section 632—Whistleblower Protection
Fails to extend whistleblower protections for DOE or NRC employees. Establishes a 540-day deadline for final decisions on whistleblower claims. Language in the House-passed energy bill in the 108th Congress included employees of NRC and DOE and established a 180-day deadline for final decisions.

Subtitle B, Section 634—Fernald Byproduct Material
Reclassifies radioactive waste from a former uranium extraction plant in Fernald, Ohio as "byproduct material," which would allow it to be disposed in a dump not equipped to properly contain the waste's radioactivity.

Subtitle B, Section 635—Safe Disposal of Greater-Than-Class C Radioactive Waste
Requires DOE to develop plans for disposing of Greater-Than-Class C radioactive waste at a new or an existing facility. Currently, some of this waste is being accepted for disposal at Barnwell, a shallow radioactive waste dump in South Carolina. Some of the waste is slated for disposal at the proposed Yucca Mountain high-level waste repository in Nevada, but this program is seriously delayed and mired in a data falsification scandal.

Subtitle B, Section 638—National Uranium Stockpile
Authorizes DOE to create a stockpile of low-enriched uranium from Russian and U.S. uranium

in order to "enhance national energy security" and "reduce global proliferation threats." This would give a big boost to Louisiana Energy Services (LES), the multinational consortium that has applied for an NRC license to build a uranium enrichment plant in southeastern New Mexico.

Subtitle B, Section 639—Nuclear Regulatory Commission Meetings
Requires NRC to record any meeting of a quorum of Commissioners during which official business is discussed and to provide a transcript to the public within 15 days.

Subtitle C—Additional Hydrogen Production Provisions
Authorizes $1.3 billion to DOE for research, development, and construction of a hydrogen cogeneration reactor in Idaho between FY2006 and FY2015. Establishes 2011 as the target date for initial testing. Requires DOE to report to Congress with a comprehensive plan within 3 months after the bill is enacted. Hydrogen has a long-term potential (in 50 years or more) to help reduce the country's reliance on foreign oil, but using nuclear power or fossil fuel to produce hydrogen makes a mockery of these clean energy goals.

Subtitle D, Section 661—Nuclear Facility Threats
Requires the President to submit a report to Congress within 180 days on security threats to nuclear facilities, including taking into account the September 11 attacks. Requires a report to Congress on actions taken or actions that will be taken to address the threats, but does not require the NRC to upgrade its Design Basis Threat regulations (the standards that a nuclear facility is required to defend against) based on the finding of the report. An upgraded Design Basis Threat should include requirements for operating facilities, spent fuel storage facilities and decommissioning plants, as well as strict corrective actions for facilities that repeatedly fail to meet the established performance criteria. Moreover, the study should be conducted by an independent or inter-agency panel. Requires the NRC to establish an "operational safeguards response evaluation program" that is tested with "periodically" through force-on-force tests. The NRC recently restarted this program, but allowed the Nuclear Energy Institute, the lobbying arm of the nuclear industry, to hire Wackenhut – the same company the guards about half the plants in the U.S. – to conduct these tests. The provision does not address this inherent conflict of interest. Requires NRC to assign a Federal security coordinator to each region of the Commission. Requires the development of a technical assistance and training program for Federal agencies, the National Guard, and State and local law enforcement and emergency response agencies.

Subtitle D, Section 662—Fingerprinting for Criminal History Record Checks
Requires fingerprinting of any individual that will have unescorted or escorted access to a nuclear facility or a proposed facility, or access to safeguards information. Costs are to be paid by the individual.

Subtitle D, Section 663—Use of Firearms by Security Personnel of Licenses and Certificate Holders of the Commission
Authorizes security personal at NRC-licensed facilities to possess rifles, shotguns, machineguns, and semiautomatic assault weapons. Requires background check of these individuals by the Attorney General.

Subtitle D, Section 665—Sabotage of Nuclear Facilities or Fuel
Increases the penalty for sabotaging a nuclear facility from a $10,000 fine or a maximum 20-year prison term to a $1 million fine or maximum life imprisonment without parole.

Subtitle D, Section 666—Secure Transfer of Nuclear Materials
Requires the NRC to develop a system for tracking the import and export of nuclear materials. Requires a background check on any individuals receiving or accompanying nuclear materials.

Subtitle D, Section 667—Department of Homeland Security Consultation
Requires the NRC to consult with the Department of Homeland Security about the potential terrorist vulnerabilities of a proposed nuclear facility's location before issuing a license.

Subtitle D, Section 688—Authorization of Appropriations
Shifts the cost associated with NRC's "homeland security activities" (an undefined term) from licensees to taxpayers, providing yet another subsidy to the nuclear industry. Excludes costs of fingerprinting, background checks, and security inspections. Permanently reauthorizes the NRC's user fees, paid by licensees, to cover 90% of the NRC's activities.

Title VII — Vehicles and Fuels

Subtitle E, Section 772—Revised Considerations for Decisions on Maximum Feasible Average Fuel Economy
Adds two new criteria for analyzing the feasibility of increasing average fuel economy: safety and effect on employment. The National Highway Traffic Safety Administration (NHTSA) already considers safety in issuing fuel economy rules under its broad mandate to improve motor vehicle safety, and numerous court cases have reinforced this clear duty under the law. Employment considerations are at the heart of both the "economic practicality" prong and the cost-benefit analysis required by Office of Management and Budget (OMB). Adding new criteria offers new grist for litigation over fuel economy standards set by NHTSA.

Subtitle E, Section 773—Extension of Maximum Fuel Economy Increase For Alternative Fueled Vehicles
Extends through 2014 the Alternative Motor Fuels Act (AMFA) Title 49, Section 32905, which allots automobile companies more fuel economy credits towards required fleet averages under the Corporate Average Fuel Economy program (CAFE) in exchange for producing "dual-fuel" vehicles, vehicles capable of operating partially or wholly on an alternative fuel such as the gasoline and corn-based ethanol mix E85. Automakers can claim, for the purpose of meeting CAFE requirements, a fuel-economy credit. Not only did AMFA fail to stimulate development of an alternative fuel infrastructure, it has served as a loophole for automakers because it allows the rest of an automaker's fleet to be significantly less fuel-efficient. In February 2004, NHTSA issued a final rule extending the AMFA program for another four years until 2008. Public Citizen has challenged this extension in court, but this provision would render the litigation moot, undermine fuel economy standards, and increase oil consumption and greenhouse gas emissions.

Title IX — Research and Development

Subsection A, Section 906—Fusion Energy Sciences Program
Establishes fusion energy research and development as "policy of the United States" and requires DOE to report to Congress a plan for implementing the policy. Authorizes DOE to participate in the ITER (International Fusion Energy Project). Canada, China, Europe, Japan, Russia, and South Korea are part of the ITER program, which has the mission "to demonstrate the scientific and technological feasibility of fusion energy for peaceful purposes" (ie electricity). The countries cannot agree on where to site the facility. The two sites are under consideration are Cadarache in France (supported by Europe, China, and Russia) and Rokkasho in Japan (supported by Japan, South Korea, and the US). The process requires deuterium and tritium, and would produce low-level radioactive waste.

Subtitle E, Sections 947—Nuclear Energy Programs
Directs the DOE to conduct nuclear energy research and development and commercial development programs. Requires DOE to report to Congress on a "performance plan" in its fiscal year 2007 budget request and on progress in achieving those goals in every fiscal year afterwards. Requires DOE to consider industry, university and public comments on the reports.

Subtitle E, Chapter 1, Section 948—Advanced Fuel Recycling Program
Authorizes DOE to conduct research and development on reprocessing and transmutation technologies. Reprocessing, a process in which uranium and plutonium are separated from spent fuel, creates serious environmental problems and proliferation risks. Tanks containing the waste created during reprocessing at Hanford in Washington and the Savannah River Site in South Carolina are leaking and threaten to contaminate important drinking water sources. Moreover, the only commercial reprocessing plant in the United States, at West Valley, NY, was an economic failure, in addition to being an environmental disaster.

Subtitle E, Chapter 1, Section 949—University Nuclear Science and Engineering Support
Directs DOE to support a program to promote nuclear sciences and engineering programs at universities through fellowships and funding for research and development, sharing and upgrading research and training reactors. Authorizes $244 million for this program in Sec. 956. This program would further subsidize the nuclear industry and entrench nuclear power research within the university system.

Subtitle E, Chapter 1, Section 950—University-National Laboratory Interactions
Directs DOE to carry out a fellowship program for university professors to spend sabbaticals at national laboratories and for national laboratory staff to visit at university nuclear science and engineering departments. This program would further subsidize the nuclear industry and within the university and entrench nuclear power research within the national laboratory systems.

Subtitle E, Chapter 1, Section 951—Nuclear Power 2010 Program
Authorizes DOE's *Nuclear Power 2010* program, which promotes the construction and operation of new nuclear power plants by 2010 and provides taxpayer money for half the cost of license applications.

Subtitle E, Chapter 1, Section 952—Generation IV Nuclear Energy Systems Initiative
Authorizes DOE's *Generation IV* program to research and develop "advanced" nuclear reactors using a "cost-share" arrangement by which taxpayers pay for half of the expenses.

Subtitle E, Chapter 1, Sec. 953—Civilian Infrastructure and Facilities
Requires DOE to "operate and maintain infrastructure and facilities" for nuclear energy research, development, and demonstration programs.

Subtitle E, Chapter 1, Sec. 954—Nuclear Energy Research and Development Infrastructure Plan
Requires DOE to develop a plan for improving the nuclear energy research and development infrastructure at the national laboratories, which further subsidizes the nuclear industry, entrenches nuclear power within the national laboratory system, and blurs the artificial line between U.S. nuclear weapons and nuclear power programs.

Subtitle E, Chapter 1, Sec. 955—Idaho National Laboratory Facilities Plan
Requires DOE to develop a plan for nuclear power research and development activities at the Idaho National Laboratory, including a timeline and budget.

Subtitle E, Chapter 1, Section 956—Authorization of Appropriations
Authorizes $2.249 billion between fiscal year 2006 and 2010 for the nuclear programs authorized in this chapter. Of the $2.249 billion, $243.75 million is allocated to supporting university nuclear science and engineering programs.

Subtitle E, Chapter 2, Sections 957 to 961—Next Generation Nuclear Power Plant
Authorizes $1.25 billion for the research, development, and construction of a demonstration "advanced" nuclear reactor by December 31, 2015. Requires DOE to partner with industry and to seek international participation and financial contributions. Requires DOE to submit a "comprehensive program plan" to Congress within one year of enactment of the bill.

Subtitle F, Chapter 2—Ultra-Deepwater and Unconventional Natural Gas and Other Petroleum Resources
This section would provide up to $2 billion in direct payments to oil and natural gas corporations to drill in deepwater wells. This section is a pet project of Texas Republican Tom DeLay, and would designate a private entity, Sugar Land-based Texas Energy Center, as the "program consortium" to dole out taxpayer money to corporations. The Texas Energy Center has strong ties to Tom DeLay, with 6 different executives (Herbert W. Appel, Jr., Robert C. Brown, III, Philip E. Lewis, Thomas Moccia, Ronald E. Oligney and Barry Ashlin Williamson) giving a total of $8,000 to DeLay's campaign since March 2004. In addition, 3 of the Center's executives have given a total of $4,500 to President Bush's 2004 re-election effort.

The Center's lobbyist is Barry Ashlin Williamson
http://sopr.senate.gov/cgi-win/opr_gifviewer.exe?/2004/01/000/880/000880290|3
In 1988, Williamson went to work for the Reagan administration and became principal advisor to the US Secretary of Energy in the creation and formulation of a national energy policy. President

G.H. Bush later chose him to be the US Department Interior's Director of the Minerals Management Service, which managed oil and gas exploration and production on the nation's 1.4 billion-acre continent shelf. Williamson then served as Chairman of the Texas Railroad Commission from January 1993 to November 1995.

Title XII — Electricity

Subtitle A, Section 1211—Electric Reliability Standards
Establishes electric reliability organizations (EROs) that enforce reliability standards overseen by FERC, thereby improving communication between operators of power plants, transmission lines, etc. This is the only component of the electricity section that effectively addresses some of the root causes of the August 2003 power blackouts that affected the Midwest and Northeast. Importantly, the section does not allow FERC "to order the construction of additional generation or transmission capacity" in order to improve these reliability standards— an important check on FERC's jurisdiction.

Subtitle B, Section 1221—Siting of Interstate Electric Transmission Facilities
Overturns nearly a century of local control over the siting of electric transmission lines. It not only authorizes FERC to overrule local and state governments in the siting of transmission lines, but extends this authority to distribution facilities. This section also allows such projects to acquire rights-of-way through eminent domain. The section also authorizes FERC to issue a permit for a facility if a state takes longer than 1 year to review the application, or if a state places certain conditions on the permit for approval.

Subtitle C, Section 1232—Sense of Congress on Regional Transmission Organizations
Although not legally binding, this provision sends a message to FERC that it should continue trying to implement anti-consumer Regional Transmission Organizations (RTOs). These multi-state organizations seek to control transmission for use by power marketers, and not for consumers or reliability.

Subtitle C, Section 1234—Federal Utility Participation in RTOs
Allows the Secretary of Energy to unilaterally commit federal Power Marketing Agencies (PMAs) into RTOs. Forcing these inexpensive, publicly-owned PMAs into RTOs has been a dream of power marketers who seek to exploit these expensive RTOs for their own profit at the expense of consumers.

Subtitle C, Section 1235—Standard Market Design
Prohibits any rulemaking on SMD before October 31, 2006. SMD is a controversial deregulation proposal that would federalize the nation's electrical grid, kicking states out of their traditional role in protecting consumers.

Subtitle C, Section 1236—Native Load Service Obligation
This protects the rights of those electric utilities that remain vertically-integrated, state-regulated monopolies to prioritize the use of their transmission lines to serve their customers. This is an important protection; however, when it is coupled with repeal of PUHCA (Subtitle F), it may result in providing too much power to these state-regulated monopolies.

Subtitle D, Section 1241—Transmission Rate Reform
This section allows a monopoly industry, transmission line owners, to charge consumers more by replacing cost-of-service ratemaking with incentive-based rate making. This is asinine, as cash "incentives" won't provide any "incentive" in an inherently monopolistic industry like transmission. Rather than improve reliability (as is its stated purpose), this incentive-based rate making will simply act as a tax increase on consumers—with consumers receiving no guarantee that the higher rates they will be paying will lead to better service. This rate increase on consumers will be charged not only by builders of new transmission lines, but owners of existing lines will be able to now pass on higher rates for routine maintenance and operation costs. The August 2003 blackout was caused not by inadequate transmission line capacity but by poor management of power across plentiful lines—a problem associated with deregulation. This section ignores the recent experience of the telecom industry, which went on a billion-dollar building spree of cable lines following the deregulatory Telecommunications Act of 1996. But the building spree in the inherently monopolistic lines sector resulted in massive over-capacity, which directly led to the crash of many telecommunications companies.

Subtitle E—Amendments to PURPA
Overall, elements of this section erroneously emphasize that policies like "net metering" and "smart metering"—where consumers have access to "real time" information on electric rates, theoretically allowing consumers to "choose" the "cheapest" power—can help solve America's skyrocketing energy demand. While this may be true for large users of power (like industrial consumers), it won't work for household electricity consumers, because the bulk of their power use is not elective, but rather mandatory (running air conditioning, computers, lights, etc.). Economists therefore refer to household consumers as having inelastic demand. Since households must use a core amount of power to satisfy their basic needs, they do not have the luxury of being able to "choose" a less expensive time to keep their homes warm or cool, to cook their meals, to power their lights and computers. All net metering will allow household consumers to do is to more effectively see how badly they are getting price-gouged by energy companies in deregulated markets.

Subtitle F—Repeal of PUHCA
The 70 year old consumer and investor protection statute would be completely abolished within 12 months, opening up ownership of approximately ONE TRILLION DOLLARS worth of electric generation, transmission and distribution assets and natural gas distribution assets to any kind of company, anywhere, for the first time since 1935. In its place, FERC would have a virtually meaningless right to look at the "books and records" of conglomerates the size of GE, ExxonMobil, J.P. Morgan and Berkshire Hathaway, in the off chance that FERC could discover whether these vast conglomerates have affiliates whose activities have in any way affected their affiliated utility's rates. State review of such huge companies, the adequacy of which review would clearly be absurd in any case, would have even more restricted rights to look at these affiliated books and records.

The roaring 1920s of utility holding company Enron-like abuses, which resulted in 53 utility holding company bankruptcies and 16 interest defaults, lengthening and deepening the Great Depression, will return. Indeed, Enron's ability to abuse electric contracts came from several

partial repeals of PUHCA by Congress in 1992 and 1996. Rather than reversing these partial repeals in light of their disastrous consequences, however, Congress is now proposing to repeal PUHCA altogether.

But far worse, in 1935 state commissions regulated over 90% of electricity rates. Now, utilities have switched to owning Exempt Wholesale Generators (a 1992 partial PUHCA repeal) instead of state-regulated, rate based generating facilities. EWG rates are exclusively regulated by FERC and FERC now allows contracts to be negotiated by utilities themselves, without review by FERC. Still, the Supremacy Clause of the U.S. Constitution requires that such contract rates be passed through to retail ratepayers. Another part of the energy bill, section 1241, allows higher than cost of service rates for use of the monopoly transmission grid (which, with PUHCA repeal, can now be owned by anyone from Rupert Murdock to Warren Buffett to ExxonMobil to investment banks and pharmaceutical companies). These FERC-blessed rates must also be passed through to retail electricity consumers.

The only thing state utility commissions will have any control at all over will be (some) distribution facility costs; the rest will be determined by FERC, which has abrogated its review to "the market." However, with PUHCA repealed, interstate holding companies will also be free to buy up many distribution companies. David Sokol of utility Mid-American, has stated that there are about ten times too many electric distribution companies. In other words, he (and Warren Buffett's Berkshire Hathaway, major owners of Mid-American) plan to buy them up and consolidate them. He admits there will be "substantial consolidation" in the utility industry once PUHCA is repealed, but says this is a good thing. The only problem: PUHCA is allegedly being repealed in order to encourage competition!

The repeal of PUHCA means we will have again the huge utility holding companies, only this time owning unregulated utility monopolies, thanks to FERC's wholesale electricity and transmission deregulation, and the fact that Congress is rendering meaningless any effective state utility regulation.

It isn't just consumer groups like Public Citizen reaching these conclusions. Standard & Poor's wrote in its February 2004 publication, "Is PUHCA Beneficial or Detrimental to U.S. Utilities' Credit?":

> "Standard & Poor's Ratings Services has concluded that PUHCA may provide some level of credit protection for bondholders, particularly in restricting utility investment in nonrelated entities. However, the SEC's relaxation of these restrictions over the past few years has not helped utility investors. Utility investment in noncore businesses has been responsible for most of the credit deterioration in the utility industry. A historical survey of industries that utilities invested in, such as savings and loan, insurance, aircraft leasing, real estate, telecom, emerging market utilities, independent power, and energy marketing and trading, leads to the conclusion that utilities are acting to preserve credit quality when they avoid investing in other industries. Therefore, any regulation that restricts a utility's ability to invest in other industries could be supportive of credit. If PUHCA had not been in place, the registered holding companies might have raised their level of outside

investment to even higher levels than experienced over the past few years and the average rating deterioration might have been greater.

The main argument to repeal PUHCA--that it inhibits investment in the industry--does not seem to hold much water after the power generation market imploded. With most regions experiencing 30% reserve margins and industry reports indicating that new generation will not be needed for 10 years, the need for capital to build power plants in many regions is no longer a driver in PUHCA's repeal. Yet, the U.S. transmission infrastructure is in need of significant capital, with estimates of up to $56 billion over the next 10 years. However, investor appetite for the debt and equity of companies with stable regulated revenues has not waned. So, repealing PUHCA on the basis of needing more capital in the industry does not seem to be a valid point, given the industry's foreseeable ability to raise capital for transmission and distribution projects."

Public Citizen recently exposed a new anti-PUHCA lobbying group.
http://www.citizen.org/pressroom/release.cfm?ID=1907

Subtitle G—Market Transparency, Enforcement, and Consumer Protection
Section 1281—Market Transparency Rules
This section only directs FERC to establish an "electronic information system" to collect very limited amount of information on electricity trading. FERC already was collecting this information when Enron, Reliant Energy and other companies stole billions of dollars from West Coast consumers. Simply collecting information doesn't do a single thing to stop market manipulation - only re-regulating energy markets and establishing cost-of-service rates will adequately protect consumers. The fact that FERC is still unable to sort out the extent of company market manipulation 5 years after the fact is proof that market-based electricity markets are far too complex for regulators to effectively monitor.

Subtitle G, Section 1282—Market Manipulation
All this section does is prohibit the filing of false information and round trip trading - neither of which would have done anything to stop what Enron and other energy companies did. Again, the only way for regulators to effectively protect consumers is to end the failed deregulation experiment and re-establish cost-of-service rates.

Subtitle G, Section 1286—Sanctity of Contract
Undermines most of the consumer protection provisions of the Federal Power Act by replacing the higher "just and reasonable" standard with the lower "public interest" standard. The Federal Power Act requires that FERC review wholesale rates BEFORE they are collected to insure that they are "just and reasonable, and not unduly discriminatory or preferential," or to order refunds once the lawful rates are determined. Section 1286 would instead codify FERC's ability to allow two utilities to negotiate a contract between them at "market" rates, have it go into effect without ever being reviewed by any utility regulatory body under any standard—much less, whether its just and reasonable, unduly discriminatory or preferential, or not—and then PROHIBIT FERC from changing such utility negotiated rate unless FERC meets an extremely heavy burden of proof under the so-called "public interest" standard of contract review that derives from a long line of quite different cases called the "Mobile-Sierra" doctrine. The "public interest" standard as

defined in those cases is so difficult to meet that it's almost never been met. Thus, the Federal Power Act will be statutorily changed from requiring utilities to meet the burden of justifying any rate increase as "just and reasonable, and not unduly discriminatory or preferential," to having FERC and consumers be given the burden of trying to meet an nearly impossible standard of showing harm to the public interest.

Moreover, the Supremacy Clause of the U.S. Constitution will then require state utility commission's to pass on these never-reviewed, utility-set rates and will protect them under the "filed-rate doctrine." The public would actually be better off repealing the Federal Power Act than allowing such an unacknowledged reversal of consumer protections to take place, because—with admittedly unregulated wholesale rates—no federal laws would require such unreviewed rates to be passed on to consumers.

Subtitle G, Section 1287—Consumer Privacy and Unfair Trade Practices
This section is irrelevant, as 94% of the 42 million household consumers living in deregulated states have no access to competitive suppliers, and so are totally unaffected by the "consumer protections" offered in this section.

Subtitle H, Section 1291—Merger Reform
A first step in gutting merger review by FERC by authorizing a study by the Department of Energy (DOE), which, like FERC, is currently committed to deregulating electricity, to look into eliminating FERC's merger review authority, to remove "unnecessary duplications or delays in merger and disposition review."

Subtitle H, Section 1292—Electric Utility Mergers
Reduces FERC's ability to review mergers by greatly increasing the price of the transactions FERC can review from $50,000 to $10,000,000. Utilities may be able to structure some deals into contracts of less than $10 million, and thus avoid FERC review altogether for the acquisition of huge amounts of electric capacity.

This section MUST be viewed in light of PUHCA repeal. Its proposed PUHCA replacements are far too week to protect consumers.

The section adds some ability of FERC to review holding company mergers that affect a "public utility," and attempts to strengthen the standard of review of FERC over mergers, since FERC only has to find a merger "consistent with the public interest," a very low threshold, particularly compared to the strict structural limitations of PUHCA. But at the same time the section expedites merger reviews, and of course, the preceding section gives DOE oversight of mergers if FERC takes too long or imposes too many troubling consumer-protection "conditions" on mergers. In any event, the preceding section appears designed to eliminate any effective FERC merger review altogether as "redundant" within one year.

The section gives FERC only 180 days to review a merger - after that point, the merger is automatically approved.

In addition, the section replaces FERCs current 3-step merger review process (the effect on competition, rates and regulation) with a new process that is more blatantly pro-deregulation and offers weak substitutes for PUHCA. The new review process includes considering whether a merger “will be consistent with competitive wholesale markets." And the pathetic PUHCA replacement is the proposed standard of whether the merger "will impair the financial integrity of any public utility that is a party to the transaction or an associate company of any party to the transaction.”

Title XIII — Energy Tax Incentives

Subtitle A, Section 1301—Natural gas gathering lines treated as 7-year property
Section 1302—Natural gas distribution lines treated as 15-year property
Section 1301 estimated 10-year cost: $16 million
Section 1302 estimated 10-year cost: $1.281 billion
This tax break allows natural gas companies to save nearly $1.3 billion by depreciating their property at a much faster rate. This tax break makes no economic sense, as natural gas prices remain at record high levels, and these high prices - not tax breaks - should be all the incentive the industry needs to invest in gathering and distribution lines.

Subtitle A, Section 1303—Electric Transmission property treated as 15 year property
Will allow a monopoly industry to save $1.462 billion over the next 10 years by depreciating their property at a much faster rate. It makes no economic sense, and exposes the inherent inefficiencies under deregulation - after all, under the old, fully regulated monopoly system, companies were required to reinvest in their transmission systems. Apparently deregulation proponents think that taxpayers should now spend hundreds of millions of dollars in payments to electric companies to do something they should be doing anyway.

Subtitle A, Section 1305—Modification of Credit for Producing Fuel From a Nonconventional Source
This expands the so-called Section 29 tax credit to include oil produced from shale and tar sands, and the much-abused synthetic fuels produced from coal. The cost of this giveaway is over $3 billion.

Subtitle A, Section 1306—Modifications to Special Rules for Nuclear Decommissioning Costs
Changes the rules for the collection and transfer of decommissioning funds, which is money that the NRC requires nuclear operators to set aside for site cleanup after reactors are shut down. Decommissioning funds are taxed at a lower rate and the rule changes will cost taxpayers $1.3 billion.

Subtitle B, Section 1314—Amortization of Delay Rental Payments
Provides a $77 million tax break to oil and gas producers related to their costs associated with inventory and property held for resale. With oil currently selling for over $50/barrel, there is no need for oil producers to obtain any sort of tax break.

Subtitle B, Section 1315—Amortization of Geological and Geophysical Expenditures
Allows "geological and geophysical" costs associated with oil exploration to be written off faster than present law, costing taxpayers over $2 billion.

Subtitle C—Alternative Minimum Tax Relief
Application of enhanced oil recovery tax credits against the Alternative Minimum Tax, costs nearly $200 million. Big giveaway to profitable oil companies.

Title XIV — Miscellaneous

Section 1443—Attainment Dates for Downwind Ozone Nonattainment Areas
Championed by Joe Barton, this section allows major U.S. cities currently not in compliance with federal clean air standards - such as Barton's home turf of Dallas/Ft. Worth - to delay their need to clean up the sources of pollution.

Section 1444—Energy Production Incentives
Allows state to provide a credit against any tax or fee owed to the state by an energy company for producing electricity from coal, wind, solar, or biomass, or ethanol.

Section 1448—Oxygen Fuel
Appropriates $300,000,000 for an Oxygen-Fuel program.

Section 1451—Carbon-based Fuel Cell Development
Appropriates $850,000 to a private institution to develop a coal-based fuel cell.

Title XV – Ethanol and Motor Fuels

Subtitle A, Section 1502—Fuels Safe Harbor
Subtitle A, Section 1503—Findings and MTBE Transition Assistance
Provides liability protections to producers of the gasoline-additive MTBE, along with $2 billion in direct "transition assistance" payments to current producers of MTBE to help them in the transition to produce MTBE alternatives.

Since 2001, the major MTBE producers have made nearly $10 million in contributions to federal political candidates, with 77% of that total going to Republicans. Reps. Joe Barton and Tom DeLay have accepted over $200,000 from MTBE producers during that time period.
For more info, see:
http://www.citizen.org/cmep/energy_enviro_nuclear/electricity/energybill/2005/articles.cfm?ID=10546

One of the recipients of the $2 billion in transmission assistance—in addition to ExxonMobil and all the other leading producers of MTBE—will be Halliburton, Vice-President Cheney's former company. Halliburton holds the exclusive North American licensing rights to NExOCTANE, an MTBE alternative developed by Norway-based Fortum Oil.

Subtitle A, Section 1511—Commercial Byproducts from Municipal Solid Waste and Cellulosic Biomass Loan Guarantee Program
Authorizes the Secretary of Energy to provide taxpayer-guaranteed loans to the municipal solid waste and cellulosic biomass industry.

Subtitle A, Section 1512—Cellulosic Biomass and Waste-Derived Ethanol Conversion Assistance
Provides $750 million to companies creating ethanol from certain types of biomass and waste.

Subtitle B, Section 1525—Remediation from Oxygenated Fuel Additives
Provides financial cover to MTBE producers by allowing states to spend the underground storage tank trust fund on matters related to MTBE water contamination. Since MTBE producers were well aware of the gasoline-additive's risks, they alone should be held financially responsible, and should be allowed to tap into the trust fund to cover clean-up costs.

Title XX — Oil and Gas—Resources

Subtitle A, Section 2002—Program on oil and gas royalties in-kind
Allows corporations drilling for oil on public land to forgo paying cash royalties to taxpayers. Instead, companies provide an amount of the oil as an in-kind contribution to the federal government. Since federal land supplies one-third of the oil and gas produced in the United States, expansion of this program could have a significant impact on the federal treasury.

This proposal has its origins in Bush's National Energy Policy, http://www.whitehouse.gov/energy/Chapter5.pdf, which requested that the Secretary of the Interior "explore opportunities for royalty reductions."

A recent Government Accounting Office report, http://www.gao.gov/new.items/d03296.pdf; however, criticizes the current royalty in kind program, concluding that the government is unable to determine whether taxpayers receive a fair shake from the program. For example, the GAO concluded that since the pilot program currently "relies upon royalty payers to self-report the amount of oil and gas they produce, the value of this oil and gas, and the cost of transportation and processing that they deduct from royalty payments, there are concerns about the accuracy and reliability of these data."

Indeed, the industry's cheerleading for the royalty in-kind program stems from recent court decisions that found U.S. oil companies, equipped with an "honor system" self-reporting system, routinely underreported the volume of oil and natural gas removed from taxpayer land, therefore allowing the companies to cheat the public. By seeking to end cash payments for the privilege of drilling on public land altogether, it appears as though the oil companies are attempting to hedge their losses from the embarrassing court decisions.

Subtitle A, Section 2004—Incentives for natural gas production from deep wells in the shallow waters of the Gulf of Mexico
Section 2005—Royalty relief for deep water production
Section 2006—Alaska offshore royalty suspension
Apparently record-high oil and natural gas prices (with oil consistently above $50/barrel and natural gas prices consistently above $6/thousand cubic feet) and recent billion-dollar tax breaks to oil & natural gas producers http://www.citizen.org/cmep/energy_enviro_nuclear/electricity/energybill/articles.cfm?ID=12395 and record profits for natural gas and oil producers http://www.citizen.org/cmep/energy_enviro_nuclear/electricity/Oil_and_Gas/articles.cfm?ID=13317 aren't enough incentive to produce more domestic oil. These sections significantly reduce payments oil and natural gas companies would otherwise pay to taxpayers for the privilege of drilling on public land.

Subtitle A, Section 2007—Oil and gas leasing in the National Petroleum Reserve in Alaska
Suspends royalty payments for drilling in the Reserve.

Subtitle A, Section 2014—Reimbursement for costs of NEPA analyses, documentation, and studies
Allows energy companies to be reimbursed by taxpayers for part of the costs of complying with federal environmental laws.

Subtitle A, Section 2015—Gas hydrate production incentive
Waives royalty payments by natural gas companies for drilling natural gas from gas hydrate resources in the outer Continental Shelf.

Subtitle A, Section 2016—Onshore deep gas production incentive
Suspends royalty payments for drilling deep natural gas wells on federal land.

Subtitle A, Section 2017—Enhanced oil and natural gas production incentive
Encourages the controversial use of carbon dioxide sequestration—an unproven method in which carbon dioxide emissions from industrial output are stuffed into oil wells, gas wells or other underground “storage” areas. Stuffing so much carbon dioxide into the earth has the potential to not only leak out, but cause untold environmental damage.

Subtitle D, Section 2052—Royalty payments under leases under the Outer Continental Shelf Lands Act
Allows oil companies drilling on public land to pay only 44 cents of every dollar owed in royalty payments.

Title XXII — Arctic Coastal Plain Domestic Drilling

Opens the environmentally-sensitive Artic National Wildlife Refuge to oil drilling, despite the fact that the United States is already the third largest producer of crude oil in the world. Even if we produced as much oil as Saudi Arabia (which we couldn’t, even by opening the Artic Refuge), we’d still be importing more than half of our oil.