

# ENERGY CONFERENCE TODAY

## A DAILY REPORT ON THE ENERGY POLICY ACT CONFERENCE

ISSUE 4

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This edition of Energy Conference Today reports on yesterday's meeting of the energy conferees and details the announced schedule for the remainder of the energy conference.

### MEETING OF THE ENERGY CONFEREES

On Thursday, July 22, 2005, the energy conferees met to consider four titles of the energy bill. These titles were Electricity, Indian Energy, Renewables, and Coal Leasing.

The markup was dominated by debate over the Electricity title with many of the contentious issues delayed for later consideration. Specifically, the conferees deferred taking action on the following issues:

- **Renewable Portfolio Standard.** The Senate-passed bill contains a proposal to require that beginning in 2008, 2.5% of electricity sold by large utilities come from renewable energy sources. This rises gradually over time to 5% in 2012, 7.5% in 2016, and 10% in 2020.<sup>1</sup>
- **Enron Termination Fees.** A provision in the Senate-passed energy bill is designed to protect Western ratepayers from the termination fees associated with inflated Enron contracts.<sup>2</sup> This provision is estimated to shield Nevada and Washington state ratepayers from approximately \$500 million in payments to Enron.<sup>3</sup>
- **Participant Funding.** A dispute has arisen about how precisely federal law should prescribe the allocation of costs for transmission upgrades when a new generator connects to an existing transmission system.<sup>4</sup>
- **Merger Review Reform.** The Senate-passed energy bill contains a requirement that the Federal Energy Regulatory Commission be granted new

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<sup>1</sup> H.R. 6 (Senate-passed version) § 291(a). For a discussion of this provision see Energy Conference Today (July 21, 2005) (online at <http://www.democrats.reform.house.gov/Documents/20050721161619-22423.pdf>).

<sup>2</sup> H.R. 6 (Senate-passed version) § 1270.

<sup>3</sup> *Washington Wire: Roberts's Reception Leads Democrats to Focus on Rove*, Wall Street Journal (July 22, 2005).

<sup>4</sup> See Letter from Western Governors Association to Reps. Barton and Dingell and Sens. Domenici and Bingaman (July 20, 2005).

authority to review mergers in the energy industry in order to prevent harmful effects on shareholders and consumers.<sup>5</sup>

Debate also addressed the western energy crisis that occurred in 2000 and 2001. It has now been demonstrated that exorbitant energy prices in the west were the result of deliberate actions under lax regulation. Energy companies took advantage of market design flaws and negligent federal enforcement to increase profits through substantial market abuse and market manipulation.<sup>6</sup>

However, the conferees rejected an amendment that would have ordered the energy companies to refund the state of California in cases where it had been overcharged.<sup>7</sup>

The conferees also rejected an amendment to allow treble damages when energy markets are manipulated.<sup>8</sup> In many, if not all, cases where energy companies manipulated the market at the expense of consumers, the refund and penalty recovered by FERC has been dwarfed by the profit received by the companies. This amendment would have rendered market manipulation unprofitable.

#### **ENERGY CONFERENCE SCHEDULE**

Chairman Barton announced the schedule for the planned completion of the energy conference. He stated that the remaining base text would be negotiated by Chairman Barton, Chairman Domenici, Ranking Member Dingell, and Ranking Member Bingaman on Friday, July 22, 2005, and Saturday, July 23, 2005.

Chairman Barton announced that on Sunday, July 24, 2005, at 2 p.m., the energy conferees would meet to discuss the following titles of the energy bill: Oil and Gas, Renewable Portfolio Standard, Hydropower, Geothermal, Climate Change, Ethanol and Fuels, and Research and Development.<sup>9</sup> The Chairman did not indicate when the base text for these titles would be made available or state the deadline for circulating amendments to such text.

He further announced that the conferees would meet to finish the energy bill on Monday, July 25, 2005, at 2 p.m. In addition to any unfinished business, the conferees would also consider the titles: Incentives, Studies, and Miscellaneous.

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<sup>5</sup> H.R. 6 (Senate-passed version) § 1288.

<sup>6</sup> For an extensive discussion of the energy crisis in California, see House Government Reform Minority Staff, *The California Energy Crisis* (April 2005) (online at <http://www.democrats.reform.house.gov/Documents/20050408123544-16103.pdf>.)

<sup>7</sup> Amendment offered in H.R. 6 conference by Rep. Waxman (not agreed to 7-10).

<sup>8</sup> Amendment offered in H.R. 6 conference by Rep. Waxman (not agreed by voice vote).

<sup>9</sup> Although Chairman Barton announced to conferees that the Oil & Gas title would be considered on Sunday, a daily energy reporter has reported that the Oil & Gas title has been rescheduled for Monday. *Barton Unveils MTBE Deal as Energy Conference Sets Weekend Plans*, E&E Daily (July 22, 2005).

## UPCOMING ISSUES

The next meeting of the energy conferees on Sunday, July 24, 2005, will address many contentious issues. Three high-profile areas in which the House and Senate bills differ sharply are the renewable portfolio standard, which is included in the Senate bill, climate change, on which there are provisions in the Senate bill, and a liability waiver for the producers of MTBE, which is included in the House bill.

Additional issues that the conferees must address in the Oil and Gas title include:

- A provision in the House bill that exempts construction activities associated with oil and gas drilling from the Clean Water Act;<sup>10</sup>
- A provision in the House bill that exempts the practice of hydraulic fracturing from regulation under the Safe Drinking Water Act;<sup>11</sup>
- Differences between provisions in both bills that shift authority over siting liquefied natural gas facilities from states to the federal government;<sup>12</sup>
- Provisions in the House bill that preempt state authority over the siting and permitting of new and expanded oil refineries;<sup>13</sup> and
- A provision in the House bill that limits state authority over management of energy projects in the state's coastal zone.<sup>14</sup>

One potentially contentious issue in the Research and Development title in the House bill is the ultradeepwater and unconventional natural gas and other petroleum research and development program.<sup>15</sup> This program would dedicate up to \$2 billion in direct spending over 10 years for grants to the oil and gas industry to support research, development, demonstration, and "commercial application of technologies."<sup>16</sup> DOE would contract with a private sector consortium to administer the program and make grants, subject to final approval by the Secretary of DOE.<sup>17</sup> The Senate energy bill contains no comparable provisions.

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<sup>10</sup> H.R. 6 (House-passed version) § 328.

<sup>11</sup> H.R. 6 (House-passed version) § 327. Hydraulic fracturing involves injecting fluids that can contain toxic substances into oil or gas wells that may intersect underground sources of drinking water, thereby risking contamination of the drinking water sources.

<sup>12</sup> H.R. 6 (House-passed version) § 320; H.R. 6 (Senate-passed version) §§ 381-382.

<sup>13</sup> H.R. 6 (House-passed version) §§ 371-379.

<sup>14</sup> H.R. 6 (House-passed version) § 330.

<sup>15</sup> H.R. 6 (House-passed version) §§ 969-976.

<sup>16</sup> *Id.*

<sup>17</sup> H.R. 6 (House-passed version) § 970.