

*Report of The Committee
On Legislation and Regulatory Reform**

I. INTRODUCTION

This is the third annual report filed by the Committee on Legislation and Regulatory Reform of the Federal Energy Bar Association ("FEBA"). This report covers the First Session of the 98th Congress ("First Session"), calendar year 1983, and the first part of the Second Session, including January through April, 1984.

This Committee's 1982-83 Report, 4 Energy L. J. 105 (1983), noted that the re-emergence of the natural gas pricing and policy issue was perhaps the most significant turn of events in the Second Session of the 97th Congress, accurately predicting that the issue would carry forward into the succeeding Congress. The 1982-83 Report contained a comprehensive analysis of the underlying facts and circumstances which gave rise to the renewed controversy and detailed discussion of the numerous issues involved in myriad legislative proposals. The 1982-83 Report also discussed the principal bills under consideration in the Senate and the House at the close of the 97th Congress and bills reintroduced in the early part of the 98th Congress. As in the last Congress, decontrol of old gas prices remained the key issue around which other issues turned, with no consensus in sight at the end of the First Session; nor has any proposal shown any prospect of garnering majority support as of mid-April, 1984.

In the 98th Congress the Administration's once cherished dream of abolishing DOE faded into oblivion, while coal slurry pipelines and the Clinch River project suffered setbacks which render their future problematic at best. As discussed hereafter, the prospects of many other energy related proposals waxed and waned as the 98th Congress progressed.

In 1983 the Supreme Court finally put to rest the long debate over the pros and cons of the legislative veto. In *Immigration and Naturalization Service v. Chadha*, ___ U.S. ___, 103 S.Ct. 2764 (1983) ("Chadha"), the Supreme Court struck down the legislative veto as an unconstitutional infringement on the powers of the Executive Branch. Since the legislative veto has been the cornerstone of many so-called Regulatory Reform Acts, the *Chadha* decision sent the legislative draftsmen back to the drawing board.

Finally, by way of introduction, the Committee cautions that while its mandate is potentially unlimited, it is not possible to deal with every legislative proposal which may be energy related. The Committee does not pretend to mention every bill introduced, nor to bring current the status of all proposals noted. For example, authorization and appropriation bills obviously affect the energy issue; however, the Committee simply does not have the resources to track or analyze this type of activity, although such legislation may be selectively mentioned. Nor does this Committee deal with court decisions unless, like *Chadha*, they have a direct and substantial impact on legislation.

*This Report covers calendar year 1983, a period coextensive with the First Session of the Ninety-Eighth Congress of the United States, and the first four months of 1984.

II. STATE LEGISLATION

A. *New York*

Despite the national attention focused on federal legislative initiatives in recent years, there is a vast body of state statutory law affecting the production, sale and transportation of energy. Many of the state legislatures are now attempting to deal with issues also under consideration by Congress. Notable among these proposals in 1983 was legislation in New York vetoed by Governor Cuomo. This legislation, passed by both houses of the state legislature over the objections of the New York Public Service Commission and the State Energy Office, (1) imposed common carrier status on natural gas utility systems within the state, (2) abrogated take-or-pay clauses, and (3) ordered utilities to buy gas at the "lowest available price" through competitive bidding.

B. *West Virginia*

In April, 1983, West Virginia Governor Rockefeller signed into law legislation altering significantly the regulation of utilities and pipelines. The Act, *inter alia*, declares unenforceable certain take-or-pay clauses, indefinite price escalator clauses, and most-favored-nation clauses which do not meet a reasonableness test; requires utilities to invite bids for natural gas supplies; and applies common carrier status to intrastate pipelines. The new law also provides assistance to low-income customers, regulates transactions between utilities and their affiliates; suspends certain rate increases for one year; forbids overlapping rate filings; and requires utilities to purchase the least costly gas.

C. *NARUC Survey*

In 1983 the National Association of Regulatory Utility Commissioners ("NARUC") published a survey of state legislation dealing with twelve categories of proposals. The survey is entitled Survey of Pending State Legislation Pertaining to Utility Regulation.

III. NATURAL GAS

A. *Natural Gas Pricing and Regulation*

This Committee's 1982-83 Report contained a comprehensive treatment of the underlying facts and circumstances which gave rise to the re-emergence of the natural gas controversy in the 97th Congress, as well as a detailed analysis of the principal provisions found in innumerable proposals. 4 Energy L.J. 105 (1983). The Committee's 1982-83 Report also covered these proposals as reintroduced in the First Session of the 98th Congress, and included an itemized list of provisions contained in the Administration's proposal, S. 615 and H.R. 1760, and the Gephardt alternative, H.R. 2154. *See also* S. 996, by Kassebaum, a companion Senate bill to Gephardt. The 1982-83 Report also included a comparative analysis of

the Addabbo-Heinz alternative, H.R. 1752/S. 689, as compared to H.R. 2154.

In 1983 Senate hearings were held by the Committee on Energy and Natural Resources on S. 615 and related bills. Markup of S. 615, which included votes on various amendments, continued in May, June and July. On July 26, by a vote of 11-9, the committee reported S. 1715 to the Senate without a recommendation. See S. Rept. 98-205.

As reported, the Senate bill, *inter alia*, deregulates (1) "new new gas" under post-enactment contracts, (2) gas under pre-enactment contracts by mutual agreement, and (3) gas volumes freed up for resale due to the bill's market-out and take-or-pay provisions. Gas not deregulated is subject to a gradual "ramp-up" by producers, or a "ramp-down" by purchasers, to a parity price known as the Free Market Price Indicator ("FMPI"). An option to ramp-up or ramp-down triggers other options by the party against whom the provision is invoked, including market-outs, rights of first refusal, mandatory one-year takes, and mandatory pipeline and distribution company carriage.

Other provisions of S.1715 deal with (1) reductions in take-or-pay obligations, (2) limitations on favored nations clauses, (3) a new "prudence" test governing PGA passthroughs, (4) minimum prices for off-system sales, (5) intrastate pipeline purchases of interstate gas, (6) antitrust exemptions for producer marketing cooperatives, and (7) prohibitions against discrimination by interstate pipelines in favor of affiliated intrastate and Hinshaw pipelines.

In November, following unsuccessful efforts to pass the committee bill and the Kassebaum alternative, the natural gas bill was withdrawn from the Senate calendar. As of April 1, 1984, the Senate has not been able to establish sufficient support for any legislation to attempt passage of a bill, although conferences are underway among various senators in an effort to develop an approach that could attract majority support.

In the House, Energy and Commerce had been deadlocked since July 29, 1983, when its Subcommittee on Fossil and Synthetic Fuels reported a bill by a vote of 10-9. In November 1983, Chairman Dingell adjourned the Committee, reportedly to avoid passage of the so-called Richardson-Broyhill substitute.

In early April, 1984, the House Energy and Commerce Committee reported a bill by a vote of 22 to 20. In committee mark-up all amendments were defeated by the same vote. The bill, among other things, freezes prices for gas subject to sections 102, 107(c)(5) (tight sands), and 108 (stripper) of the Natural Gas Policy Act of 1978 at the levels in effect in the month prior to enactment, until January 1, 1985. A cap is placed on indefinite price escalation clauses affecting certain gas scheduled for decontrol in 1984 and 1987. Pipelines can demand renegotiation of contracts entered into before April 2, 1984, involving high cost gas, with failure to renegotiate leading to binding arbitration supervised by FERC. For contracts entered into before April 2, 1984, take-or-pay provisions exceeding 50% are voided for a three-year period. Additional provisions of the bill include: a new "prudence test" is added to the standard to be applied by FERC in allowing PGA passthroughs; old gas remains under price controls; incremental pricing is repealed; most Fuel Use Act provisions are repealed; contract carriage is to be encouraged and may under certain circumstances be ordered by FERC. The President's authority to reimpose price controls is retained.

B. *Natural Gas Import Policy*

The general controversy over domestic prices for natural gas again extended to overland imports from Canada and Mexico, as well as liquefied natural gas ("LNG") imports from various foreign nations. As was the case in the 97th Congress, Senator Percy and Representative Corcoran were among the principal spokesmen on this issue.

In February, Senator Percy used his chairmanship of the Energy, Nuclear Proliferation and Government Processes Subcommittee of Senate Governmental Affairs as a forum for hearings on the import gas issue. Following these hearings, Senator Percy and eight colleagues introduced S. Res. 75, expressing the sense of the Senate that the Secretary of State, with the assistance of the Secretary of Energy, enter into negotiations with foreign nations to lower the cost of imported gas, and to report to Congress in thirty days the progress of such negotiations. Upon introduction S. Res. 75 was referred to Foreign Relations, which reported it to the Senate on March 23, 1983.

In September, Senator Percy and ten midwestern co-sponsors introduced S. 1882, which would suspend for eighteen months the Algerian LNG import authorization of Trunkline LNG Co. Following the 18-month suspension period, the license could be reissued by ERA and FERC. S. 1882 was referred to the Energy and Natural Resources Committee.

On February 15, 1982 Representative Corcoran introduced H.R. 1441, the Natural Gas Import Policy Act of 1983. The bill suspends NGA orders authorizing the importation of natural gas unless (1) the price and terms are renegotiated to reflect current prices and demand and (2) the renegotiated contract and tariff adjustments have been filed with the Secretary of Energy and FERC. The bill allows pipelines with proscribed contracts with Algeria to recover the prudently incurred costs associated with terminal facilities as though used and useful, but prohibits FERC from allowing a rate of return on such facilities. *See also* H.R. 2012. Most comprehensive natural gas pricing and policy bills contain provisions dealing with imports; therefore this issue will probably be dealt with, if at all, in the context of such legislation.

IV. COAL

A. *Coal Slurry Pipelines*

Legislation giving federal eminent domain power for coal slurry pipelines was a hotly contested issue in the 98th Congress. Early in the First Session bills were reported to the Senate (S. 267), from the Committee on Energy and Natural Resources, *see* S. Rept. 98-61, and the House (H.R. 1010), from the Committees on the Interior, *see* H. Rept. 98-64 (Part I), and Public Works, *see* H. Rept. 98-64 (Part II). The showdown came in the House on September 27, where H.R. 1010 was defeated by a vote of 182 to 235. The coal slurry issue is not expected to be revived in the 98th Congress. There has been speculation that efforts to reduce rates for transporting coal may now turn to attempted amendments to the Staggers Rail Act of 1980, which some coal consumers blame for the steep price increases in rail transportation.

B. State Severance Taxes on Coal

Legislation was introduced again the First Session to limit the amount of severance taxes that can be imposed by states on oil, natural gas and coal. *See* H.R. 2690, by Hyde, referred to the Committee on the Judiciary. These proposals are aimed at severance taxes on coal imposed by certain Western states.

V. OIL

A. Oil Pipeline Deregulation

For the past several years the regulation of oil pipelines has been in a state of transition, with FERC assuming this responsibility from ICC. H.R. 2677, a bill to deregulate oil pipelines, was introduced in the House in the First Session, by Breaux, and jointly referred to the Energy and Commerce, and Public Works and Transportation Committees. Until the Administration submits its proposal, no action is anticipated.

B. Alaskan Oil Swap

The Trans-Alaskan Pipeline Authorization Act prohibited exports of Alaskan oil to noncontiguous foreign nations absent special Presidential findings and the concurrence of Congress. The prohibition has prevented the proposed "oil swap" whereby Alaskan oil would be shipped to Japan, displacing Mexican oil, which would in turn be shipped to U.S. Gulf and Atlantic Coast refineries. The prohibition expired on September 30, 1983.

VI. NUCLEAR

A. Nuclear Facility Licensing

On June 27, 1983, House Energy and Commerce reported H.R. 2510, a bill authorizing appropriations for the Nuclear Regulatory Commission ("NRC") for Fiscal Years 1984 and 1985. *See* H. Rept. 98-103 (Part II). Among other things, the bill authorizes NRC to use funds, in the absence of a state or local emergency preparedness plan, to issue an operating license for a nuclear reactor if there is no danger from the operation of the facility to the public health and safety. H.R. 2510 had previously been reported to the House by Interior on May 5, 1983. *See* H. Rept. 98-103 (Part I).

B. Clinch River

In the First Session of the 98th Congress the long struggle to save the Clinch River Breeder Reactor ("CRBR") may have ended. On July 14, 1983, H.R. 3132, the Energy and Water Development Appropriation Act for Fiscal Year 1984 was enacted without funding for Clinch River. *See* PL 98-50. The legislation, however, did leave the door open to reconsideration if an alternative financing plan

acceptable to Congress were submitted. On August 1, 1984, DOE Secretary Hodel submitted a new plan to Congress but no action was taken. The Barnwell Fuel Reprocessing facility, the Gas Centrifuge Enrichment Plan at Portsmouth, Ohio, and other related nuclear projects are not discussed herein, the Committee having deemed these projects as lacking a sufficient legislative nexus for inclusion.

VIII. HYDRO

A. *Authorization of New Hydroelectric Powerplants*

In the First Session, the Senate passed S. 268, a bill authorizing the Secretary of the Interior, *inter alia*, to construct, operate and maintain the following hydroelectric powerplants: the Whiskeytown powerplant in California, the Yellowtail Afterbay powerplant in Montana, the Red Bluff powerplant in California, the Palisades powerplant enlargement in Idaho and Wyoming, the Anderson Ranch powerplant in Idaho, the Minidoka powerplant and enlargement in Idaho and Wyoming, and the Guernsey powerplant enlargement in Wyoming. *See* S. Rept. 98-137. The legislation also authorizes other projects in the western states. The bill, introduced by McClure, was reported by Energy and Natural Resources, passed by the Senate, as amended, and referred to the House Committee on Interior and Insular Affairs. *See also* H.R. 4275 and H.R. 3552.

On November 17, 1983, the Senate Committee on Environment and Public Works reported S. 1739, by Abnor, the Water Resources Development Act of 1983. *See* S. Rept. 98-340. The bill authorizes work by the Corps of Engineers on ten hydroelectric projects. *See also* S. 947.

B. *The New England Power Planning and Distribution Authority*

In the First Session legislation was introduced in Congress to establish a New England Power Planning and Distribution authority. *See* S. 670, by Pell and Stafford, referred to Energy and Natural Resources; H.R. 1210, by St. Germain, referred jointly to Energy and Commerce, and to Interior and Insular Affairs.

C. *Bonneville Power Administration*

In the First Session Senator Baucus introduced S. 623, entitled the Bonneville Power Administration Regional Accountability Act, requiring the submission of the Administration's draft budget for each fiscal year to the Pacific Northwest Electric Power and Conservation Council for review, and requiring that such budget conform to the requirements of the Pacific Northwest Electric Power Planning and Conservation Act. The bill was referred to the Committee on Energy and Natural Resources. *See, also*, H.R. 2098, and H.R. 2111. *See generally*, S. 1701 (financing agreements).

D. *Rural Electrification Act*

On December 9, 1983, the House Agriculture Committee reported H.R. 3050,

as amended, entitled the Rural Electrification and Telephone Revolving Fund Self-Sufficiency Act of 1983. *See* H. Rept. 98-588 (Part I). The bill which, among other things, revises the liabilities and uses of the Rural Electrification and Telephone Revolving Fund, was subsequently referred jointly to the House Committee on Banking, Finance, and Urban Affairs, and to Ways and Means. *See also* S. 1300, by Huddleston, referred to Agriculture, Nutrition and Forestry.

On November 3, 1983, House Interior and Insular Affairs reported H.R. 2211, as amended, a bill amending the Federal Land Policy and Management Act of 1976 to provide, *inter alia*, that rights-of-way shall be granted without rental fees to electric facilities financed pursuant to the Rural Electrification Act of 1936. *See* H. Rept. 98-475. The bill, as amended, passed the House on November 8, 1983, and was subsequently referred to the Senate Committee on Energy and Natural Resources. *See also* S. 508, by Laxalt, referred to Energy and Natural Resources; H.R. 2027, by Oberston, referred to Interior and Insular Affairs.

E. Tennessee Valley Authority

There has not been any activity in the 98th Congress with respect to the Tennessee Valley Authority ("TVA"); however the following bills are noted: H.R. 96, by Duncan, to require TVA to sell to states, counties, municipalities, and cooperatives for resale to certain industries, referred to Public Works and Transportation; H.R. 1771, by Duncan, granting immunity from civil suits to TVA employees for actions taken in good faith, referred to Public Works and Transportation; and H.R. 814, by Jenkins, concerning recreational development, and the economic and social well-being of people living in the Tennessee and Mississippi River Basins, referred to Public Works and Transportation.

VIII. SYNTHETIC-RENEWABLE ENERGY

A. The Synthetic Fuels Corporation

The Synthetic Fuels Corporation ("SFC") and synthetic fuels policy remained centers of controversy in the 98th Congress. The role of government vs. free market allocation of resources to synthetic fuel projects remained at the heart of the controversy. Even among those advocating a larger government role in the development of projects which involve risks unacceptable to private capital formation efforts, or which are simply uneconomical under foreseeable circumstances, the SFC does not appear to have established a consensus or a constituency. The SFC, as well as its performance and policies, were the subject of numerous oversight hearings in the First Session. *See, e.g.*, hearings before the Oversight of Government Management Subcommittee, Senate Government Affairs; and hearings before the Fossil and Synthetic Fuels Subcommittee, House Energy and Commerce. *See also*, the Third Annual Report on activities undertaken by SFC and DOE to implement the development of synthetic fuels under the Defense Production Act of 1950, as amended, from June 30, 1982 through July 1, 1983, PM-76, Senate Committee on Energy and Natural Resources.

Two legislative proposals were introduced dealing with SFC: S. 250, by

Proxmire, abolishing the agency, referred to Energy and Natural Resources; and H.R. 1701, by Corcoran, eliminating SFC's authority to enter into joint ventures or to own corporation construction projects, jointly referred to Banking, Finance and Urban Affairs, and to Energy and Commerce. *See also* H.R. 4098 (construction projects); H.R. 4060 and H.R. 4098 (financial assistance).

B. The Great Plains Project

Late in the First Session Congress used the conference report on H.J. Res. 413, the Further Continuing Appropriations Bill for fiscal 1984, to express its support for the Great Plains coal gasification project. This action was in response to an earlier rejection by the SFC of a request by the sponsors of the Great Plains project that the unused portion of the project's \$2.02 billion loan guarantee be converted to a price guarantee. According to the report of the conference committee, the project is "a crucial element in our national synthetic fuels program" the value of which will not be realized until completion and operation. The report urged "in the strongest possible terms" that SFC open a solicitation at its December board meeting allowing sponsor application for such price guarantees. Other SFC options included a solicitation that would open negotiations for additional assistance for Great Plains.

In January 1984 SFC reversed field and issued a solicitation allowing the Great Plains sponsors to apply for price guarantees; subsequently the application was officially made. In late April the SFC offered a \$790 million price guarantee in return for an additional \$100 million equity investment for debt payment and reinvestment of all after-tax cash flow benefits.

C. Magnetohydrodynamics

On May 12, 1983, Senator Melcher introduced S. 1278, entitled the Magnetohydrodynamics Research, Development and Demonstration Policy Act of 1983, requiring the Secretary of Energy to conduct research into the technology for the production of electricity from coal. The bill also requires the Secretary to undertake a pilot project with the owner of an existing coal-fired electric power plant designed to test the concept of magnetohydrodynamic technology. The bill was referred to Energy and Natural Resources.

D. DOE Civilian Research and Development Authorization

On April 19, 1983, Representative Fuqua introduced H.R. 2587, entitled the Department of Energy Civilian Research and Development Authorization Act for Fiscal Year 1984, authorizing FY 1984 appropriations for (1) the fossil energy program; (2) the energy conservation program; (3) energy supply research and development with respect to solar energy, geothermal energy, nuclear fission, magnetic fusion, electric energy systems, energy storage systems, basic energy sciences, environmental R & D, and policy and management of energy research; (4) the geothermal resources development fund; (5) general science and research; and (6) advanced isotope separation technology and gas centrifuge process development and demonstration under the uranium enrichment program. The bill

also prohibits the use of funds under this proposed Act or other legislation for continuation or termination of the Clinch River Breeder Reactor project. The bill, as amended, was reported by Science and Technology, *see* H. Rept. 98-81, was passed by the House on May 12, 1983, by a vote of 230 to 132, and was subsequently referred to The Senate Committee on Energy and Natural Resources.

On April 3, 1984, the House Committee Science and Technology ordered reported H.R. 5224, the DOE Civilian Research and Development Act authorization for fiscal years 1985, 1986 and 1987.

E. Renewable Energy Industry Development Act

On November 13, 1983, the House passed H.R. 3169, by Wyden, entitled the Renewable Energy Industry Development Act of 1983. The bill, as amended, had been reported to the House by the Committee on Energy and Commerce. *See* H. Rept. 98-537. The proposed Act amends the Energy Policy and Conservation Act to require the Secretary of Commerce to study and report to Congress his findings regarding the domestic renewable energy industry and related service industries. In the Senate the bill was referred to the Committee on Energy and Natural Resources.

IX. ENVIRONMENT

A. The Clean Air Act — Acid Rain

The continuing debate over the amendments to the Clean Air Act involves environmental policy; however, environmental and energy policies have proven to have direct impact on each other. Oil, gas and coal leasing in environmentally sensitive areas is one example of two priority objectives in conflict. The use of natural gas to fuel the generation of electric power to alleviate air pollution has been another issue in the context of curtailment proceedings. However, the energy industry which bears the brunt of the expense of meeting the ambient air standards demanded by the Act is the electric utility industry and its customers.

The Clean Air Act was last amended in 1977 (P.L. 95-95). The 1977 amendments called for various studies, including one by a National Commission on Air Quality, completed in March 1981. With these studies in hand legislation amending the Act received substantial attention in the 97th Congress. In the Senate, the Committee on Environment and Public Works reported S. 3041 in August 1981, and in the House the Committee on Energy and Commerce Subcommittee on Health and the Environment reported H.R. 5252 to the full committee. The Senate bill provided for an acid deposition control program. *See*, the 1982-83 Report of this Committee, 4 Energy L.J. 117 (1983).

Congress was expected to take up consideration of the comprehensive amendments to the Clean Air Act early in the 98th Congress. This has not been the case. On March 10 Chairman Stafford of the Senate Environment and Public Works Committee introduced S. 768, which was identical to S. 3041, as reported to the Senate in 1982. S. 768 was referred to the Committee on Environment and Public Works.

The points of controversy remain the same, principal among which are (1) extensions of deadlines, (2) imposition of sanctions on the eleven nonattainment areas identified, (3) procedures for simplifying Environmental Protection Agency ("EPA") review of State actions and plans, (4) prevention of significant deterioration, (5) acid rain, (6) toxic air pollution control, and (7) auto emission standards. Of these, major legislative attention in the 98th Congress has focused on acid rain, which has become a national and international political issue.

Legislative proposals dealing with acid rain fall into two general categories. The first approach calls for immediate steps to reduce SO₂ emissions from approximately eight to twelve million tons over an acid deposition impact area comprised of the thirty-one states east of the Mississippi River. This approach prevailed in the 1982 legislation. For examples of legislation taking this approach in the 98th Congress see H.R. 132 by Gregg, H.R. 2794 by St. Germain, S. 145, by Mitchell, S. 768, by Stafford, S. 769, by Stafford, H.R. 3251, by D'Amours and H.R. 3400, by Sikorski, and H.R. 4404, by D'Amours.

The second approach calls for more study of the problem. Sponsors of these bills argue that there is insufficient scientific data as to the extent and nature of the problem, or as to its solution, to justify the massive expense required by the immediate remedies discussed. The direct economic effect would be upon heavy industry in the midwest and the electric utility industry. An indirect but more substantial effect would be upon the entire coal industry. For legislation adopting this second approach see H.R. 1405, by Rahall, S. 454, by Byrd, and S. 766, by Randolph.

In February, 1984, the Senate Environment and Public Works Committee renewed hearings on amendments to the Clean Air Act, focusing on S. 768, with particular emphasis on the acid rain issue. In testimony stating the Administration's view, EPA Secretary Ruckleshaus supported the second approach discussed above, outlining the Administration's FY 1985 budget calling for \$55 million for scientific research and \$67 million specifically for an acid rain control technology research program.

On March, 15, 1984, the Senate Environment and Public Works Committee favorably reported S. 768, as amended, to authorize funds through FY 1987 and to extend certain provisions of the Clean Air Act. The bill contains sections dealing with acid rain and indoor air quality research, the latter being identical to provisions in H.R. 2899, as passed by the House in February. *See* H. Rept. 98-212 (Part I).

As reported to the Senate S. 768 provides for a 31-state acid deposition control region. Within that region emissions of sulfur dioxide would have to be reduced by eight million tons over the next twelve years. No reductions in nitrogen dioxide emissions would be required, but a ceiling would be imposed pegged to the emissions per Mcf of gas burned in 1981. In the House, hearings on acid rain were held in March by the Science and Technology Committee and the Energy and Commerce Committee.

B. Moratorium On Offshore Leasing

In the First Session a number of bills were introduced calling for a moratorium on further leasing, licensing, permitting and other regulatory actions required for

oil and gas exploration and drilling off the California coast and on the Outer Continental Shelf ("OCS"). See H.R. 2581, by Lowery, H.R. 2736, by Lowery, and H.R. 2059, by Panetta, referred to Interior and Insular Affairs; see also H.R. 3595, referred jointly to Interior and Insular Affairs, and Merchant Marine and Fisheries. In September hearings were held on these bills by the Subcommittee on Mining of the Committee on Interior and Insular Affairs. In addition to the moratorium, some bills also contained provisions mandating the Secretary of the Interior to give equal consideration to the potential environmental damage and adverse impact on coastal areas. These bills were apparently prompted by a review by the Interior Committee's Subcommittee on Oversight and Investigation of Department of the Interior Secretary James Watt's five-year leasing plan for the OCS.

C. *Geothermal Steam Leasing*

Numerous bills were introduced in the First Session limiting the leasing authority of the Secretary of the Interior; however, H.R. 2058, by Marriott, referred to Interior and Insular Affairs, expands the Secretary's authority to lease geothermal resource areas. The bill would amend the Geothermal Steam Act of 1970 to authorize the Secretary to issue geothermal leases in any lands administered by another federal agency or department, and would authorize noncompetitive leases on lands not designated as a "known geothermal resource area."

D. *Oil Pollution Liability and Compensation Act*

In the 98th Congress legislation was again introduced establishing a Comprehensive Oil Pollution Liability Trust Fund ("Fund") in Treasury, funded by an environmental excise tax on crude oil and petroleum products. The Fund would pay claims of persons injured by oil spills. The Act also requires the operators of vessels and offshore drilling facilities to establish and maintain evidence of financial responsibility for oil pollution; imposes joint, several and strict liability upon such operators to anyone injured by such pollution; and allows private actions by injured parties. See H.R. 2115, by Baggi, and H.R. 2222, by Studds, both referred jointly to Merchant Marine and Fisheries, to Public Works and Transportation, and to Ways and Means. Subsequently, Representative Studds introduced a similar bill, H.R. 3278, which was referred to Merchant Marine and Public Works, but not to Ways and Means. On August 2, 1983, this bill was reported by Merchant marine, with an amendment. See H. Rept. 98-340 (Part I).

E. *Wyoming Wilderness Act*

In April, 1983, the Senate Committee on Energy and Natural Resources reported S. 543, as amended, a bill entitled the Wyoming Wilderness Act of 1983, designating certain lands as components of the National Wilderness Preservation System. Title V of the Act directs the Secretary of the Interior to continue to assess the minerals potential of wilderness land in Wyoming, but prohibits exploratory drilling to assess oil and gas potential within any congressionally designated wilderness area. The bill passed the Senate on April 13 and was subsequently jointly

referred to the House Committees on Interior and Insular Affairs, and to Agriculture.

F. General Leasing Prohibitions

On November 4, 1983, H.R. 3363, as passed by Congress, was signed into law. See PL 98-146; see also H. Rept. 98-253 (House Committee on Appropriations), S. Rept. 98-184 (Senate Committee on Appropriations), and H. Rept. 98-399 (Conference Report). The Act, making FY 1984 appropriations for Interior and other departments, contains limitations and prohibitions on the expenditure of funds for certain leasing and permitting activities with respect to coal, oil, gas, oil shale, phosphate, potassium, sulphur, gilsonite and geothermal resources on federal lands.

X. PUBLIC SAFETY

A. Superfund

In early April, 1984, the Subcommittee on Commerce and Tourism of the House Committee on Energy and Commerce voted in favor of a bill to reauthorize the Superfund law for five years without substantive changes. As reported, the bill does not include natural gas as a hazardous substance. Such an inclusion had been incorporated in other bills introduced. However, the five year simple reauthorization approach is not supported by the subcommittee chairman. Thus, upon the favorable vote described above, the chairman adjourned the subcommittee and the matter remains pending at this writing.

B. Pipeline Safety

The Fossil and Synthetic Fuels Subcommittee of the Committee on Energy and Commerce reported in April 1984, H.R. 5313, reauthorizing the pipeline safety program for one year, and calling for a study of transporting methanol through the interstate liquid pipeline system. The bill also provides for a study of testing methods related to hazardous liquid pipeline facilities.

C. Nuclear Waste Management

The continuing controversy between the State of Mississippi and DOE/Battell over the site selection process for nuclear waste storage was reflected by the introduction of S. 1343, by Senator Cochran, entitled the Nuclear Waste Management Act of 1983. The bill, referred to the Governmental Affairs Committee, would transfer the selection process from DOE to a newly established Nuclear Waste Management Authority.

D. Hazardous Waste from Small Generators

In July S. 757, entitled the Resources Conservation and Recovery Act, was

approved by the Environmental Pollution Subcommittee of the Senate Environment and Public Works Committee. Among other things, the bill deals with waste disposal by small quantity generators. Additionally, the bill provides that EPA must promulgate rules for small quantity generators by March 31, 1986. Failing adoption of such rule, hazardous waste from these generators must go to a treatment, storage or disposal facility having a permit. On October 28, 1983, the full committee reported S. 757 to the Senate. *See* S. Rept. 98-284.

In the House, H.R. 2867, introduced by Rep. Florio, entitled the Hazardous Waste Control and Enforcement Act of 1983, included, among its comprehensive provisions, requirements for small generator waste. The bill, as amended, was reported by Energy and Commerce, *see* H. Rept. 98-198 (Part I, II), and by Judiciary, *see* H. Rept. 98-198 (Part III). On November 3, 1983 the bill was passed by the House, and was subsequently referred to the Senate Committee on Environment and Public Works. *See also* S. 1363 and H.R. 2478.

XI. CONSUMER PROTECTION

A. *Low-Income Home Energy Assistance*

In early 1983 the Reagan Administration proposed a \$1.3 billion block grant to the States for low-income fuel assistance. The proposal was contained in the fiscal 1984 budget for the Department of Health and Human Services ("HHS"). Senators Danforth, Eagleton and Riegle introduced S. 292, authorizing \$2.5 billion for fiscal 1984, which was referred to Labor and Human Resources.

In the Senate the Appropriation Committee's Subcommittee on Labor, Health and Human Services and Education approved \$1.872 billion for the Low-Income Home Energy Assistance Program ("LIHEAP") for fiscal 1984, a figure slightly under the authorization level. This legislation was subsequently passed by the Senate by a vote of 70-23. The \$1.875 billion appropriation was also contained in H.R. 3913, as passed by the House. *See* H. Rept. 98-357; *see also* S. Rept. 98-247. In October Congress approved a conference report sending H.R. 3913 to the President. *See* H. Rept. 98-422. The legislation, signed by the President, contained the \$1.875 billion appropriation for LIHEAP. *See* PL 98-139. In early April 1984, the President signed supplemental legislation adding \$200 million to this program. *See* H.R. Res. 493, PL 98-248, signed April 2, 1984.

For other legislation relating to low income assistance see: H.R. 2306, by Sharp, referred to Energy and Commerce, a bill to increase funding for low-income home energy assistance, to limit use of low-income home energy assistance funds made available in prior years, and to make data collecting and reporting requirements under the Low-Income Home Energy Assistance Act of 1981, and for other purposes, referred jointly to Energy and Commerce and to Education and Labor, reported to the House from Education and Labor, with an amendment, May 16, 1983. *See* H. Rept. 98-139. The House Energy and Commerce Committee subsequently held mark-up sessions. *Also see* H.R. 3520, by Murphy, The Rehabilitation Act Amendments, amended on the House floor on August 13, 1983, to change the formula for distribution for low-income energy assistance to the states.

B. Lifeline Rates

Senator Hart introduced on May 4, 1983, S. 1204, entitled the Utility Lifeline Rate Act of 1983. The bill was similar to legislation introduced by Senator Hart in 1977, subsequently added as an amendment to the Public Utility Regulatory Policies Act of 1978, deleted in conference. Again, S. 1204 is drafted as an amendment to that Act. Referred to Energy and Natural Resources, the bill would require, within two years, lifeline rates to low income customers which would be the lower of (1) the lowest rate charged any class of customer, or (2) 75% of the average cost of service to all customers. *See also* Hart Amendment No. 2618 to S. 1715, pending on Senate calendar.

C. Involuntary Utility Terminations

Legislation has been introduced in the 98th Congress dealing with involuntary utility terminations. The critical problem has to do with life threatening heat terminations in the winter. The states address this problem through their respective Public Utility Commissions. For federal legislation relating to involuntary terminations, *see*, H.R. 1594, by Conyers, and H.R. 2004, by Collins, both referred to Energy and Commerce.

D. Low-Income Weatherization Assistance

In October Senators Heinz, Percy, Leahy and Tsongas introduced S. 1953, entitled the Weatherization Act of 1983, which would amend the Energy Conservation in Building Act of 1976. The bill, referred to Labor and Human Resources, would add to approved weatherization measures the retrofitting of gas furnaces, the replacement of heating systems, and other conservation methods selected by the states. In addition to giving the states greater flexibility in selecting energy audit procedures, the bill would not require states to submit an implementation plan to DOE. *See also* S. 590, S. 618, H.R. 1595, H.R. 1598, H.R. 1727 and H. Con. Res. 231.

In early 1983 the Administration had proposed transferring \$11 million from the Housing and Urban Development/Solar Energy Bank to the Department of Health and Human Services for low income weatherization.

On January 24, 1984, the House passed H.R. 2615, by Ottinger, to amend the Energy Conservation in Existing Buildings Act of 1976 to provide for weatherization of the remaining eligible low-income dwelling units, and to create additional employment in weatherization related industries. As reported to the floor by Energy and Commerce, the bill would have authorized \$500 million for fiscal 1985. *See* H. Rept. 98-108. As amended and passed by the House, H.R. 2615 authorizes \$200 million for FY 1985 under Title IV of the Act. The House bill is now before the Senate Labor and Human Resources Committee.

E. Rural Consumers

Since the energy shortages of the 1970's and the advent of government

allocation, the farm constituency of Congress has sought priority energy allocation for agricultural uses. These interests now find themselves affected by energy *prices* as well. In this regard farm interests, along with certain affected commercial and industrial interests, have found common cause with a broader constituency of residential consumer organizations which have traditionally been concerned with energy prices. During 1983 the Energy Development and Applications Subcommittee of the House Committee on Science and Technology held field hearings on the general problem of high energy prices in rural areas. The hearings were chaired by Representative Fuqua. Hearings on this subject are continuing in the Second Session.

XII. REGULATORY REFORM

A. *The Regulatory Reform Act*

At one time, early in the 97th Congress, it appeared that an omnibus, comprehensive regulatory reform bill was "an idea whose time has come." In fact, S. 1080, entitled the Regulatory Reform Act, passed the Senate in 1982 by a vote of 94-0; however, the legislation was not acted upon in the House. As noted in this Committee's 1982-83 Report, it later appeared that a comprehensive approach to regulatory reform was "an idea whose time has come and gone." 4 Energy L.J. at 118 (1983). Nothing in the 98th Congress would warrant a change in that assessment.

On April 19, 1983, Senator Grassley introduced S. 1080, identical in name, number and content to the same bill the Senate unanimously passed in 1982. This bill was placed on the Senate calendar without referral to a committee; nevertheless, the bill was not called up and hearings were held in September by the Subcommittee on Administrative Practice and Procedure of the Committee on the Judiciary. Comprehensive regulatory reform bills were also introduced in the House. See H.R. 220, by Levitas, referred jointly to Judiciary and Rules; H.R. 2327, by Hall, referred to Judiciary, on which hearings were held in June and July, 1983; H.R. 3939, by Lott, referred jointly to Judiciary and Rules.

Among the controversial provisions found in these proposals were, (1) the legislative veto, subsequently rendered moot by *Chadha, infra*, (2) the requirement of a cost-benefit analysis in each rulemaking, and (3) the elimination of the presumption of validity of agency actions.

B. *INS v. Chadha*

The growing complexity of a modern industrial, urban society inevitably required the delegation by Congress of inherently legislative powers to administrative agencies; therefore Congress traditionally regards any such agency as "an arm of Congress." On the other hand, the agencies are within the Executive Branch; therefore, each Administration regards such agencies as its own, with a responsibility to respond to its policies. These conflicting claims to the loyalty of administrative agencies give rise to political tension between the two branches of government. This tension is more acute when the party in control of the Executive Branch is not the party in control of the Legislative Branch.

In this tug-of-war between the Executive and Legislative Branches, one of the principal instruments used by Congress in its effort to retain some control of its delegated power has been the legislative veto. This Congressional check, whether it be a one-house or two-house veto, has been applied not only to rulemaking, a quasi-legislative function, but to every aspect of administrative action. In recent years the legislative veto has been a standard provision in most comprehensive regulatory reform legislation.

On June 23, 1983, the Judicial Branch conclusively resolved this issue. In *Immigration and Naturalization Service v. Chadha*, ___ U.S. ___, L.Ed. 317, 103 S.Ct. 2764 (1983) the Supreme Court struck down the legislative veto. The breadth of the decision was clear. Justice Powell, concurring, cautioned that the decision apparently will invalidate every use of the legislative veto. Justice White, dissenting, noted that the majority opinion "also sounds the death knell for nearly 200 other statutory provisions in which Congress has reserved a legislative veto."

On June 28, 1983, the Supreme Court, in a series of dockets, summarily affirmed federal circuit court decisions invalidating the legislative veto. Of special interest to Federal Energy Bar Association members were those affirming the D.C. Circuit's invalidation of the legislative veto provisions of the Natural Gas Policy Act of 1978, and setting aside FERC's revocation of its congressionally vetoed rule implementing incremental pricing. *See, e.g., Consumer Energy Council v. FERC*, 673 F.2d 425 (D.C. Cir. 1982), *aff'd. sub nom.; Process Gas Consumers Group v. Consumer Energy Council*, ___ U.S. ___, 51 U.S.L.W. 39209 (Jun. 28, 1983).

The *Chadha* decision was the subject of a number of Congressional hearings in the First Session. In July hearings were held by the Administrative Practice and Procedure Subcommittee of the Senate Committee on the Judiciary, and the Administrative Law and Governmental Relations Subcommittee of the House Committee on the Judiciary. In November hearings on the effect of *Chadha* were held by the Senate Committee on Labor and Human Resources.

The impact of *Chadha* was also the subject of testimony and discussion in connection with the consideration of S. 1080, the so-called Regulatory Reform Act, which contained a legislative veto provision. Various legislative alternatives were proposed. Hearings by House and Senate committees have continued in the Second Session.

XIII. CONSERVATION

A. Federal Preemption of State Efficiency Standards

In November, the House Rules Committee granted an open rule allowing a one hour debate on H.R. 3244, sponsored by Representative Ottinger, a bill to amend the Energy Policy and Conservation Act to eliminate the preemption of a state's authority to establish or enforce energy efficiency standards if such federal standards have not been established. In July the bill had been favorably reported to Energy and Commerce by its Subcommittee on Energy Conservation and Power. In August the bill was reported to the House by the full committee. *See* H. Rept. 98-351. *See also* S. 2124.

B. Disapproval of Energy Conservation Deferral

In a related matter, the House, on May 26, 1983, by a vote of 280 to 107, approved a resolution from the Appropriations Committee to disapprove the energy conservation deferral.

C. Conservation Generally

For other legislation relating to conservation, see S. 617 (defense procurements); H.R. 2283 (emergency energy authority); S. 618, H.R. 1595 and H.R. 1598 (employment and training programs); H.R. 139 (federal funding); H.R. 4512 (energy efficiency standards for household consumer products); H.R. 2283 and H.R. 3966 (commercial buildings); S. 619, S. 1780, H.R. 231, H.R. 1595 and H.R. 1599 (Solar Energy and Energy Conservation Bank); S. 1277 (local government and public care institutions); H. Con. Res. 29 (residential energy conservation); S. 1237 and H.R. 2927 (geothermal); H.R. 1531 (home energy assistance); H.R. 2283 and H.R. 3966 (multifamily dwellings); H.R. 3966 (public utilities); H.R. 650 (veterans housing); S. 590, S. 618, S. 1953, H.R. 1595, H.R. 1598, H.R. 1727 and H.R. 2615, *see* Low-Income Weatherization Assistance, *supra*, H. Con. Res. 231 (weatherization assistance); S. 493 (weatherization employment); S. 619, S. 1780, H.R. 1595, H.R. 1596, H.R. 1599 (small business loans); H.R. 1727 (promotional activities). *See also* CONSUMER PROTECTION: Low-Income Weatherization Assistance, Section XI, D, *supra*.

XIV. PUBLIC UTILITY REGULATION

A. Public Utility Holding Company Act

Legislation to amend the Public Utility Holding Company Act to reduce restrictions on diversification and remove disincentives to adopting holding company corporate structures, was considered again in the First Session of the 98th Congress. The utility industry, the investment community and the Securities and Exchange Commission favor outright repeal of the Act, while various consumer groups and state utility commissions support retention. Congressional attention focused on two identical compromise proposals, S. 1174, introduced by Senators D'Amato and Johnston, and H.R. 2994, introduced by Representatives Corcoran, Tauzin and Bliley.

Hearings were held before the Securities Subcommittee of the Senate Banking Committee on S. 1174; and before the Energy Conservation and Power, and the Telecommunications, Consumer Protection and Finance subcommittees of the House Energy and Commerce Committee, on H.R. 2994. Interests favoring repeal nevertheless endorsed this legislation as a step in the right direction. No action was taken in either chamber.

B. Construction Work in Progress

For more than a decade industry and consumer interests have disputed the

question as to whether or not, and if so under what circumstances, construction work in progress ("CWIP") should be allowed in rate base. The issue has been most frequently discussed in connection with electric utilities and nuclear power plants involving large capital investments over long construction periods. In the mid-1970's the growing percentages of earnings accounted for by Allowance for Funds Used During Construction appeared to threaten the cash flow of major utilities. In response the Federal Power Commission under Chairman Dunham opened the door to the inclusion of CWIP in rate base in certain circumstances where a utility could essentially demonstrate that exclusion could threaten the financial stability of the company.

The Reagan Administration has supported industry's request for a more general and lenient test for inclusion of CWIP and FERC had such proposals under consideration at the beginning of the First Session. In response to such proposals, legislation was introduced in both chambers to essentially write the Dunham test into the Federal Power Act, maintaining the *status quo*. See S. 1069, by Senator Chafee and others, and S. 817, by Senator Metzenbaum, to Energy and Natural Resources; H.R. 555, by Representative Harkins, referred to Energy and Commerce. Hearings are scheduled in April 1984 by the Energy Regulation Subcommittee of the Senate Committee on Energy and Natural Resources.

In May FERC adopted a new rule allowing utilities, without the financial hardship finding, to include 50% of their financing cost in plant under construction. The Congressional response to FERC came in the House, where the Energy Conservation and Power Subcommittee and subsequently its parent Energy and Commerce Committee reported H.R. 555. See H. Rept. 98-350. In November the House Rules Committee reported H. Res. 375 providing for House consideration. No further action was taken prior to adjournment.

C. *Rate Design – PURPA*

Legislation repealing rate design provisions of the Public Utility Regulatory Policies Act of 1978 ("PURPA") was introduced by Representative Moorhead, as H.R. 2283, referred to Banking, Finance and Urban Affairs, and to Energy and Commerce. No action was taken.

D. *Reimbursement for Utility Relocation*

Legislation to deepen inland waterways and ports to accommodate deep draft coal colliers gave rise to another issue of interest to utilities. In the Senate, neither S. 865 nor S. 970 provided compensation for utilities forced to relocate due to deep dredging, while H.R. 1512 did so provide. In November the Senate Committee on Environment and Public Works reported S. 1739, by Abdnor, an omnibus water projects bill requiring reimbursement. See S. Rept. 98-340. On a related matter, on May 20, 1983, the Senate passed S. 531, the Uniform Relocation Act Amendments of 1983. See S. Rept. 98-71. In the House S. 531 was referred to the Committee on Public Works, where it is presently scheduled for mark-up by the Surface Transportation Subcommittee. As originally written, the bill would have prohibited utilities from receiving compensation for federally mandated removal or relocation;

however, Senator Durenburger subsequently changed the bill to eliminate the exclusion. However, the draft bill prepared by the staff of the Surface Transportation Subcommittee of House Public Works does not provide for utility reimbursement. *See also* H.R. 1687. The Committee also notes *Norfolk Redevelopment and Housing Authority v. Chesapeake & Potomac Co. of Virginia*, ___ U.S. ___, 52 U.S.L.W. 4007 (1983), reversing *sub nom.*, a Fourth Circuit decision holding that a utility is entitled to reimbursement of expenses incurred in relocation resulting from federally funded urban renewal projects. In *Norfolk*, the Supreme Court held that the Chesapeake and Potomac Telephone Co. was not a “displaced person” within the meaning of the federal Uniform Relocation Act, and reaffirmed the common law principle that a utility forced to relocate from a public right of way must do so at its own expense.

E. FERC User Fees

In the First Session of the 98th Congress FERC continued its ongoing effort to shift the cost of its operations from Congressional appropriations to user fees paid by its regulated public utilities and common carriers. Perhaps a sense of urgency was added to these efforts as a result of a General Accounting Office report published in June of 1983, entitled Potential Administrative Impact of Implementing Selected Provisions of the Administration’s Natural Gas Decontrol Plan (S. 615). According to the report, (1) the proposed monthly PGA filings, in lieu of annual or semi-annual filings, and (2) the mandatory carriage provisions, with the potential case-by-case adversary hearing, would cause a substantial increase in the workload of FERC. These increased burdens would not be offset by minimal savings resulting from the repeal of sections of the Powerplant and Industrial Fuel Use Act and the NGPA’s incremental pricing program.

On December 29, 1983 the FERC noticed a fourth proposal to impose user fees under its existing authority. By way of example, the proposal would charge natural gas pipelines \$46,200 for a tariff filing with a hearing. On April 5, 1984, FERC transmitted to the House Committee on Energy and Commerce a draft of proposed legislation to authorize FERC to collect fees and charges for “services, benefits, privileges, and authorizations” granted in administering its regulatory programs.

XV. ANTITRUST

A. Exemption for Research and Development Efforts

In both the Senate and House, legislation was introduced exempting from federal and state antitrust laws joint research and development ventures approved by the Attorney General. *See* S. 568, S. 737 and S. 1383, referred to Senate Judiciary, hearings held; and H.R. 4043, referred jointly to Judiciary, and Science and Technology. *See also* H.R. 5041, introduced in the Second Session, referred to Judiciary.

B. Pipeline Mergers

In March 1984 the Fossil and Synthetic Fuels Subcommittee of House Energy held hearing on H.R. 4095, by Glickman, a bill giving FERC authority to approve interstate pipeline mergers, or the purchase of more than five percent of the outstanding shares of an interstate pipeline.

C. Oil Company Mergers

On March 28, 1984, an effort was made in the Senate to impose an eleven month moratorium on large energy company mergers. The legislation was offered by way of an amendment, by Johnston, to H. J. Res. 492, a supplemental appropriations bill for the Department of Agriculture. For all practical purposes, the effort failed with the adoption of Amendment No. 2852, by Baker, in the nature of a substitute, providing for a study by the Committees on Finance, Judiciary and Energy, and a report to the Senate by July 1, 1984.

XVI. TAXES

A. *U.S. v. Ptasynski*

The legality of the Crude Oil Windfall Profits Tax Act of 1980 ("WPTA") remained uncertain from November 4, 1982, when the U.S. District Court for Wyoming declared it to be unconstitutional, but staying judgment pending direct appeal to the Supreme Court. *Ptasynski v. U.S.*, 550 F.Supp. 549 (D.Wyo.1982). On June 6, 1983, a unanimous Supreme Court reversed, and in its opinion, delivered by Justice Powell, declared that the exemption of certain categories of Alaskan oil production from the WPTA did not violate the Uniformity Clause of the Constitution. *U.S. v. Ptasynski*, ___ U.S. ___, 76 L.Ed.2d 427, 103 S.Ct. 2239 (1983).

B. *The Tax Reform Act of 1984*

In February 1984 the Congressional Budget Office released a report entitled Reducing the Deficit: Spending and Revenue Options. Among the tax options discussed were an oil import fee, a tax on domestic and imported oil, an excise tax on natural gas, repeal of the percentage depletion allowance, and expensing of intangible drilling costs.

In March 1984 the House Rules permitted the Ways and Means Committee to offer a new revenue increase package as a substitute for H.R. 4170, entitled the Tax Reform Act of 1984. H.R. 4170 was reported to the House on October 21, 1983, but was not called up for consideration due to the controversy over restrictions on industrial revenue bonds. *See* H. Rept. 98-432.

On March 15, 1984, the Senate Finance Committee completed work on the major parts of its tax package designed to raise approximately \$48 billion over three years.

The Senate and the House bills correct a technical error contained in the current Internal Revenue Code repealing the percentage depletion for secondary

and tertiary crude production on January 1, 1984. Both bills establish a 15% deduction for percentage depletion for independent producers and royalty owners on secondary and tertiary production. The Senate bill makes no change in the current phase down of the windfall profits tax on newly discovered crude oil. The House bill increases the 1984 rate from 22.5% to 25% and freezes that rate until 1988. The rate is thereafter phased down from 25% to 15% between 1988 and 1990. The House bill disallows current year tax deductions for the prepayment of intangible drilling costs and expenses by oil and gas syndicates defined as "tax shelters" unless "economic performance" actually occurs in that tax year.

C. Extension and Expansion of Tax Credits

In the First Session numerous bills were introduced extending tax credits and other incentives for energy related investments. These bills would extend the expiration dates for existing credits and incentives, as well as extending the coverage of existing laws.

In the Senate, the Finance Committee's Subcommittee on Energy and Agricultural Taxation held hearings on S. 1396, introduced by Senator Domenici, entitled the Energy Security Tax Incentives Act of 1983. The bill extends from 1985 to 1992 the availability of investment tax credits for affirmative commitments made for solar, wind, geothermal, and biomass energy property; extends for different time periods but under similar conditions tax credits for synthetic fuel energy property; expands the definition of qualifying energy property to include tar sands, shale oil and synthetic fuel production equipment; allows an investment tax credit for affirmative commitments made for chlor-alkali electrolytic cells; and allows an investment tax credit for qualifying rehabilitated buildings.

The subcommittee also heard testimony supporting S. 1305, also referred to the Finance Committee, introduced by Senator Packwood, extending the expiration date for cogeneration and biomass credits, and removing the provision of existing law limiting gas and oil use to 20% of the total fuel consumed in qualifying cogeneration equipment. *See also* H.R. 3072, a similar bill introduced by HefTEL, referred to Ways and Means, but which does not remove the 20% oil and gas restriction.

In July the Energy Development and Applications Subcommittee of the House Science and Technology Committee held hearings on tax incentive promoting new energy technologies.

For other legislation extending tax credits, see S. 1939 and H.R. 4078, identical bills entitled the Alternative Energy Tax Incentive Act of 1983; H.R. 1775 (solar, wind, geothermal and ocean thermal property); H.R. 2105 (heating and cooling systems); and H.R. 1876 (property used in producing methane-containing gas for fuel or electricity produced by anaerobic digestion from non-fossil waste materials).

D. Depletion and Intangible Drilling Costs

On March 8, 1983, Representative Frank introduced H.R. 1966, which repeals the option to expense intangible drilling costs for oil, gas and geothermal wells; repeals the percentage and depletion allowance for such wells; and repeals the provisions of the windfall profit tax law which (1) exempts royalty oil; (2) reduces the tax on newly discovered oil, and (3) exempts independent producer stripper well oil.

E. Oil Import Tax

On February 3, 1983, Senator Chafee introduced S. Res. 52 expressing the sense of the Senate that neither the President nor the Congress should impose fees on imported crude or refined petroleum products. The resolution was referred to the Finance Committee.

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