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A REVIEW OF THE CARTER ENERGY PROGRAM

STATUS

On April 20, 1977, President Carter proposed a sweeping package of taxes, regulations, and federal controls as his answer to the energy crisis. Calling it the "moral equivalent of war," he urged the Congress and the public to embrace the principles of conservation and sacrifice. From the outset, his program came under heavy criticism from both the Congress and the private sector. Perhaps the two most frequently voiced objections were that his proposal totally ignored the development of additional supplies of energy and that it was more a tax program than an energy program.

After passing the House virtually intact, the Carter program stalled in the Senate. Among the key factors contributing to the delay were objections to his proposals concerning natural gas, concern over the lack of incentives, and particularly strong objections to the wellhead tax on crude oil (COET).

Presently, it appears that four of the five sections of the original Carter program will be dealt with by the Congress this session; however, these sections will bear little resemblance to what the President originally proposed. Action on the fifth section, dealing with the tax portions of the program, is not anticipated prior to adjournment.

NATURAL GAS

The President had originally proposed the extension of federal controls to gas sold on the intrastate market, coupled with an

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increase in the federally determined wellhead price for gas from $1.42 per thousand cubic feet (mcf) to $1.75 per mcf. Members in producer states which have supplies of natural gas strongly objected to this proposal because of their fear that it would result in a decrease in the price of gas in their home states which would cause shortages. They proposed, instead, that all natural gas be deregulated, thereby giving producers an incentive to explore for new supplies.

Members from consumer states were adamantly opposed to deregulation. Their constituents had enjoyed cheap regulated gas, and they feared the consequences of the price increases which could result from decontrol. Their fears were most strongly evidenced in the Senate where Senators Metzenbaum and Abourezk staged a filibuster in an attempt to prevent the Senate from voting in favor of deregulation.

When the proposal ultimately reached conference, the conferees were deadlocked over the deregulation question. In December, it was thought that a compromise had been reached; however, that initiative fell through, with the result that it was not until early June 1978 that the members of the conference committee were able to agree.

As agreed upon by the conferees, the natural gas portion of the President's energy package would bring about a gradual elimination of price controls, but would first impose controls on the intrastate market. Specifically, as of the date of enactment of the legislation, all gas from offshore wells leased after April 20, 1977, would be priced at the same rate as new gas. All gas from so-called "deep wells" (those lying under 15,000 feet) which were drilled after April 20, 1977, would be deregulated one year after enactment of the bill. Certain categories of what is termed "high-cost" gas from existing reservoirs would be allowed a price increase, but would not actually be deregulated.

Other new gas would undergo a phased deregulation based on a formula which would allow the price to increase 3.7 percent plus the percent increase in Gross National Product through 1981 and by 4.2 percent plus the increase in Gross National Product thereafter. All controls would be required that prices of existing contracts on the intrastate market be rolled back, but all new contracts would be subject to the controls. Under the compromise, new gas is defined as gas found at least 2.5 miles from an existing reservoir, or at least 1,000 feet deeper than existing wells in a reservoir.

Once price controls are totally lifted in 1985, the President or the Congress will have the option of re-imposing them if they believe that prices are increasing too rapidly. The re-imposition of controls, however, may only be for a period of 18 months, and no such action may be taken after June 30, 1987.

ANALYSIS

While the compromise natural gas measure falls far short of the President's original plan, there is considerable opposition to it in the House. Members who oppose deregulation feel that it goes too far and that it would adversely affect consumers. Members in favor of deregulation feel that it is far too little and that the incentives it contains are insufficient to spur additions to supply. Perhaps the most important change in the eyes of members favoring a free market approach to gas pricing is the extension of controls to the intrastate market. The fact that price controls currently do not apply to gas sold and consumed in the same state has long been credited for the ample natural gas supplies found on the intrastate market. The imposition of intrastate controls no matter what the price, it is feared, will eventually cause the same sort of shortages which developed on the controlled interstate market. It is interesting to note that it was the unregulated intrastate market which was able to provide the gas to get the nation through the 1977 natural gas shortage.

On the whole, the current proposal is thought by most industry observers to be far superior to the President's original plan. Members from producing states are pleased to see at least a commitment to the concept of deregulation, although they caution that the current Congress cannot bind the actions of a future one. The outcome of the natural gas compromise will not be decided for some weeks, however, as the measure is expected to require at least four weeks for drafting in legislative language, with an additional one to two weeks for it to be scheduled for consideration.

COAL CONVERSION

The President's original program called for a massive conversion of industrial and utility boilers from burning oil or natural gas to burning coal. This program was to affect both existing and new boilers which consumed more than 100 million btu's of fuel per hour and all existing and new aggregations of boilers which consumed more than 250 million btu's of fuel per hour. The program would also have had a specific requirement that the Best Available Control Technology be employed to limit emissions from such facilities.

As the coal conversion provisions made their way through the House and Senate, considerable doubt developed as to the President's target in this area. The Bureau of Mines, Congressional Research Service, Congressional Budget Office, and other authoritative sources expressed reservations as to the nation's ability to produce enough coal to support such massive conversion. Further doubts surfaced

as a result of the miners' strike. The result of the skepticism regarding our ability to meet such an ambitious program was a considerably scaled down program to utilize coal. As the program is currently constituted, the only existing boilers which would be affected are those which are already "coal capable." For the most part, these are facilities which were originally designed to burn coal and were subsequently ordered to convert to oil for environmental reasons. As with the original version, only boilers in excess of 100 million btu's per hour or aggregations of boilers in excess of 250 million btu's per hour are affected. All new utility boilers must be capable of using coal or some alternative fuel, and all new industrial boilers similarly must be able to burn either coal or an alternative. Again, only those in the 100 million btu and 250 million btu or larger category are affected. After 1990, no utility may burn natural gas as a fuel.

There are a number of exemptions under the conference committee version of the coal conversion provision. The most important exemptions are for environmental reasons and for hardships. If a facility under a conversion order can prove that it could not convert without violating environmental requirements, it may be exempted; a hardship exemption may be granted if it can be demonstrated that the cost of constructing and operating a facility to burn coal would be substantially more than the cost of burning imported oil.

As of the date of enactment, any facility which is coal capable may be ordered to burn coal. In instances where the exclusive burning of coal might cause environmental standards to be violated, an order to burn a mixture of oil and coal may be issued, but no order may be issued to burn a mixture which would contain less than 25 percent oil.

ANALYSIS

The coal conversion provision agreed upon by the conferees actually would only affect those facilities which are likely to convert to coal anyway. The real difficulty seen by some observers lies in the environmental problems some companies might experience. The environmental exemption is not likely to be particularly effective, as it does not address the question of cost; and the reason for not being able to convert in most instances where there are environmental considerations is likely to be that capital costs would be excessive with the addition of the necessary pollution control devices. This would mean that most applicants for environmental exemptions would have to fall back on the hardship exemption. There is no certainty, however, as to the exact meaning of the phrase "significantly more than the cost of imported oil," which raises further doubts as to the meaningfulness of either of the exemptions.

UTILITY RATE REFORM

The Carter energy program originally proposed a total restructuring of utility rates, abolishing declining block rates and establishing a so-called lifeline rate for the poor and the elderly. Interconnection, wheeling, co-generation, and pooling could all be required by the Federal Energy Regulatory Commission under the Carter plan, and the federal government was to play an expanded role in siting and approval of new facilities. In most respects, the plan outlined by the administration was identical to the Dingell-Moffett proposals of previous Congresses. As was the case with other portions of the Carter plan, the conferees' version differs in substance.

The House-Senate conference agreed to a study of the alternative rate schedules, rather than to the imposition of them. One of the main reasons for this was that utility rate structures have traditionally been within the purview of the states, and the move to a federally imposed rate structure was seen as an infringement on states' rights. Further, serious doubts exist as to whether or not such rate structures will actually serve to reduce demand or merely to increase costs to consumers.

The Federal Energy Regulatory Commission would be empowered to order system interconnections under the conference version and could, at the request of a utility, order wheeling and pooling. It would also be required to issue guidelines for the use of co-generation by utilities and for the sale of power to major utilities by small utilities.

The conferees' proposals would prohibit the inclusion of expenditures for advertising or for political purposes in the rate base, with the exception of notices required by law and information on conservation. An Office of Public Participation would be established to fund intervenors in ratemaking cases, and the Department of Energy would have the right to intervene in such proceedings. A number of sections applicable to utilities are also contained in the conservation provisions of the bill.

ANALYSIS

The conferees' versions of the utility rate section is generally considered to be a bare minimum. Most of the sections which generated controversy have been deleted or so weakened as to be of little concern. The only real objections which remain are related to the prohibition on the inclusion in the rate base of monies spent on advertising and for political purposes. It is the contention of the utility industry that this prohibits them from defending

themselves in instances where they are coming under unfair attack and from promoting their views on issues. It is the contention of the industry that this provision would violate the First Amendment. Recent court decisions regarding the rights of corporations to expend funds on issues in the state of Massachusetts may lend credence to this argument.

CONSERVATION

Perhaps the most popular section of the President's energy program has been the tax credits for conservation. Originally, strict conservation penalties, including a tax on so-called "gas guzzlers," were part of the program, but these measures were extremely unpopular among members of Congress. A much better reception was given to various incentives for insulation, solar energy, and related conservation approaches. One particularly controversial provision of the President's package, mandatory conservation standards for homes receiving federally insured mortgages, did initially pass the Ways and Means Committee but was left out of the conference version of the bill. A number of the conservation alternatives addressed are accomplished through utilities.

In the conferees' version of the conservation section, utilities would be required to inform consumers on ways to insulate their homes and conserve energy. Such information would not be subject to the prohibition on including advertising in the rate base. Utilities would also have to furnish lists of businesses which could install conservation equipment. They also would be required to perform analyses of buildings to identify energy leaks. Utilities would be allowed to act as project managers for conservation installations and would be allowed to finance conservation efforts, accepting payments through customers' utility bills. They would also be allowed to install some load management devices and to make adjustments to boilers.

The federal government would establish a fund of $3 billion for subsidized conservation loans which would be granted at an interest rate between 7 percent and 12 percent to families with incomes below the median. There would be a $2,500 limit on the amount of money any one borrower could receive. Individuals could receive both a loan and a tax credit for installation of insulation. In addition to the subsidized loans, there would also be $2 billion of unsubsidized loans, to be issued to all borrowers at the discretion of the Secretary of Housing and Urban Development.

Loans for solar heating and cooling units would be issued at an interest rate of between 7 percent and 12 percent for a period

of up to 15 years. In order to insure that banks would make these loans, the federal government would purchase the commercial paper on them. FHA mortgage loans would have their ceiling raised from $60,000 to $72,000 to allow for the installation of solar units. The federal government would embark on a 3-year program of installing solar heating and cooling units in government offices with $100 million authorized. The government would also spend $98 million for the purchase of photovoltaic cells.

There would be a 3-year program of grants funded at $900 million for the insulation of non-profit institutions, with an additional $65 million for local governments to inspect buildings and give technical advice on conservation. State energy conservation programs would receive federal funds, and mandatory standards would be established for the efficiency of 13 key appliances.

The Department of Energy would commission studies of pumps, motors, and off-road vehicles to determine their effect on energy consumption and to find ways they could be made more efficient, and the authority to require the burning of local coal would be repealed.

ANALYSIS

Perhaps the most significant factor evident in the conservation provisions of the bill is that an attempt was made to include something for everyone. While the study of bicycles as an alternative mode of transportation in cities was deleted, most of the other provisions were retained. The only sections which were left out of the conservation provisions were those which either had a penalty or were in some way coercive. On balance, this section should prove to be the least controversial of any contained in the conferees' version of the energy bill.

CONCLUSION

As this measure awaits floor consideration, tremendous pressure is building to report some sort of bill this session. It has been well over a year since the President first went on national television with his energy program, and most members do not want to return to their districts empty-handed. There are those, however, who contend that no bill might be better than the current version. Interestingly, those making such comments range across the entire ideological spectrum. It may well be that the problem is not with this particular measure, but rather with attempting to address the entire question within the framework of a single bill.

At present, the tax provisions of the measure have yet to be agreed upon by the conference, and there is little likelihood that they will be this session. This means that, at best, the first four sections of the bill may reach the floor by late August. What happens when they do is as yet an open question.

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