



Energy Policy for 2004

AFTER TWO YEARS OF DEBATE and compromise, the Energy Policy Act of 2003 was tabled for reconsideration. Black August rang alarm bells throughout the civilian and non-civilian establishments and properly dominates both energy policy and politics. Concerns about liquidity and price transparency have reshaped the wholesale marketplace. Uncertainty and competitive barriers to entry continually increase the costs of “safety-net” regulations for commercial as well as “core” residential customers.

So where are we? New laws are on hold. Re-regulation is not an option. California and Ontario have amply demonstrated that the costs in debt, lost jobs, investment, economic growth and the political fall-out are far too great. Consumers want price stability, reliability and value-added services and technologies. Utilities and marketers alike need a road map to higher share prices and a successful transition. And, most importantly, capital markets need competitive rates of return.

Ironically, all of these factors lead to one inescapable conclusion. Future energy policy will be formed, in large part, by energy tax policy. Increasing the risk-weighted, after-tax, rate of return on investments in energy supply and infrastructure has always been one of the most powerful tools in the Government’s policy arsenal. It is also a common sense solution, particularly given the cost in tax revenues versus the benefits of cleaner, more reliable domestic energy supplies. One blackout could cost far more than a properly structured and targeted tax incentive. As in the past, this energy bill did not reach a final conference compromise until the tax section was completed.

To counter natural gas price spikes and accelerated domestic depletion rates, it increased the depletion allowance, suspended tax penalties and increased marginal well incentives. In response to calls for cleaner energy sources, it provided incentives for renewables, load shifting, demand-side management, real-time prices and smart metering. In response to the blackout, it encouraged investments in all forms of advanced transmission technologies. So, what does this mean? In my opinion, two things are clear.

INCENTIVES

First, Congress opted to use powerful investment incentives to address major social concerns. If structured properly, these tax incentives could move utilities to focus available capital on upgrading infrastructure, relieving congestion and outsourcing low- or no-yield investments in commodity-related products, services, information and technologies. The public interest is well served if utilities use capital to

yield the highest possible rate of return. Consumers also benefit if utilities are encouraged to facilitate open, low cost, non-discriminatory access, thereby, enabling marketers to compete on the basis of price, quality of service and the value of new products, services and technologies.

Second, the tax incentives are focused on increasing energy supply as well as infrastructure upgrades and advanced technology that can lead to greater reliability, homeland defense and less congestion. The structure, timing and terms under which the federal and state governments pass the tax savings through to utility shareholders will hold the key to the effectiveness of these incentives to increase reliability, reduce congestion, implement advanced technology and permit customers access to competitive retail offerings. However, the costs and risks of these investments increase as long as it is unclear when the energy bill will become law.

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Congress decided to delay FERC’s much-needed standard market design (SMD); however, voluntary RTO participation was urged in the bill as the “Sense of Congress.” Even if Congress does not reconsider this delay, a properly structured tax title in the Energy Policy Act of 2004 could effectively create a “de facto restructuring” with a voluntary, yet powerful “self-interested” motivation to comply with SMD.

When Congress reconvenes it should quickly eliminate the uncertainty of when energy and tax laws will become law. FERC should continue using all of its authority to push for RTO formation, standardized market designs and encourage advanced transmission technologies. Lastly, and perhaps most importantly, state PUCs should tie the normalization of any new tax reductions to the percentage of customer migration. In effect, utility shareholders and marketers could become partners in a consumer-focused, value-driven transition to an orderly, reliable and competitive retail marketplace. ■

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