

Bryan Cave Energy Update

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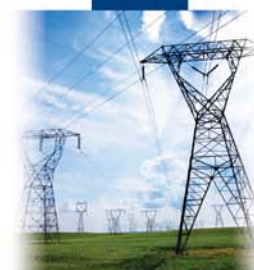
Congress

House Passes ‘Black Liquor’ Provision, Prohibits ‘Tall Crude Oil’ Credit

The House this week voted to prevent paper companies from claiming a biofuel tax credit for two byproducts of the paper production process. In the first vote, which was included in the House health care reconciliation bill, paper companies will not be able to claim the credit for “black liquor,” which the companies burn as fuel to produce electricity for paper mills. As part of the jobs package, the House also voted to exclude “tall crude oil,” which is produced by skimming the top layer off black liquor and treating it with acid. The byproduct is sold for use in paint and print ink manufacturing. The paper industry, however, did not expect to qualify for the credit. Carlton Carroll, a spokesman for the American Forest and Paper Association, said, “Based on the way we currently use our renewable fuels, we don’t believe the EPA will find that we meet the registration requirements and have not expected to receive the credit or engaged in advocacy to pursue it.” An IRS memo indicated the industry may qualify for the credit and prompted Democrats to move to exclude the byproducts.

Legality of Closing Yucca Mountain Questioned

During an appropriations subcommittee hearing this week, Rep. Rodney Frelinghuysen (R-NJ) said that the Obama administration does not have the legal authority to close the Yucca Mountain nuclear waste repository and that he is seeking a legal opinion from the Government Accountability Office. Frelinghuysen and other lawmakers contend that the administration cannot shift money away from the purpose for which it was appropriated. The plan also violates the Nuclear Waste Policy Act, which requires the Department of Energy to construct the Yucca facility. Energy Secretary Steven Chu responded that the department’s lawyers have said they have the authority. In addition, five lawmakers recently sent a letter that indicated that they consider “the department’s actions contrary to the clear intent of Congress.” A resolution of disapproval also was introduced and would prevent the DOE from using appropriated funds to end the Yucca project. The move comes after the DOE this month filed to withdraw its license application for the repository with prejudice, meaning the site could never be considered for nuclear waste storage again.



Senate Climate Bill Gives States Input on Offshore Drilling

The Senate climate change legislation reportedly would give state governments the ability to determine whether to allow offshore drilling within 35 miles of their shores. Drilling would be permitted between 35 miles and up to 75 miles offshore unless states took action to prohibit it. These opt-in and opt-out zones would help determine how revenue would be shared but other details of the legislation are still unknown. Sen. Lindsay Graham (R-SC), who is negotiating the bill with Sen. John Kerry (D-MA) and Sen. Joe Lieberman (I-CT), said that offshore drilling must be included in the package to secure his support.

Coastal Democrats Object

In a letter to the three negotiators, 10 Democratic senators from coastal states said that any major expansion of offshore oil and gas drilling should be rejected. Led by Sen. Bill Nelson (D-FL), the senators said they “cannot support legislation that will mitigate one risk only to put our coasts at greater peril from another source.” The letter did not indicate what level of drilling would be acceptable.

Hydraulic Fracturing Provisions Uncertain

While the gas industry is urging lawmakers to include a provision in the bill to recommend against federal regulation of hydraulic fracturing, Graham said it was not certain the such language will be included in the bill. “That’s not decided. I just want to make sure we can do it.” He added, “We need to use the fracturing process to get gas. But it needs to be transparent and we understand the environmental impact of it.”

Industry

Union Calls for Boycott of BP Gas Stations

The United Mine Workers of America is calling for a boycott of BP PLC’s gas stations in response to a comment from BP CEO Tony Hayward, who said policy makers should not try to save coal industry jobs. In comments about the House-passed climate change bill, Hayward said that the coal industry is “disproportionately favored.” He added, “It’s about creating jobs. We’ve got to find a better way to create jobs than preserving coal jobs.” He also said that the country should move away from coal-fired electrical plants. The gas industry criticized the House bill for including concessions to protect jobs in the coal industry and lawmakers from coal-producing states. The gas companies maintain that reducing emissions would be better achieved through the use of natural gas, which emits about half the amount of carbon as coal. “It’s surprising the U.S. is still building coal-fired power plants,” he said.

In response, the union sent an “activist alert” that read: “Next time you go to fill up, you might want to think twice about buying your gas – or anything else – from BP.” Phil Smith, a union spokesperson, said, “If he’s going to advocate putting our members out of jobs and out of their homes, then our members can make a decision for themselves.”

More Information

If you have any questions regarding any of these issues, please contact:

Darryl Drevna	Policy Analyst	darryl.drevna@bryancave.com	1 202 508 6164	Washington
Matt Jessee	Policy Advisor	matt.jessee@bryancave.com	1 202 508 6341	Washington
Dave Russell	Senior Policy Advisor	dave.russell@bryancave.com	1 202 508 6353	Washington

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