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THE SURGE

BY THE COMPETITIVE ENTERPRISE INSTITUTE

Welcome to the latest edition of The Surge!

- EPA guidance on science policy places agency bureaucrats over sound science.
- Will California get the greenlight from the EPA to ban gas-powered cars?
- The Biden administration identifies yet another way to block oil and gas lease sales.
- Biden's LNG "pause" will hurt Americans and our allies, while helping unfriendly countries.
- The SEC's climate disclosure rule is coming.

These are just some of the issues covered below. Please let others know about The Surge and they can subscribe here.

Best,

CEI's Energy and Environment Team

TOP OF THE AGENDA

Coalition Responds to EPA Draft Scientific Integrity Policy

The way that the EPA utilizes science is critical in the development of its regulations that impact the lives of all Americans. Further, if the EPA uses and disseminates science that is flawed, it can entrench costly and harmful mistakes not only within the agency, but also across the government and in society. Therefore, getting the science right is critical and why CEI led a coalition consisting of 20 organizations that submitted a comment on a new draft scientific integrity policy published by the agency.

The agency's "Scientific Integrity Policy" ostensibly aims to ensure the agency's science-based decisions and research are impartial, empirically-derived, transparent, and based on sound data analysis and objective scientific evidence. Unfortunately, the EPA's new draft policy contains a number of significant flaws. One area of concern relates to the overly-broad definitions contained in the document. For instance, the draft defines "scientist" as "anyone who collects, generates, uses, or evaluates scientific data, environmental information, analyses, or products." This could refer to virtually anyone, from professional researchers to casual readers of science news.

The EPA also incorporates factors like "diversity, equity and inclusion" and "indigenous knowledge" into the scientific process. While in principle there is nothing wrong with agency scientists gathering information from a diverse array of sources, what ultimately matters is the validity of knowledge itself, not the characteristics of those who share it. By promoting certain forms of knowledge as specially-valuable based on arbitrary social categories, EPA risks depriving its decisions of local knowledge beyond those types singled out for special consideration.

Additionally, the draft states that economic analyses that are inherently policy and value-laden, like cost-benefit analysis, are scientific documents, and that estimates in those analyses shouldn't be changed "based on internal or external policy or political concerns." The EPA appears to be going as far as to insulate the policy judgements of career staff regarding economic analysis from Office of Management and Budget regulatory reviews and from any public comments that are inconsistent with the views of career staff.

The blurring of science and policy, as well as the blatant inconsistencies between EPA rhetoric and EPA actions, creates the appearance that partisan political considerations rather than scientific impartiality motivate this draft policy. While some provisions of the draft policy plausibly aim to shield career analysts from political pressure, others seem intended to empower an unaccountable bureaucratic elite to sabotage administration initiatives on ideological grounds.

Comments from Our Friends

- Science and Environmental Policy Project (SEPP) Comment
- Center for Environmental Accountability Comment

IN THE SPOTLIGHT

EPA to Make Critical Decision Affecting the Fate of Gas-Powered Cars

California is seeking permission from the U.S. Environmental Protection Agency (EPA) to implement the State's Advanced Clean Cars II (ACC II) program. ACC II includes the State's Zero Emission Vehicle (ZEV) program, greenhouse (GHG) emission standards for internal combustion engine (ICE) vehicles, and vehicle emission standards for conventional air pollutants. The most controversial component is the ZEV program, which would ban sales of new gasoline- and diesel-powered cars by 2035.

The EPA is widely expected to authorize California to implement the ACC II program—an action referred to as granting a waiver of Clean Air Act preemption. The adverse impacts on vehicle affordability and choice are likely to be substantial, for two main reasons.

First, at least a dozen other states are planning to adopt the ACC II program once the EPA greenlights it. Second, nearly all ZEVs are battery electric vehicles (EVs), which have significant consumer downsides: high cost, range anxiety, long recharging time, limited recharging infrastructure, reduced towing capacity, impaired cold weather performance, and less reliability during blackouts from hurricanes and other disasters.

Millions of Americans in California-aligned states will have less freedom to purchase cars that best meet their needs. ZEV mandates are also likely to make ICE vehicles more expensive by decreasing their supply relative to demand.

The EPA claims California's ZEV mandates and tailpipe GHG standards are lawful under the Clean Air Act. That is debatable. What is far more certain is the unlawfulness of those policies under a different statute, the Energy Policy and Conservation Act (EPCA).

EPCA Section 32919(a) preempts state policies "related to" fuel economy standards. California's tailpipe GHG standards are directly related to fuel economy standards; California's ZEV mandates are substantially related. Consequently, EPCA preempts those policies, and, unlike Clean Air Act preemption, EPCA preemption cannot be waived. For the interesting details, see CEI's comments on the EPA's consideration of the ACC II waiver.

Yet Another Biden Restriction on Oil and Gas

As it develops policies to limit supply, the Biden administration is draining our Strategic Petroleum Reserve and removing trade sanctions on sanctions that will allow for the import of more of its oil.

A subtler cutback is the administration's decision to exclude certain parcels of federal land from auction to disincentivize oil and gas lease sales. In 2023, oil and gas companies declined to bid on nearly half of the acres of public land the administration offered for drilling in Wyoming.

The president of the Petroleum Association of Wyoming in 2023 said in testimony before the Senate Committee on Energy and Natural Resources that "(Bureau of Land Management) continues to omit leases that would fill in 'donut-holes' in otherwise leased fields making development difficult or impossible."

Not offering up choice land for lease could be one roundabout way the administration could achieve its stated goal of "discourag(ing) speculation by oil and gas companies."

Policymakers need to remove unnecessary obstacles created by the federal government. Also, the government, which owns a vast amount of land, especially in the west, could shift ownership or management of these lands to the states.

Biden Liquefied Natural Gas Export 'Pause' Hurts Americans And Our Allies

Last month, the Biden administration announced a pause on new approvals for liquified natural gas (LNG) exports to non-Free Trade Agreement (non-FTA) countries. The vast majority of countries, including most of Europe and Asia are non-FTA countries, and this move by the administration would limit the future expansion of LNG exports to these nations.

This pause will have significant consequences for natural gas prices, both abroad and domestically, by creating uncertainty for producers that would negatively impact production. It would also force our allies to rely on gas from unfriendly countries.

Earlier this month, Rep. August Pfluger (R-TX) sponsored a bill to circumvent the pause. The bill, the Unlocking our Domestic LNG Potential Act of 2024, was passed in a bipartisan manner, 224-200.

Presently, under the Natural Gas Act (NGA), the Department of Energy (DOE) approves LNG export permits, while the Federal Energy Regulatory Commission (FERC) is responsible "for the siting, construction, expansion, or operation of an LNG terminal." The new bill would remove the DOE from approving export permits while retaining FERC's responsibility. In effect, this bill would remove import and export restrictions on natural gas.

This solution would simplify the governance of LNG exports under FERC's authority, and would also render the Biden administration's export pause moot by removing the permits that it concerns.

The Senate should take up this important House legislation. Admittedly given the Democratic majority in the Senate, they are unlikely to take this bill up, but this should be a bipartisan issue as it was in the House.

Regardless, the bill's passage in the House is a good sign of legislator interest in maintaining the freedom of natural gas producers to export. The bill text will also be useful in the next Congress.

Two Rules that Threaten Grid Reliability

Two energy rules from the Biden administration stand out because of the difficulties that they create for reliable electric generation.

First is the EPA's proposed power plant rule, which would close a large number of coal and natural gas plants in the next decade. The rule pushes some gas and all coal plants toward closure in the 2030s if technologically infeasible emissions standards were not met through as of yet unproven means.

A second rulemaking of concern involves the continued licensure of existing nuclear power plants. Following pressure from anti-nuclear groups, the Nuclear Regulatory Commission pursued a rule creating an additional process for nuclear plants to receive their subsequent license renewals to cover years 60 to 80 of their operations. This is especially important given that 90 percent of currently operating nuclear plants intend to seek these types of licenses in the coming years.

The rulemaking process here has been incredibly slow and fraught with problems, including the cancellation of already issued subsequent licenses at two different plants. This provides uncertainty for plant operators, making it more difficult to keep their facilities online and generating power long-term.

Meeting electricity demand in the coming years hinges on the stewardship of existing power plants and avoiding wide, sweeping rulemakings that will affect reliable generating capacity. A reliable electric grid is essential to a functioning society as a whole, and we undermine it at our peril.

SPECIAL FOCUS: CLIMATE FINANCE

This edition of *The Surge* provides a special focus on climate focus given two important developments:

Coalition Warns Against RECOUP Act, Including Its Potential Impact on Energy

CEI and Americans for Tax Reform led a coalition of 35 public policy leaders – representing a variety of groups– who signed on to a letter opposing S. 2190, the RECOUP (Recovering Executive Compensation Obtained from Unaccountable Practices) Act. The bill, which has passed out of Senate Banking Committee, would increase financial regulatory agencies' powers excessively by allowing them to remove the leadership of any U.S. bank they supervise, even if the agency doesn't deem such a bank as at risk of going under. From this coalition letter to congressional leaders:

> Under the bill, financial regulators would have the power to remove the executives of banks – including the smallest of community banks – anytime these bureaucrats believe a bank has failed "to appropriately implement financial, risk, or supervisory reporting or information system or controls." The bill's language is written so broadly that it may allow bank regulators to take over banks on the basis of policy judgments about certain industries with which the banks do business. It has been postulated, for instance, that executives of banks lending to oil and gas producers could be subject to the bill's removal provisions for failing to implement adequate "climate risk" reporting or controls.

Read the full letter here.

SEC's Climate Disclosure Rule is Coming

The Securities and Exchange Commission (SEC) will meet next Wednesday to discuss the fate of its proposed climate disclosure rule. The Commission aims to finalize its rule by April for inclusion into the Federal Register. The proposed rule would redefine "materiality" by requiring public companies to disclose their perceived risks to climate change. Registered companies would be forced to report their direct emissions (scope 1), indirect emissions (scope 2), and value chain emissions (scope 3). It would also require periodic reporting of corporate board considerations for climate change mitigation, forecasting the impact of climate change on a company's activities in the short and long-terms, and an acknowledgement for how severe weather events impact their firm locations. Public companies that already voluntarily disclose sustainability reports or provide scenario analyses would not be spared from the SEC's proposed rule. Nor does the rule seem to provide any exception to companies impacted by California and the EU's mandatory climate disclosure rules.

The climate disclosure rule represents the center-piece of the SEC's environmental, social, governance (ESG) rulemaking. It also demonstrates a complete deviation from the agency's prior restraint and refusal to compel environmental information in its disclosure regime. The proposed rule would impose the single largest increase to corporate disclosure costs in the agency's 90-year history. The rule alone would raise annual disclosure-related compliance costs from $3.8 to $10.2 billion, imposing a crippling financial burden for many small-to-mid-size companies.

There is a glimmer of hope in that recent reports suggest the SEC's final rule will pare back its scope 1-2 requirements, while completely removing its scope 3 provision. We may ultimately see a more passive and less prescriptive final rule from the SEC, depending on what is raised at next week's meeting.

FEATURING OUR FRIENDS

Let's Fix the Quorum Quandary at FERC, Travis Fisher, Cato Institute

California's Ruinous (and Unlawful) Assault on America's Trucking Industry, Steven G. Bradbury, The Heritage Foundation

Despite Net-Zero Push, Oil and Gas Have Staying Power, Sarah Montalbano, Independent Women's Forum

Latest Global Temperature Trends, 1979-2023: Models vs. Observations, Roy W. Spencer

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