HOUSE ENERGY BILL ANALYSIS
H.R. 4 – "The Securing America's Future Energy (SAFE) Act of 2001"

Following is an analysis of the House Energy bill. The provisions listed are wasteful and inefficient provisions in the House Energy bill to which TCS objects. For just the provisions listed, TCS estimates a cost over ten years of at least $34 billion. For more information, please call Cena Swisher at (202) 546-8500 x108:

DIVISION A: "The Energy Advancement and Conservation Act of 2001"
Title III – Nuclear Energy
Section 301: Budget Status of Nuclear Waste Fund
This section would take the Nuclear Waste Fund off-budget. This action would essentially remove the nuclear waste fund from any congressional oversight. Furthermore, since 1983, nuclear power plants have been paying a flat fee of one-tenth of one cent per kilowatt-hour (one mill per kilowatt-hour) to cover the cost of long-term storage on nuclear waste. Unfortunately, the current payment rate fails to cover the costs anticipated to build an eventual long-term storage.

Sec. 306: Cooperative research and development and special demonstration projects for the uranium mining industry
This section would directly subsidize and inappropriately prop-up the uranium mining industry with federal tax dollars. The provision authorizes appropriations of $30 million over the next three years for highly dangerous "in-situ leach" uranium mining. Further, there is no need to mine for more uranium as the U.S. has more than enough stockpiled.

Title V – Fuels
Sec. 604: Funding for MTBE contamination
This section would authorize appropriations of not more than $200 million from the Leaking Underground Storage Trust Fund to the Environmental Protection Agency to use for the assessment, corrective action, and inspection of underground storage tanks and groundwater monitoring in connection with MTBE contamination. Taxpayers should not be paying for investigation and cleanup costs that oil and fuel companies can well afford.

DIVISION B – "Comprehensive Energy Research and Technology Act of 2001"
The Congressional Budget Office estimate of just this bill as reported out of the Science Committee, with amendment, on July 24, 2001 is $18.5 billion from 2002 through 2011.
Title III – Nuclear Energy
Subtitle A – University Nuclear Science and Engineering
This section of the bill would authorize appropriations that would be used by colleges and universities to conduct research and development for nuclear power. This money would also be used in an effort to "beef up" academic programs in nuclear engineering and science around the country, as well as establishing a "recruiting" program for undergraduate and graduate students, as well as faculty. The total authorization of appropriations for carrying out this program would be as follows: $30.2 million for FY02; $41 million for FY03; $47.9 million for FY04; $55.6 million for FY05; and $64.1

million for FY06, for a total of $238.8 million for fiscal years 2002 through 2006.
Estimated cost over five years: $238.8 million

Subtitle B – Advanced Fuel Recycling Technology Research and Development Program
This section would establish on "Office of Spent Nuclear Fuel Research" within the Department of Energy to oversee research and development activities on the disposal and reprocessing of spent nuclear fuel, among other programs. Specifically, this subtitle encourages research into the reprocessing or "transmutation" of nuclear waste. Transmutation of nuclear waste combines particle accelerators, a new type of nuclear reactor that contains liquid lead, and a nuclear fuel reprocessing technology known as "pyroprocessing." This process is designed to lesson the toxicity of radioactive waste. This research program also reverses a decades-old U.S. policy against reprocessing commercial nuclear fuel. The bill would authorize appropriations of $10 million for FY02, and such sums as necessary for fiscal years 2003 and 2004.
Estimated cost over five years: $50 million (when estimating $10 million each fiscal year over five years).

Subtitle C – Department of Energy Authorization of Appropriations
Secs. 2341 and 2342: Nuclear Energy Research Initiative (NERI) and Nuclear Energy Plant Optimization (NEPO)
Section 2341 authorizes and appropriation of $60 million for the NERI program in FY02, and an open-ended appropriation for years thereafter. The appropriation for FY02 is a $25 million increase over fiscal year 2001 funding. Section 2342 also authorizes an appropriation of $15 million for the NEPO program in FY02, and an open-ended appropriation for years thereafter. The open-ended appropriation authorization leaves the door open for a potentially significant increase in funding. **Estimated costs for over five years: NERI -- $300 million and NEPO -- $75 million**

In fiscal year 1999, Congress created NERI and NEPO in order to "address and overcome the principal technical obstacles to the expanded use of nuclear energy," and to create a domestic and overseas market for nuclear power. At the same time, the DOE created the NEPO program to improve the economic competitiveness of existing nuclear power plants. Much of the funding from NERI and NEPO go to the largest and most profitable energy companies, including General Electric and Westinghouse.

Compounding the egregiousness of this proposal is the fact that the federal government has already given over $66 billion in subsidies to the commercial nuclear industry from fiscal years 1948 through 1998.

The mature nuclear power industry should be paying for its own commercial research and development costs. Furthermore, the research done under the NERI program may be duplicative of research already being conducted by the Nuclear Regulatory Commission (NRC).

Sec. 2343: Nuclear Energy Technologies
Also part of Subtitle C is this section authorizing appropriations to conduct research and development to develop nuclear power plant technologies, specifically Generation IV nuclear systems, and facilities within the United States. This section authorizes appropriations of $20 million in fiscal year 2002, with such sums as are necessary for each of the following years. **Estimated cost over five years: $100 million**

Title IV – Fossil Energy
Subtitle A – Coal
Section 2401: Coal and related technologies programs
This section authorizes appropriations for several coal and related technologies research and development programs, including sequestration research and innovations for existing plants. Programs such as these have been given millions of dollars over the past several years in the Interior spending bill, but this bill would authorize the expenditure of even more money on R&D for the very profitable coal industry. Specifically, this bill would authorize $172 million for FY02, $179 million for FY03, and $186 million for FY04. **Estimated cost for these R&D programs over three years is $537 million, and over five years is $909 million.**

Subtitle B – Oil and Gas
Section 2421: Petroleum-oil technology and Sec. 2422: Gas
This section authorizes appropriations for research and development activities for oil and natural gas. Under this subtitle, these programs would receive millions of taxpayer dollars to conduct this R&D work. The appropriations for these sections are authorized in Section 2481, with a portion of this money going to fuel cell research and development Section 2481 authorizes the following appropriation levels for Subtitle B, as well as Subtitle D and other activities: $238 million for FY02, $237 million for FY03, $257 million for FY04. **Estimated cost over three years is $732 million, and over five years is $1.4 billion.**

Subtitle C – Ultra Deepwater and Unconventional Drilling
This section would authorize the development of a new ‘‘Ultra-Deepwater and Unconventional Gas Research Fund’’, which would engage in research and development activities for deepwater natural gas and petroleum. Appropriations for this new “Fund” would come from $900 million in Treasury loans for fiscal years 2002 through 2009, regular appropriations activity, and a percentage of the income from oil and gas leases.

DIVISION C – “Energy Tax Policy Act of 2001”
Title I – Conservation
Sec. 3108: Credit for energy efficiency improvements to existing homes; Sec. 3109 Business credit for construction of new energy efficient home.
In general, this provision would create a new tax credit for energy efficiency improvements to new homes and for existing homes. For new homes, up to $2,000 would be available to home builders who construct houses that save 30 percent of energy compared to national model standards. For existing homes, taxpayers could receive 20 percent of their expenditures (up to $2,000) on similar energy efficiency measures. **JCT**

estimates that these two credits will cost $1.4 billion for 2002 through 2006, and $1.6 billion for 2002 through 2011.

Sec. 3115: Phaseout of 4.3-cent motor fuel excise taxes on railroads and inland waterway transportation which remain in general fund.
The annual revenue loss will increase after 2011, as that is when the excise tax is fully repealed. **JCT estimates that the repeal of these excise taxes will cost $240 million for 2002 and 2006, and $992 million for 2002 through 2011.**

Sec. 3117: Credit for investment in qualifying advanced clean coal technology; Sec. 118: Credit for production from qualifying advanced clean coal technology
These sections allow companies that invest in clean coal technology to deduct investment credits, as well as get tax credit for production from a qualifying clean coal technology unit. This means that not only will companies participating in the Clean Coal Technology Program (CCTP), or the new Clean Coal Power Initiative, receive the spending subsidy for developing the clean coal technology, but, they will receive tax breaks for using the technology -- in effect, a double subsidy. **JCT estimates that these two tax credits will costs the Treasury $1.3 billion for 2002 through 2006, and $3.3 billion for 2002 through 2011.**

Title II – Reliability
Sec. 3201: Natural gas gathering lines treated as 7-year property
JCT estimates that this change will have a negligible revenue effect.

Sec. 3202: Natural gas distribution lines treated as 10-year property
JCT estimates that this provision will cost the Treasury $984 million for 2002 through 2006, and $3.5 billion for 2002 through 2011.

Sec. 3203: Petroleum refining property treated as 7-year property
JCT estimates that his provision will cost the Treasury $568 million for 2002 through 2006, and $1.3 billion for 2002 through 2011.

Sec. 3206: Determination of small refiner exception to oil depletion deduction
JCT estimates that this provision will cost taxpayers approximately $71 million for 2002 through 2006, and will cost $151 million for 2002 through 2011.

Sec. 3210: Modifications to special rules for nuclear decommissioning costs
Taxpayers for Common Sense believes that the beneficiaries of nuclear power plants should pay the full life-cycle costs of the construction, operation, waste disposal and decommissioning of nuclear power plants.

Current law provides preferential tax breaks to rate-regulated utilities in order to reduce the decommissioning costs that the utilities would otherwise be entitled to pass on to their ratepayers. These utilities make tax-deductible contributions into “qualified funds” established to decommission nuclear power plants. Investment income from these funds is taxed at the reduced rate of 20 percent. These funds must be used exclusively for the

payment of decommissioning costs, taxes on fund income, payment of management costs and making investments. In addition to the qualified funds, utilities may have set aside nonqualified funds for decommissioning. Contributions to these funds are not tax-deductible and the income on the nonqualified funds is taxed at the utility's marginal rate.

However, these tax benefits do not apply if the plant is sold from a regulated, or "public," utility to a non-regulated, or "merchant," entity. Such entities may include a corporate entity outside the state's jurisdiction or one that is partly foreign-owned. Since there is no longer a public utility commission to set electric rates or a cost of service amount, the decommissioning fund is transferred into a nonqualified fund and the balance is then taxable.

There is no justification for giving merchant plant owners a tax break originally justified to help rate-regulated, investor-owned utilities. Merchant companies buy the former rate-regulated utilities with the expectation of competing in an unregulated market. Therefore, ratepayer protections do not and should not apply to the owners of merchant plants.

This provision would inappropriately shift the costs of decommissioning from the nuclear industry and plant owners to taxpayers. It would give the nuclear power industry a billion-dollar tax break and then expect taxpayers to make up the difference. **The Joint Committee on Taxation has estimated that from the revenue loss from these changes would be $697 million from 2002 through 2006, and $1.9 billion for 2002 through 2011.**

Title III – Production

Sec. 3301: Oil and gas from marginal wells

This tax credit would allow an income tax credit of $3 per barrel of oil and 50 cents per 1,000 cubic feet of natural gas production from marginal wells. The purpose of the credit would be to keep "marginal wells" – or wells that are not as profitable when prices drop -- open.

TCS argues that economically inefficient wells should be subject to market forces and should not be bailed out by taxpayers, costing potentially hundreds of millions without relieving the current reliance on foreign oil. In its latest analysis, JCT estimates no revenue effect for tax credits for oil and gas production from marginal wells. However, a previous analysis of a similar provision in the "Community Renewal Act of 2000" estimated a two-year cost to the Treasury of $12 million.

Sec. 3302: Suspension of limitation based on 65 percent of taxable income and extension of suspension of taxable income

The percentage depletion allowance lets companies deduct capital investments, including "write-offs" that reflect the declining value of a well. Larger oil and gas companies can currently deduct 15%, while independent producers can deduct 100 percent of the net income for a drilling operation. This section repeals the limitation so companies can

deduct an unlimited amount, creating a loss of hundreds of millions of tax revenue. **JCT estimates that this provision would cost $898 million for 2002 through 2011.**

Sec. 3303: Deduction for delay rental payments
Oil and gas producers typically contract for mineral production in exchange for royalty payments. If mineral production is delayed, these contracts provide for "delay rental payments" as a condition of their extension. This proposal would allow those delay rental payments to be deducted currently. **JCT estimates that this provision would cost $547 million for years 2002 through 2006, and $1.2 billion for 2002 through 2011.**

Sec. 3304: Election to expense geological and geophysical expenditures
Geological and geophysical expenditures are considered capital costs to increase the value of the land and therefore are depreciated over the useful life of the land. The proposal would allow geological and geophysical costs incurred in connection with oil and gas exploration in the United States to be deducted currently. In the current tax code, costs associated with inventory and property held for resale are capitalized rather than currently deducted. **The estimated cost of this proposal would be $626 million over 5 years and $958 million over ten years.**

Sec. 3305: 5-year net operating loss carryback for losses attributable to operating mineral interests of oil and gas producers
At the present time, when companies experience a net operating loss (NOL), which is the amount by which business deductions exceed business gross income, they can be carried back 2 years or carried forward 20 years to offset taxable income in such years. A carryback of a NOL results in the refund of Federal income tax for the carryback year. This proposal would provide a special five-year carryback for certain eligible oil and gas losses. **The estimated cost of this tax break would be more than $423 million over 5 years, or $1.1 billion over 10 years.**

Sec. 3306: Extension and Modification of Credit for Producing Fuel From a Nonconventional Source (Section 29 Tax Credit)
Section 29 of the Internal Revenue Code currently allows oil and gas companies to take a production tax credit for fuels produced from non-conventional sources. **JCT estimates that the extension and modification of this credit as proposed in the bill would cost taxpayers $1.5 billion over 5 years, and $2.8 billion over ten years.** However, this estimate could be extremely conservative. Previously, JCT had estimated that this credit would cost taxpayers approximately $7 billion over five years, and $12 billion over ten years. This expansion, combined with current law, could cost the Treasury at least $10 billion over ten years. This proposal would extend the life of the credit through 2007.

This program was instituted in an effort to decrease American dependence on foreign oil, and is a remnant of the Carter Administration's "synfuels" program. However, it has not lead to major increases in alternative fuel production and has not helped to decrease our reliance on foreign oil.

DIVISION E – "The Clean Coal Power Initiative Act of 2001"
This division of the Energy bill would authorize appropriations for a new round of clean coal technology projects through fiscal year 2011. The intended purpose of the program would be to eventually develop and demonstrate advanced clean coal technologies for coal-fired power plants, for which the bill authorizes the appropriation of $200 million each fiscal year from 2002 through 2011. **Estimated cost over ten years: $2 billion**

In 1984, Congress authorized an up-front appropriation of $2 billion for the first Clean Coal Technology Program. The current CCTP encourages private companies to develop cleaner burning coal technologies by providing matching federal funds (up to 50 percent) for projects designed mainly for existing power plants. The problem is that CCTP projects waste millions of taxpayer dollars each year on research that has already been done and that the coal industry should conduct with private funding. The coal industry is capable of supporting its own research and development costs. According to the Energy Information Administration, 1.04 billion tons of coal was consumed in the U.S. in 1998, while the net income of coal companies in 1998 was $500 million.

The "Clean Coal " technology program is fraught with waste, fraud and abuse. The General Accounting Office (GAO) has released over seven studies documenting the waste and mismanagement within the CCTP. In fact, a GAO report from March 2000, found that eight ongoing CCTP projects "had serious delays or financial problems." Two of the eight projects are in bankruptcy and are unlikely to be completed, and the other six are seriously behind their original completion schedules.

The new coal programs and tax credits authorized in this legislation are being sold under the oxymoronic moniker of "clean coal." Since 1984, the coal industry has been subsidized to the tune of $2.4 billion through the "Clean Coal" Technology Program (CCTP). This program, similar to some of the new programs proposed in this bill (see below), encourages private companies to develop cleaner burning coal by providing matching federal funds. By definition, the burning of coal will never be "clean." Coal is without question the dirtiest fossil fuel and burning it produces contaminants such as carbon dioxide, sulfur dioxide, nitrogen oxides and mercury. In addition, several reports from the General Accounting Office (GAO) have already documented waste and mismanagement in the use of CCTP funds. Thus, this program has amounted to an egregious waste of money; the mature and very profitable coal industry does not need billions of dollars more in handouts from federal taxpayers.

DIVISION F: "Energy Security Act"
Title II – Oil and Gas Development

Subtitle A: Offshore Oil and Gas
Sec. 6202: Lease sales is Western and Central Planning Area of the Gulf of Mexico
This section would require the suspension of royalties for certain offshore oil and gas leases, which would essentially hand wealthy and profitable oil and gas companies a multi-billion dollar royalty holiday. This royalty holiday will cost the Treasury millions.

Sec. 6224. Limitations on cost recovery for applications.
Currently, the Federal Land Policy and Management Act requires oil and gas companies to cover the administrative costs of the oil and gas program. This section would prohibit the Department of the Interior from requiring oil and gas companies to cover these costs. This provision would leave federal taxpayers on the hook at the benefit of wealthy oil and gas companies.

Sec. 6232. Program on oil and gas royalties in kind.
This section would authorize oil and gas companies to pay royalties to the federal government in the form of oil, or "in kind". There are numerous problems with instituting this kind of policy, however. The program is likely to cost taxpayers hundreds of millions of dollars per year, and the costs of administering such a program would more than likely outweigh any benefits. Feasibility studies by the Minerals Management Service (MMS) on the RIK program demonstrate the federal government may lose money with the program. In fact, the current RIK pilot programs have actually lost money. The two RIK pilot programs that Interior has completed have failed, both losing significant revenues when compared to traditional royalty payment programs. **The fact of the matter is that the federal government should not be in the business of marketing oil.**

Sec. 6233: Marginal well production incentives
This section would change the definition of marginal wells to those onshore oil wells that produce less than 30 barrels of oil, onshore gas wells producing less than 120 million British thermal units per day, offshore oil wells producing less than 300 barrels of oil per day, and offshore gas wells producing less than 1,200 million British thermal units per day. This language would expand the definition of marginal wells to include a higher number of producers, and thus would provide royalty relief for an increased number of wells.

Sec. 6234. Reimbursement for costs of NEPA analyses, documentation, and studies
This section would allow oil and gas companies to recover traditional costs of doing business by reducing their federal royalties to cover the cost of NEPA studies paid for by drilling permit applicants. Thus, this section would shift the traditional costs of doing business from wealthy oil and gas companies to hardworking American taxpayers.