FINAL TRANSCRIPT

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**ACC - Comprehensive Energy Legislation: Content, Policy and Politics of the 2005 House/Senate

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PRESENTATION

John Allen - *Halliburton Energy Services - Senior Vice President-Law*

Good morning and a good afternoon if any body is at that end of the time zone in Europe. This is John Allen and we'd like to welcome you to the conference call. Hunton & Williams has generously agreed to share with us a comprehensive review of the content and policy and politics of the US energy legislation that's ongoing coming out of committee I think almost as we speak. And with that I'd like to turn it to folks from Hunton & Williams to get it started.

Drew Murphy - *Hunton & Williams - Partner in Energy Practice Group and Chairman of Energy Steering Committee*

Well thank you. This is Drew Murphy. I am a partner in the energy practice group and the chairman of our energy steering committee and our energy practice here at Hunton & Williams and we are very happy to have the opportunity to address the members of the energy committee of the ACC. I will keep it brief so we can get straight to the heart of the matter we have a panelist of lawyers from the firm here who are going to be talking about areas of the energy legislation that they have particular expertise in and obviously want to encourage the interactive questions and things through the medium that's set up on the webcast to do that through emails and all as you go forward. And with that I'm going to turn this over to Pat McCormick who is a partner in our regulatory group here and who's going to kick things off. Pat?

Pat McCormick - *Hunton & Williams - Partner in Regulatory Group*

Thank you Drew and thanks John and Wayne Harris who are our moderators. And thank you too to ACC and the Energy Committee for this opportunity to participate with the committee.

The purpose of our briefing this morning is to discuss the pending comprehensive energy legislation. We planned the presentation with your committee leadership about a month ago and when we picked this day we did not envision that it would be quite as current as it is and we're very fortunate I think by the accident of history here to be preparing and presenting this briefing really as the conference committee is completing its work. The conferees completed consideration of the bill in the early morning hours of yesterday and the house representatives will take up the conference report we are told sometime either later day or tomorrow and - tomorrow and the senate thereafter.

The purpose of our briefing is to orient the members of the committee to the energy legislation, which is as I say most comprehensive. The conference report is 1725 pages long. We have it here and we're here assembled in a conference room at Hunton & Williams and we have it here before us in 5 volumes. The, the table of contents alone is 20 pages. So in this hour briefing our objective here is to provide a broad orientation towards the policy and the context in which the bill is being considered and to inform the committee as best we can of what we see as some of the business consequences of the major provisions.

Of course companies have very diverse interests across this bill and one of the things we are recommending to our clients is that they bore into the bill for provisions that impact their business because it is a certainty that in legislation as comprehensive as this with energies - with industries as intensely regulated as the energy industries are that there will be very many provisions that may escape general notice that could have a significant impact for a particular client.

Our objective also is to prompt discussion, which is perhaps a little challenging with this format but we do encourage you to email the moderators and I think you have their emails but perhaps John and Wayne you may wish to repeat your email addresses.

John Allen - *Halliburton Energy Services - Senior Vice President-Law*

Yes, this is John Allen. Mine is John, J-O-H-N dot Allen, A-L-L-E-N at Halliburton.com.

Wayne Harris - *Hunton & Williams - Chief Counsel, ACES Power Marketing*

And this is Wayne Harris and my email address is WayneH@acespowers.com.

Pat McCormick - *Hunton & Williams - Partner in Regulatory Group*

Thank you. So we are hoping that participants will email in with questions and then John and Wayne will pass them on to us. The sources - now I'm on slide 3 if you have the, if you have the slides. The sources of this legislation are really; go to the Bush administration national energy policy, his legislation very much has its genesis in that, in that energy policy.

But of course the bill has been debated each year since 2001, since the Bush administration came in. elements of the bill however have been debated really back since 1994 and you may recall of course that the last major comprehensive bills that were passed were passed in 1992, 1978 and in 1935. So this is in fact very significant and very comprehensive legislation that's been, that's been cooking as it were for quite a long time.

Final passage appears more likely now than in 2003, but as we were hearing this morning, final passage is by no means a done deal. And some observers have likened the energy legislation to the proverbial scene each fall where Charlie Brown addresses the football that Lucy has ready for him to kick and we are hopeful that this will be the year that in fact congress kicks the ball and the bill is passed and signs are looking good for that but I think that's one, one thing that you're going to want to - and participants in this conference are going to want to watch for in the next few days is whether the bill does in fact make it over the goal post.

Moving on to slide 4. I will - I'd like to introduce our partner Sean Cunningham. Sean is a recent addition to Hunton & Williams having come to us indirectly from the committee on energy and commerce in the United States House where he was a committee council and was the lead negotiator on the several of the titles of the bill when the bill was taken up in 2003. and Sean will take us through the next few slides and from there we'll introduce our colleague Joe Stanko who is also a partner here at Hunton & Williams and was also a council on the house energy and commerce committee previously. Sean?

Sean Cunningham - *Hunton & Williams - Partner*

This is Sean Cunningham, I just wanted to point out briefly that under the slide where we say that there is a great deal of new law and regulation here, that, that cannot be under-emphasized. The bill again weighs in at 1725 pages and 18 titles and there are literally dozens of rule making provisions, at least 15 in the electricity title alone. There are 41 separate study provisions among many other things. Obviously the significance of these provisions will depend on the specifics of your business.

I wanted to point out, moving on to slide number 5, this bill, because of its comprehensive nature, certainly achieves the 4 objectives that the leadership in the White House had set out to achieve and I don't think we need to go into detail on those points but that is absolutely the case.

Slide 6, overview of where things stand with the legislation, it appears very likely that the bill will pass through the house and the senate starting tomorrow with the house and later this week with the senate and I will let Joe Stanko comment on that further. Joe would you like to comment on that?

Joe Stanko - *Hunton & Williams - Partner*

What we're hearing now is that the house conference report is going to go to rules and could be under consideration as early as tomorrow on the floor. Typically senate consideration of a concert report follows house consideration and we're expected to get a pretty easy up and down vote for this bill in the house.

The senate is always a bit of a wild card but we can certainly say as we'll discuss in detail later on that a number of the more objectionable to the senate provisions of this legislation last time around are not present this time around so most of the outside observers are pretty hopeful with regard to the senate passage.

Sean Cunningham - *Hunton & Williams - Partner*

In the interest of time I think we'll breeze through slides 7, 8 and 9. 7 just identifies a number of controversial provisions that were in the bill, some of these are no longer in the bill as Joe mentioned and 8 and 9 have been superceded by the actual conference report, which suffice it to say covers everything from energy efficiency to Indian energy to oil and gas. The - I will hand over the phone to Pat McCormick to talk about the main areas of focus.

Pat McCormick - *Hunton & Williams - Partner in Regulatory Group*

Yes, our primary area of focus based on our discussion with committee leadership earlier is energy efficiency, oil and gas, nuclear, electricity and energy tax incentives. So our focus is going to be at some greater level of detail on each of those topics. But again, anyone who wishes should feel free to send us an email with a question with respect to some of those controversial provisions that were on slide 7, I don't know if there may be a question about that but we are certainly free to discuss --

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Wayne Harris - *Hunton & Williams - Chief Counsel, ACES Power Marketing*

Pat?

Pat McCormick - *Hunton & Williams - Partner in Regulatory Group*

those provisions? Yes?

Wayne Harris - *Hunton & Williams - Chief Counsel, ACES Power Marketing*

Pat? Can you describe how some of the controversies listed on slide 7 played out and what we can expect if anything in the future?

Pat McCormick - *Hunton & Williams - Partner in Regulatory Group*

Yes, let me turn that over to Joe for that question.

Joe Stanko - *Hunton & Williams - Partner*

Sure, the first one you see on slide 7 is the provision that's certainly received a lot of press and a lot of attention which is the MTBE liability waiver. For those who may not be familiar with this issue, the clean air act amendments of 1990 created a reformulated gasoline program that had to be used in areas with a certain lower air quality. Although that program did not specifically mandate an oxygenate that had to be required it did require and oxygen in the gasoline. There were only 2 available at the time of passage, ethanol and MTBE. MTBE was the oxygen predominantly used and we've had some situations where through the leakage of fuel from tanks and such water quality impacts have been seen in drinking water.

The liability protection was to excuse the producers and users of MTBE since it had been mandated by use by the EPA and registered as a fuel additive from defective product liability. All other forms of liability would stay in. this provision was in the bill in '03. It was 1 of the provisions that folks on the senate floor noted a strong opposition to. In this years bill, it is not in the bill and so those provisions are not expected to be contentions on the senate floor.

Rolling through the other ones, Anwar is not in the bill. Everyone I'm sure is familiar with that as a bone of contention and the ethanol mandate in this bill is at the higher end of the range so the agricultural interests that have helped this bill, certainly on the senate side should be fairly supportive of that. Let me turn it back over to Sean.

Sean Cunningham - *Hunton & Williams - Partner*

Regarding renewables portfolios standard, there will be no RPS in the bill. There is, there is not an RPS provision in the conference report. On the senate side there was a 10% RPS which would have been - that is 10% by 20/20 of the electricity sold in retail markets would have had to be renewable power from when solar, geothermal, etc. That language is gone. It was not replaced with anything. And we will further discuss renewable energy provisions in subsequent slides.

And electric transmission issues into the merger issues, we will go into these in more detail shortly however I would say that there are a number of significant provision relating to electricity in the bill. PUHCA is repealed. Effective in 6 months and that may be one of the most significant provisions if not the most significant provision in the bill.

There has been some concern about what has replaced PUHCA and I should emphasize that none of the authorities that the SEC has have been specifically transferred to FERC, however FERC does have some new authorities over access to books and records and review of certain costs and we will get into more detail on that in the electricity slides and there are some significant other electricity issues, mandatory reliability standards and other things which, again, we will move on to that shortly and I will hand over the phone to Pat McCormick.

Pat McCormick - *Hunton & Williams - Partner in Regulatory Group*

Did that take care of the question Wayne?

Wayne Harris - *Hunton & Williams - Chief Counsel, ACES Power Marketing*

Yes, just another quick question. Given the debate in the senate on the McCain/Lieberman and the discussion of Dingman's alternative climate provisions, do you think they'll be more votes on climate changes in congress, or what's the likely outcome of climate change issues and kioto(ph)?

Joe Stanko - *Hunton & Williams - Partner*

With regard - this is Joe Stanko, with regard to the conference report, I do believe that with the climate provisions that were retained, basically the Hagle provisions passed by the senate, that climate is an issue that is not likely to bring down the conference report in the senate.

As we proceed though throughout the rest of this legislative session I certainly believe that Mr. McCain will bring back his climate proposal to the floor and probably so Mr. Binghamen(ph). The word that we're getting is that the strategy that McCain is going to use with his climate provision is similar to that of campaign finance reform where he is going to try and hold a series of votes once every 2 or 3 months, keep trying to tinker with the base language and pick up votes as we move on. I - what we will be watching is whether the sense of the senate will be that the Hagle provisions adopted in this bill are enough in the short term to be the action of the senate on climate change.

John Allen - *Halliburton Energy Services - Senior Vice President-Law*

This is John Allen, I suppose in an almost related question, what would you think about the mandate on ethanol as far of how it effects the gasoline market and supply implications.

Joe Stanko - *Hunton & Williams - Partner*

Well this is going to be a very interesting one to watch because the ethanol figure came in at the high end the house had 5 billion gallons by 20/12, senate had 8 billion, that's with a B. And really this is going to set up, I think, some implementation issues for the refiners and the distributors of motor vehicle fuel that we're not sure how they're going to be impacted in the long run.

At a certain lower level it was thought by these folks that ethanol, the use of ethanol could be maintained in the region of the country that already have it and have the infrastructure. Folks may know that ethanol has to be blended at the terminal, once added you cannot move that fuel through a pipeline or certain other conveyances because of the chemical properties of it. what we believe is that under the new and higher figure, you are, in order to maintain that figure, you're going to have to use ethanol out at both of the coasts so you're going to have ethanol market penetration into the Middle Atlantic, in to New England and into the far West in a way that you've not seen it before. That's going to require new infrastructure and its unclear how the companies are going to react and implement that.

John Allen - *Halliburton Energy Services - Senior Vice President-Law*

Okay. Thanks.

Pat McCormick - *Hunton & Williams - Partner in Regulatory Group*

With that I think we'll turn to the renewable energy slides and as Sean has already mentioned, at the time we prepared these slides there was a thought to be a great deal of interest in the RPS and we've already told you that the RPS is not going to be in the bill but Sean perhaps you could, should take us through those subjects or those which are left in the bill.

Sean Cunningham - *Hunton & Williams - Partner*

Regarding renewable energy and I may comment briefly on energy efficiency as well since these 2 issues are often lumped together.

The first 2 titles of the bill provide for extensive provisions on renewable energy, and when we say renewable energy I'm referring primarily to provisions that have to do with electricity as opposed to renewable fuels and if there are questions on renewable fuels I will defer to Joe Stanko.

But briefly on renewable energy, there are provisions on hydroelectric power that would introduce certain reforms to increase the production of hydropower and as many of you may know, hydroelectricity is the nation's number one source of renewable energy in terms of volume. There are geothermal provisions to increase the production of geothermal power.

There is a reauthorization of what's called the renewable energy production incentive program, which provides incentive payments to certain government entities for production of specified renewables. There is a federal purchase requirement, even though there is no RPS, there is a provision in here that would require the federal government to ensure that 7.5% of the electricity used by federal facilities will come from specified renewables by 2013. Now I would be quick to point out that there's a generous exemption or flexibility provision within that provision. So it may end up coming to nothing but it is worthy of note.

There are provisions to provide incentives for installing photovoltaic systems on public buildings. There's a $300 million authorization over a 5 year period for achieving that goal - actually for achieving goal of installing 20,000 federal - 20,000 solar systems on federal buildings by the year 2010. Now that will be subject to congressional appropriation so that may not come to much, but it could.

Weatherization, there's a $1 billion authorization for low-income home weatherization programs. This is not anything fundamentally new, it's a continuation of an existing program.

There are multi million dollar authorizations for installing solar energy systems at the department of energy headquarters, for giving renewable energy grants to rural and remote communities. There are grants for biomass development, there will be a comprehensive assessment of all of the renewable resources in the United States and there will be extensive research and development - there are extensive research and development provisions relating to renewable energy in the bill. They're in the electricity title.

There are federal standards for net metering and interconnection however these standards are only for the states to consider and are not mandatory. There are tax provisions that relate to renewable energy but I will defer to our tax experts on those issues.

And then regarding energy efficiency I would note that there are updated requirements on energy savings measures in federal buildings requiring percentage improvement in energy efficiency over the next 20 years and these will involve significant gains and will require the federal government to purchase large quantities of energy efficiency technology.

There are also numerous new energy efficiency standards for a long list of products approximately 18 products depending on how they are counted.

Unidentified Corporate Representative

How significant are the provisions related to the federal buildings?

Sean Cunningham - *Hunton & Williams - Partner*

These are quite significant because as I mentioned the federal government would have to use approximately 20% less energy than they are using now by the year - 20 years from now and this will potentially create a bigger market for energy efficiency products and this is also related to people who have energy savings performance contracts with the government which is the - that program is a program whereby the government - whereby a private contractor can provide energy services such as installing new light bulbs and things of that nature and the program is guaranteed to save a specific amount of energy so it's a win/win program for the government and the private sector. I will stop there on energy efficiency and hand it over to Pat McCormick.

Pat McCormick - *Hunton & Williams - Partner in Regulatory Group*

I would add on the federal buildings, the challenge there is that the federal government is already a relatively efficient user of energy since the energy policy act of 1992 had very aggressive for that time, provisions for, for federal government energy savings. So to get to your questions I think this - these new provisions are even more aggressive and should have a significant impact on that industry.

I think our next topic is moving now to slide 13 and for this I will turn back over to Joe Stanko. I'll also mention that our partner Bill Cooper was to be with us today to present part of this but he's, he's the Executive Director of the Center for Liquefied Natural Gas and he was called away to debate with the Attorney General of Rhode Island who is the leading opponent of L&G deployment on the East Coast, so unfortunately Bill is not able to join us but Joe is going to cover these slides.

Joe Stanko - *Hunton & Williams - Partner*

In the interest of time let me just hit the high points on the oil and gas. Observers of this conference pretty much keyed in that the key elements on the oil and gas side were the L&G, various L&G proposals and the OCS inventory.

I - in short, this conference report contains a number of new provisions that are the purpose of which is to help speed the citing and the construction of new L&G facilities. In short, there's some consolidation and a central role for FERC in some of these facilities. And there have been some changes made to some of the approvals that these facilities require.

Particularly with regard to the coastal zone management and some of the NIPA issues. It should be pointed out that there are no provisions from these acts that the facilities are excused from, its really more of a setting, some deadlines for agency actions which did not have clear deadlines before and allowing FERC I think to streamline and try and coordinate some of this decision making.

On the OCS inventory another very controversial issue, the inventory is in the conference report and that provision does require the secretary of the interior to conduct and inventory of oil and gas reserves in - beneath the waters of the united states.

Now, while this was an extremely controversial provision we did receive some reports today that the Florida senators while they are not happy about this provision and may not vote for final passage of this bill, would not participate in a filibuster or vote against closure, which is another sign again that the issues that concerned the senate last year have been mediated enough for passage of the bill this year.

Unidentified Corporate Representative

Have the California senators taken a position on this? It seems like they're equally in the same position as Florida.

Joe Stanko - *Hunton & Williams - Partner*

They should be, I've not heard a statement out of the California senators about where they are on the filibuster issue or the closure issue. On general issues with this bill the 2 California senators are viewed as unlikely yes votes on final passage.

Unidentified Corporate Representative

Okay.

Pat McCormick - *Hunton & Williams - Partner in Regulatory Group*

We then will turn to the nuclear power provisions of the bill and those are highlighted on slide 14. I would say that our, our nuclear partners are engaged in a matter of significance for our client and so Sean Cunningham is going to handle these slides as well. Sean did not serve as the nuclear council when we was on the committee but he has been familiar with the legislative issues and so he'll, he'll handle this one.

Sean Cunningham - *Hunton & Williams - Partner*

Nuclear issues there are numerous provisions of consequence for the industry and perhaps the, one of the clearest impact is the reauthorization of the so-called Price Anderson legislation. This would be reauthorized by 20 years without any subrogation and I can go into more detail of that as needed.

Uranium sales provisions, there were some provisions in the house, which have been eliminated. There is a whistleblower protection provision which conference resolved a difference on that issue. And there are hydrogen provisions because obviously the nuclear industry will be involved in production of hydrogen. There's a $1.25 billion authorization for R&D and construction of an advanced nuclear co-generation reactor to produce electricity and hydrogen at the Idaho national library. And there are other authorizations relating to hydrogen.

There are significant nuclear security provisions that is security for nuclear plants. There are significant provisions on nuclear research and development. 2.7 billion authorization for those programs. There will be a new assistant secretary for nuclear energy. There are provisions relating to personnel and training. There are loan guarantees provided for and there are tax provisions, which again we will take those up shortly and that's, that's the very brief overview of nuclear.

Unidentified Corporate Representative

Are there any trust implications in that, in the nuclear power realm as well?

Sean Cunningham - *Hunton & Williams - Partner*

I'm sorry could you repeat that?

Unidentified Corporate Representative

Are there antitrust implications in the, in the power sections of the legislation as well?

Sean Cunningham - *Hunton & Williams - Partner*

Yes, the NCR antitrust review under the atomic energy act is repealed by -- is prospectively repealed in this legislation so there would, that, some people have argued duplicative review would no longer apply.

Unidentified Corporate Representative

Okay thanks.

Pat McCormick - *Hunton & Williams - Partner in Regulatory Group*

Let me just, let me just say that may observers think that nuclear power is the, is the largest winner in the bill, and when, if you harken back to one of those earlier slides, thinking about what the broad objectives of the bill are, to diversify the nation's energy supply and to increase domestic production, I think, I think the administration will be pointing to the nuclear provisions and I think that's very - that's a very significant development for that industry given, given the progress of the industry over the last 15 or 20 years or so. So this is really - I think many in the nuclear industry would see this as very significant legislation for that purpose.

Sean Cunningham - *Hunton & Williams - Partner*

Pat, I think you're really, you've really hit the nail on the head. It was way back in 1979 that Jimmy Carter went to 3 Mile Island and really signed the death now for nuclear energy and no president has really pushed for nuclear energy since, since this president and so to have a president endorsing nuclear energy to such a large degree is really significant in light of the history of the industry.

Pat McCormick - *Hunton & Williams - Partner in Regulatory Group*

I think that's right, and just to underscore your point, the president was of course at the Calvert Cliffs(ph) Nuclear Facility in the run up to the conference actually earlier in July and gave a very significant speech there so I think you're, I think you're right.

Moving on now to the electricity provisions. These are a headline of the bill, I don't known if you saw the Wall Street Journal this morning but there's a quite a lengthy piece that begins on page 1 that is beginning to be a perennial. It talks about how the nation is hitting record electricity demand and how the electricity infrastructure, particularly the delivery infrastructure is really ill suited to the level of electricity use that we have in the - and the ways in which we are using the electricity network. And so the electricity provisions have been the focus of quite a lot of attention and for this section I will again turn, turn it over to Sean who as I mentioned had been the electricity council to the committee during the time, the 2003 bill, which served as the base for this bill was developed. Sean?

Sean Cunningham - *Hunton & Williams - Partner*

Thank you, the - I think its worth noting that the new FERC chairman, Joe Kelliher says that this is the most significant change in federal electricity law in 70 years and of course he's referring back to the 1935 Federal Power Act and this is absolutely the case. There have been some significant electricity laws passed since then but this is an extensive updating or and in some cases revision of the Federal Power Act. It does not rewrite the core provisions of the Federal Power Act, that is the rate filing provisions however it introduces a number of significant new elements and a lot of these are similar to the 2003 conference report that passed but there are some new developments.

First of all, regarding FERC authority to review mergers and acquisitions of utility property. This provision has expanded FERC's merger authority to pick up so called generation only transactions. FERC has already been able to review a lot of transactions that have included generation components but now they are able to review peer generation only transactions, which they were not previously able to review.

There were proposals to extensively rewrite FERC's merger and acquisition authority but a lot of those proposals were rejected, however in the wake of Puka repeal, some members of the senate thought it was important to include an explicit reference to cross subsidization in the FERC's merger authority so now when FERC reviews a merger or an acquisition, it must determine whether the transaction will result in cross subsidization and if it does its prohibited unless the cross subsidization is found to be consistent with the public interest and the public interest is the current law standard of review for FERC reviews of these kinds of transactions.

Puka repeal, really that should be first because I think that is probably the most far reaching provision in the bill and others will comment some more on the practical effects of that.

Third, mandatory national reliability standards. The bill would establish and industry self-regulatory organization which will essentially be the North American Reliability Council which is already in existence. That will become the delegated developer and enforcer of mandatory reliability standards, which do not now exist.

This is a significant grant of authority, not only to this industry organization but also to the FERC and stay tuned for what FERC may try to do with this reliability authority in terms of furthering its restructuring agenda, generally and that language is worthy of noting, it specifically says that FERC shall not defer to the industry organization with respect to the effect of a reliability standard on competition. No one knows what the implications of that will be.

The next one is transmission citing. This provision gives FERC authority similar to the authority that it has for citing gas transportation lines. FERC would be able to be the federal backstop if a utility wants to cite a transmission line in a state where the state is not cooperating, the state is not willing to approve the line or not authorized to approve the line, FERC can step in and issue a certificate allowing them to do this and then its enforceable by an imminent domain order in federal court. There are also provisions streamlining the permitting process on federal lands for citing transmission lines on federal lands.

There are incentives for participating in regional transmission organizations and also other incentives for building new transmission lines, generally that is rate incentives.

Unidentified Corporate Representative

It appears that FERC is a big winner in this energy bill.

Sean Cunningham *- Hunton & Williams - Partner*

In terms of, of a, new authority, the self-aggrandizement of any agency, I think FERC would definitely be the winner, certainly on electricity.

Native load transmission rights. This is one provision that actually limits FERC's authority because it provides that if a utility in a state that hasn't, particularly in a state that hasn't opened up to competition has, has transmission contracts in place to serve its native customers FERC must respect those contracts and must allow those utilities to use the available capacity on the transmission lines to serve those customers and they cannot override it through something like a standard market design proposal.

HRPA reform, there has been an effort underway for the last, I believe, 25 years to repeal the provision of HRPA that requires utilities to purchase power from so called qualifying facilities which include certain co-generation plants and other producers of renewable energy. The HRPA purchase obligation provision is technically repealed here but only when the qualifying facility has access to so called competitive markets and they're long very abstruse provisions explaining what counts as a competitive market and it may be until the next energy bill that the meaning of those provisions is figured out.

Next is market transparency and market manipulation. I really want to focus on the market manipulation provision because what this does is it sets up, it gives FERC essentially the same authority that the Securities and Exchange Commission has over the securities markets to - it says that any fraudulent or deceptive or manipulative act or practice that is undertaken directly or indirectly by any participant in the market is unlawful and so this opens the door for FERC to search for anything that it considers fraudulent, manipulative or unlawful. Obviously this provision is related to the troubles that resulted from some of the activities at Enron and others were engaged in but the provision has been written with broad brush strokes to take up not only wholesale power sales but also transmission services so no one is quite clear how far, or how far reaching the impact of this provision will be.

Its worth noting that under the Securities Act a private right of action, the course has interpreted the Securities Act provision on manipulation to allow for a private right of action, for anybody to come along and sue on the theory that an activity is unlawful. This provision fortunately for participants in the industry specifically says that it does not create a private right of action.

Enforcement. The electricity title gives FERC new civil and criminal penalty authority for, to deal with any violation under the Federal Power Act and it's increased to $1 million per violation. And violations can be aggregated so it essentially gives FERC unlimited civil penalty authority for any violation of the Federal Power Act, they simply don't have that authority under current law, except for certain provisions and also there's a provision to allow a court to ban persons from holding corporate positions if they violate - there's another provision in here that prohibits false statements, making false statements to the government and you can be barred from holding a corporate position for violating that.

Unidentified Corporate Representative

I suppose this probably is almost redundant to what you've been telling us, but would you, are you hearing things from FERC that would give you any insight as to how vigorously you would expect them to use their new authorities?

Sean Cunningham - *Hunton & Williams - Partner*

Well, I think anyone who really wants to delve into this would be - would take great interest in a law review article in the energy law journal by none other than Joe Kelliher, the new chairman of FERC, its very unusual for a sitting commissioner to lay out their views in extensive detail in a law review article, but he has done so and he is very serious and very even perhaps enthusiastic about applying some of these provisions relating to market manipulation and civil penalty authority.

Unidentified Corporate Representative

Do you have a site to that article for us?

Sean Cunningham - *Hunton & Williams - Partner*

I - we can easily get that, yes. It's in the most recent Energy Law Journal I believe.

Unidentified Corporate Representative

Okay, that's fine.

Sean Cunningham - *Hunton & Williams - Partner*

But we'll get that to you?

Unidentified Corporate Representative

Are there any new compliance pitfalls that corporate council should be aware of as a result of this potential bill.

Sean Cunningham - *Hunton & Williams - Partner*

Yes I think I've gone over the main ones and the market manipulation piece is, is very significant because anything that's happened under the securities act, except for the private right of action part could also happen an analogous manner in the electricity markets. And it's going to have obvious consequences for the industry. Pat McCormick will add something to that.

Pat McCormick - *Hunton & Williams - Partner in Regulatory Group*

Yes, I would add to that question, that answer rather. Again, picking up on the point that Sean has made about commissioner, or Chairman Kelliher's views on the subject of strict compliance with the federal power act. He has been extremely vigilant in requiring that if actions are to be taken by certain timelines either by FERC regulation and certainly by statute that the commission will, will be very insistent that those timelines are met and even where there may be a circumstance where the deadline or the act to be done or the paper to be filed might have been filed or done at some other time or there may have been a practice or a condition in the commission where these acts were permitted to be done late, he's really cracked down on that and so anyone whose interested in the detail of that we can follow up but there's really a whole new focus on compliance at the FERC and of course there is a relatively new office of market oversight and investigation, which is itself very vigorous and very new. So, so the pitfalls are many.

I will turn it back now to Sean to conclude on these slides but also I would tell you that the law review article that Sean mentioned is in volume 26, number 1 of the energy law journal for 2005 and that's the current, that's the very current edition which is just, just come in the mail. Its been in print for a while but its, but its just been mailed out now and that's available from the Energy Bar Association, its published of course by the National Energy Environment Law and Policy Institute at the University of Tulsa Law School.

Unidentified Corporate Representative

Thanks, its, as you point out, not often that the chairman of a sitting commissioner - sitting chairman actually tells us what he thinks so clearly that's very helpful. Thank you.

Pat McCormick - *Hunton & Williams - Partner in Regulatory Group*

You're welcome.

Sean Cunningham - *Hunton & Williams - Partner*

I think we're almost ready to move on to the tax provisions. The only thing that I would add about electricity is that there's also a market transparency provision that directs FERC to set up an electronic information system to provide information on prices of wholesale power sales and transmission service, services. Its not clear what this provision means or whether it would require real time disclosure of information and obviously this could have significant competitive effects.

I will hand over the phone to David Lowman, our partner who is the expert on the energy tax provisions.

David Lowman - *Hunton & Williams - Tax Partner*

Hi, this is David Lowman, I'm a tax partner here at Hunton & Williams and my practice focuses on energy tax related matters. The conference report really provides as Christmas tree of tax benefits. There are 64 sections that takes up about 200 pages dealing with a number of broad areas form energy efficiency, oil and gas production, electricity reliability, clean coal and renewable and clean energy incentives. Those are the broad categories. We've identified on slides 17 and 18 a number of the, the principal provisions but again these are only I think 10 out of the 64. We'll be happy to take questions on any of these or any that we might have omitted.

Lets start with depreciation benefits. There are a number of depreciation benefits provided. There is a reduction in depreciable lies for gas distribution lines to 10 years. That's a reduction from 20 years under present law. It applies to lines, distribution lines, the original use of which occurs after April 11th of 2004 and are placed in service prior to January 1st, 2011. There is a binding contract and original use requirement in there. The distribution line cannot have been under construction or subject to a binding contract for construction before April 11th of 2005.

There is also a provision, which provides for a 7-year recovery period for natural gas gathering lines. This is a change from 15 years according to the IRS position and so this is a clarification of law.

Similarly with respect to electrician - electricity transmission assets reduction and depreciation life in the 20 to 15 years. There modifications to the rules for nuclear decommissioning trust funds. Basically repealing the cost of service requirement for contributions to a qualified fund. The proposal also permits the transfer of pre 1984 decommissioning cost to a qualified nuclear commissioning fund. There are provisions in the bill for amortization of post 1975 air pollution control facilities, this provision provides a 7-year recovery period for the cost of certain certified air pollution control facilities that were placed in service after January 1st, 1976. A 7-year recovery period compared to a 60-month amortization period for assets placed in service prior to January 1st, '96 - '76, I'm sorry.

The Section 29 tax credit is made part of the general business credit. What that does is allow folks that are generating Section 29 credits to generate credits in excess of their regular tax liability and those amounts can be carried back 1 year or carried forward for 20 years. That's a significant provisions, its possible that that will create some controversy on the floor but it is included in the bill.

There is also an extension of Section 29 credit for certain coke(ph) batteries, coke production and co-generation from coke. This was originally proposed as an investment credit for construction of new coke batteries. The conference report converted this into a Section 29 credit for production from coke batteries. Interestingly it goes back and picks up coke batteries that were placed in service prior to January 1st of '93. Or coke batteries that are placed in service after June 30th of '98 and before January 1st of 2010.

Going on to the next slide on page 18. we have an extension, a 2-year extension for Section 45 credits for renewable energy sources. The bill extends the place and service date to December 31st 2007. The wind closed loop biomass, open loop biomass, geothermal, landfill gas, trash combustion a number of sources. It also extends the credit period from 5 to 10 years for a number of those sources in the jobs act last year a number of these energy sources only had a 5-year credit period. Now there is parity between the various sources and 10-year credit period.

The bill also adds 2 new qualifying energy resources. One is increased hydropower and the second is indi - what they call Indian coal, which is coal that's mined on Indian tribal lands. There also is some technical corrections with respect to Section 45, dealing with landfill gas and open loop biomass.

There is a new investment tax credit for clean coal facilities. This provision establishes a 15% and a 20% investment credit for various types of clean coal facilities that produce electricity and coal gasification. There are provisions in the bill that require allocations to be made by the secretary and other restrictions on that but a significant investment tax credit.

There are also renewable bond provisions, credit bonds that are provided. What these are - what they call clean renewable energy bonds, where the proceeds are spent at least 95% for financing projects that would qualify under Section 45, the ones we just walked through, the biomass and wind and all that sort of thing.

The way those bonds work is that instead of paying interest the bondholder gets to claim a tax credit in lieu of tax-exempt interest. The - there was a similar provision for certain types of coal properties that did not make it through the only bond provision that made it through is with respect to the clean renewable energy bonds.

One of the last items I think says outstanding the tax credit for nuclear power. That provision was included in the bill yesterday afternoon and is part of the bill.

These are just some of the major tax items as I said, there are a number of additional provisions that go into things like the electric cars and all that sort of thing and then of course there were a number - a large number of provisions that were in the senate bill that did not make it into the conference report. I'll turn it back over to Pat.

Pat McCormick - *Hunton & Williams - Partner in Regulatory Group*

Thank you David. I see that our time is winding down here and I, I - obviously we want to take further questions if there are any, John or Wayne. I would say that when we prepared the slides we had a slide here, 19, which really, we wont cover today since the conference is essentially concluded but we do think that there's a very significant role for lawyers, particularly in house lawyers in advising their clients about, about legislation such as this. And then finally I guess the over arching point that we would leave you with is the comprehensiveness of this bill and the need to look into it very specifically for matters that may effect your own business and also that while people are generally optimistic about final passage there is, as they say, many slip between cup and lip and there's not much time between now and the August recess anyway. So we'll be watching this bill very closely in the coming days and we'll be continuing to work upon - work on it until the congress is over or the bill is passed. Questions?

Unidentified Corporate Representative

I think we have exhausted the list of questions that I've had come in to me. Wayne?

Wayne Harris - *Hunton & Williams - Chief Counsel, ACES Power Marketing*

I don't have any additional questions, although let me, let me throw this out. procedurally, what are the potential roadblocks that could throw this bill off the road to passage?

Pat McCormick - *Hunton & Williams - Partner in Regulatory Group*

Let me hand that one to Joe Stanko.

Joe Stanko - *Hunton & Williams - Partner*

On the house side, probably none. Things on the house side as you know come to the floor under consideration of a rule and in all likelihood the rule is going to be drafted in a way that could minimize the opportunity for mischief plus I think the votes are a little more solid in the house.

On the senate side, it's pretty easy to explain the threat is always will there be a filibuster. And if there is the threat of a filibuster, do you have 60 votes to pass this bill? And while things are still shaking out as folks have mentioned, this is a 1700 page bill, most of which, or some of which has not seen the light of day as for many member offices in terms of some of the compromises that were reached and the key questions is going to be on these issues, do you have one or more senators motivated enough to try and take a run at it.

Now as I said before the early indicators particularly with the absence of MTBE liability and the stand down of at least the Florida delegation on the OCS is pretty good on this. But that's the thing to watch as to whether somebody says they're going to filibuster and whether we've got a vote count over 60.

You may remember that last year there was a filibuster attempt and they were stuck at 58, 2 votes short, that's why we didn't get a bill. 2 years ago.

Unidentified Corporate Representative

Right, the President is extremely favorable to this bill. Has he started working the phones with the senators or his administration to push for passage?

Joe Stanko - *Hunton & Williams - Partner*

Well my understanding is the President himself made a visit on Monday when the conferees were trying to push this over the goal line and there is no doubt that White House ledge affairs which has been monitoring this process closely is taking a whip count and given the priority that the President has placed upon this legislation if it looks like there are some votes needed on the senate side, in all likelihood there would be some calls made.

Unidentified Corporate Representative

Good.

John Allen - *Halliburton Energy Services - Senior Vice President-Law*

Well with time drawing to the near - or near to the end of our schedule time I'd like to particularly thank Hunton & Williams as a firm and the individual presenters for their time and effort. Its extremely timely as you said when we were starting. I don't think we could have picked a better day for this had we actually had knowledge of when it would come out and the idea that you guys have worked through the night repeatedly to get us this information on such a timely basis is most appreciated. Wayne?

Wayne Harris - *Hunton & Williams - Chief Counsel, ACES Power Marketing*

Yes, I would like to reiterate John's comments. Thank you very much, this has been a wonderful webcast with a lot of information that is exceedingly timely.

Drew Murphy - *Hunton & Williams - Partner in Energy Practice Group and Chairman of Energy Steering Committee*

Well, John and Wayne, this is Drew Murphy. Thank you very much for the opportunity to allow us to talk to the membership today and going forward, if anyone has any questions that occurred to them that they didn't submit but would like to follow up obviously you can get in touch with us, we're listed on the website at rm.com. And you can find our phone numbers there for the various presenters who were talking today and we'll be happy to speak with you further. And look forward to meeting with you again on the next topic.

Unidentified Corporate Representative

Thank you very much.
