2005 Energy Act: Energy Project Siting & Infrastructure Development

As one in a series, this brief issue paper summarizes the key provisions, impacts, and implications that ICF International sees in the Energy Policy Act of 2005 for the siting of new energy facilities.

Key Provisions

- Gives the federal government primacy over the siting of Liquefied Natural Gas (LNG) facilities (over-riding state jurisdiction).
- Expands the types of proposed facilities that qualify for categorical exclusion from detailed environmental study under the National Environmental Policy Act (NEPA)—i.e., projects in existing approved areas affecting less than 5 acres, and pipelines in existing rights-of-way, as long as they do not have an impact on wetlands, historic resources, or endangered species.
- Provides financial incentives for the expansion and development of refineries (expensing 50 percent of the cost for investments which increase capacity at least 5 percent or that increase throughput of oil from shale and tar sands by at least 25 percent).
- Provides royalty relief for marginal wells (e.g., deep water, Alaskan, and hydrates), and extends credits for producing coke or coke gas from non-conventional sources.
- For the first eight years of operation, provides a production tax credit of 1.8 cents per kWh for the first 6,000 MW of advanced nuclear plants to be developed, and for compensation if full power operation is delayed either by litigation or by the U.S. Nuclear Regulatory Commission (NRC).
- Provides financial incentives (accelerated depreciation) for the development of natural gas distribution, gas gathering, and electric transmission lines.
- Requires that the Government develop an inventory of off-shore, outer continental shelf (OCS) resources.
- Provides incentives for developing clean coal, industrial gasification, and Integrated Gasification Combined Cycle (IGCC) plants (15-20 percent investment tax credits, and rapid amortization of scrubbers).
- Authorizes three U.S. Department of Energy (DOE) sponsored regional forums on LNG development.
- Requires DOE to expand the Strategic Petroleum Reserve.

Those with pending onshore domestic oil and gas investments should maximize production of resources that qualify for the new investment incentives.

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Anticipated Impacts

- Reduce regulatory barriers to LNG terminal development by improving the prospects for siting, and legalizing the 'Hackberry' decision that allows gas lines used for LNG terminals to be dedicated to private as opposed to 'common carrier' status.
- Accelerate the development of certain energy facilities that would otherwise require Environmental Assessments (EAs) or Environmental Impact Statements (EISs).
- Encourage upgrades to existing refineries and the development of new ones.
- On the margin, encourage the development of facilities and resources with financial incentives, though it is not clear whether the amounts of incentive provided will make the difference between development and non-development.
- Provide the starting point for future offshore oil and gas exploration in currently prohibited areas.
- In light of both the incentives in the Act and current oil and gas prices, accelerate efforts to find and produce marginal domestic resources.

Industry Implications

- New siting approvals will be required for numerous energy facilities—in light of the Act, now would seem to be a good time to seek such approvals. For example:
    - Those with economically viable LNG facilities should use this opportunity to accelerate project development and planning and to initiate the NEPA and project approval processes with The U.S. Federal Energy Regulation Commission (FERC).
    - Clean coal developers and utilities considering environmental upgrades to coal-fired plants should accelerate review and consideration of such options.
    - Energy firms seeking to develop offshore oil and gas resources outside the Gulf Coast should be realistic, as siting will remain controversial.
- Given FERC's new authority, the coming year could be a positive period in which to seek FERC approval of major energy infrastructure facility permits because the Act pressures FERC to streamline their environmental reviews.
- The potential development of new coal and nuclear projects will also require the development of new rail transportation and electric transmission lines, which should be evaluated as part of these investments.
- Those with pending onshore domestic oil and gas investments should maximize production of resources that qualify for the investment incentives.
- While nontraditional resources will receive incentives under the Act, investors must consider alternative scenarios to assess whether such projects are robust under a range of industry developments, including the possibility of lower prices.
- Refinery owners should reconsider expansion projects, though in some cases the economics may favor overseas development.
- 'Run the numbers' using the Act's incentives to assess whether they will make a difference, especially for marginal projects. Pursue financing as appropriate.

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