

O EAST OREGONIAN PINION

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OTHER VIEWS

Lawmakers don't owe secrecy to fuel industry

The Bend Bulletin

Here's a prediction for the coming legislative session, which begins in January: The fuel industry, led by Chevron, will seek to change the law underpinning Oregon's Clean Fuels Program in a way that hides the operation of its credit market securely from public view. When that effort begins, legislators should consider the state motto, "She flies with her own wings."

This motto celebrates Oregon's independent spirit, which has sent the fuel industry into a tizzy in recent weeks. How dare Oregon be different!

Perhaps nowhere is this indignation more evident than in the words of Jason Schwenneker, executive director of Iowa-based biofuel giant Renewable Energy Group. REG has joined a November lawsuit brought by Chevron that seeks to block the release of credit-transaction information related to the Clean Fuels Program.

Disclosing such information, Schwenneker practically huffs in a court filing, would make Oregon's credit market "the only carbon compliance trading program in North America, if not in the world, in which this kind of disclosure occurs."

Since when is being different a bad thing, if that's what the public interest demands?

This transparency fight began in October, when the Oregon Department of Environmental Quality refused to release credit-transaction information requested by a *Bend Bulletin* editor. The *Bulletin* appealed the denial, and in November the Oregon Department of Justice ordered DEQ to release the information. Chevron promptly summoned its lawyers to fight the release and, in an unmistakable message to journalists, sued the editor who'd made the request.

Transparency matters because the credit market is, at heart, a mechanism for spending public money.

Under the Clean Fuels Program, importers of conventional road fuels, such as Chevron, generate carbon deficits, which they eliminate by purchasing credits from a variety of entities, including producers of low-carbon fuels such as REG. This complex subsidy program is funded by motorists, who pay for carbon credits at the pump.

Problem is, the people footing the bill aren't permitted to see where their money's going, as DEQ makes only aggregate credit-sale data available to the public. Anyone who wonders which companies are winning big under the Clean Fuels Program, and whether the program is operating as lawmakers intended, is out of luck.

Of course, that's just the way the fuel industry likes it. To paraphrase REG's Schwenneker, if secrecy is good enough for the rest of North America — and maybe the world — why shouldn't it be good enough for Oregon?

We're in no position to judge the operations of credit schemes elsewhere. But to the degree that other schemes resemble Oregon's fuel program, a better question might be why transparency is the exception rather than the rule. Consider Schwenneker's arguments for secrecy.

The *Bulletin*, Schwenneker notes, requested information that would show "the timing of trades, the identities of the participants, the number of credits to be transferred and the price to be paid per credit."

The release of such information, he argues, might allow competitors "to undercut and manipulate others' pre-existing trading relationships, which in many cases have been developed over the years with significant effort and investment."

Transparency certainly would change the credit-trading landscape.

However, as the DOJ argued in its order requiring disclosure, "it is at least as likely the efficiency of the credit market will improve as a result of greater transparency."

An economist consulted by the DOJ



AP Photo/Paul Sakuma, File

This March 9, 2010 file photo shows a tanker truck passing the Chevron oil refinery in Richmond, Calif.

noted, for instance, that "transparency should make it easier for the market participants and others to detect any collusive — and potentially illegal — market behaviors that could contribute to market inefficiencies."

You'd think such a policing mechanism would reassure market participants. Yet Schwenneker argues that credit sellers "like REG, which have opportunities to do business in multiple markets, may opt to take their business elsewhere." Harrumph!

But even as he insists upon secrecy, Schwenneker accidentally makes a case for its opposite: "To function effectively," he argues, "a market requires an adequate supply of both buyers and sellers at each point when a transaction is needed. Oregon's CFP credit market has already struggled with striking this balance. To date, the market has suffered from a lack of liquidity resulting from an insufficient supply of available credits when needed."

So, even after two years in operation, the state's Clean Fuels Program still doesn't work well. And as a consequence, it suffers from a supply and demand mismatch that could,

one imagines, encourage the sort of market behaviors about which the DOJ warns.

Yet journalists, lawmakers and other members of the public can do no more than imagine the kind sort of sausage that's being made inside Oregon's super-secret credit market. They must place their trust, instead, in program regulators. What could possibly go wrong?

If insisting upon transparency is weird, then state lawmakers should embrace weird next year. Resisting attempts to bury credit-market information even deeper would be a good start. Better yet, legislators should require its regular disclosure as a matter of law.

If such transparency causes the Clean Fuels Program to implode, as Schwenneker warns, that's not necessarily a bad thing. If he's to be believed, it doesn't work well anyway.

And surely a state that prides itself on its independent spirit can come up with a way to subsidize alternative-fuels businesses and reduce carbon emissions without keeping the public utterly in the dark.

OTHER VIEWS

Case against Flynn nears end with no-jail recommendation

Michael Flynn has been waiting for more than a year to be sentenced. The retired three-star Army general, who spent 24 days as the Trump White House national security adviser, pleaded guilty on Dec. 1, 2017, to lying to the FBI in the Trump-Russia investigation. He agreed to cooperate with special counsel Robert Mueller.

Flynn's sentencing, which has been delayed a number of times for reasons that have never been disclosed, is scheduled to finally take place on Dec. 18. Late Tuesday, Mueller filed what is called a sentencing report. Citing Flynn's "substantial assistance" to the investigation, Mueller recommended "a sentence at the low end of the guideline range — including a sentence that does not impose a period of incarceration."

It's no surprise Flynn might be spared jail time. So far, two figures in the Trump-Russia matter have been sentenced for lying to investigators, the same offense as Flynn. Alex van der Zwaan, a bit player connected to Paul Manafort, was sentenced to 30 days in jail. George Papadopoulos, a short-time Trump campaign foreign policy adviser, was sentenced to 14 days — and that was after Mueller complained that Papadopoulos had not been cooperative when he was purportedly assisting the investigation.

Flynn, on the other hand, is a retired general with a long record of service to the United States, which Mueller took into consideration in recommending no jail time. "The defendant's record of military and public service distinguish him from every other person who has been charged as part of the (special counsel's) investigation," Mueller wrote.

What the sentencing recommendation did not address was the sketchy beginnings of the Flynn investigation. It started with the Obama administration's unhappiness that Flynn, during the transition as the incoming national security

BYRON YORK
Comment

adviser, had phone conversations with Russia's then-ambassador to the U.S., Sergey Kislyak. Because Kislyak was under American surveillance, U.S. intelligence and law enforcement agencies had recordings and transcripts of the calls, in which Flynn and Kislyak discussed the sanctions Obama had just imposed on Russia in retaliation for its 2016 election interference.

There was nothing wrong with an incoming national security adviser talking to a foreign ambassador during a transition. There was nothing wrong with discussing the sanctions. But some officials in the Obama Justice Department decided that Flynn might have violated the Logan Act, a 218-year-old law under which no one has ever been prosecuted, that prohibits private citizens from acting on behalf of the United States in disputes with foreign governments.

The Obama officials also said they were concerned by reports that Flynn, in a conversation with Vice President Mike Pence, had denied discussing sanctions. This, the officials felt, might somehow expose Flynn to Russian blackmail.

So Obama appointees atop the Justice Department sent FBI agents to the White House to interview Flynn, who was ultimately charged with lying in that interview.

The FBI did not originally think Flynn lied. In March 2017, then-FBI director James Comey told the House Intelligence Committee that the two FBI agents who questioned Flynn "did not detect any deception" during the interview and "saw nothing that indicated to them that (Flynn) knew he was lying to them," according to the committee's report on the investigation into the Trump-Russia affair. Comey said essentially the same thing to the Senate Judiciary Committee and, in the words of chairman Charles Grassley, "led us to believe ... that the Justice Department was unlikely to prosecute (Flynn) for false statements made in the interview."

FBI number two Andrew McCabe told the House the same thing. "The two people who interviewed (Flynn) didn't think he was lying, (which) was not (a) great beginning of a false statement case," McCabe told the Intelligence Committee.

Only later, after Comey was fired and Mueller began his investigation, was Flynn accused of lying. He ultimately pleaded guilty.

Mueller's sentencing recommendation specifically mentions the suspicion that Flynn violated the Logan Act. It says nothing about the Obama Justice Department's blackmail tale.

Hill Republicans have been suspicious about the Flynn case for quite a while. But they have not been able to get their hands on some key documents and testimony that might tell them what happened.

House investigators have a chance to learn more this week when, on Friday, Comey appears for a behind-closed-doors interview with members of the Judiciary and Oversight committees.

Lawmakers have promised to release the transcript of the interview within a day or two of its completion. That might possibly give the public a more complete picture of the Flynn case. Investigators could ask Comey specifically how the agents who interviewed Flynn characterized his answers and behavior. They could ask whether Comey believed Flynn would be indicted. They could ask what evidence Comey saw to suggest that Flynn did, in fact, lie. And they could ask if Comey ever saw the reports, the so-called 302s, that the agents wrote describing the interview.

Congress has long ago pressed the Justice Department to hand over the 302s and other documents. So far, the answer has been no. But soon the Flynn case will be entirely over. Perhaps then the public will finally learn what really went on in United States of America v. Michael T. Flynn.

Byron York is chief political correspondent for *The Washington Examiner*.

YOUR VIEWS

City hall losing focus on city streets

Now that construction of a new hotel at the Pendleton airport has been approved, city hall is proposing construction of a second hotel in the Happy Canyon parking lot. However, it seems the city doesn't own the property and would trade publicly owned property west of Southwest 18th Street for the proposed construction site. Evidently hotels are big business; our city streets and convenient parking are not.

I fully expect the Rivoli Theater Coalition will soon be approaching the city council to request another handout. They are rapidly running out of money, and the city always seems eager to provide more, keeping this money pit above water while the asphalt on Main Street continues to crack and crumble. Perhaps declaring city streets as "historical," city hall would show more interest in their renovation.

In an effort to deflect attention away from the delays and ballooning costs of the Eighth Street Bridge project, it appears city management has decided to form another new committee, the North Bank Umatilla Advisory Committee. It looks like we'll end up with another new program much like the "River Quarter Overlay," spending huge amounts on consulting fees to develop some plan the city cannot afford to fund, and all at the expense of maintaining our city streets.

According to recent city news, \$781,000 was planned for street repairs in 2018. After promising an increase using a portion of the marijuana taxes and increased state gas taxes, the public works director expects to spend \$725,000 in 2019, a decrease of \$56,000. Spending \$190,000+ of gas tax funding for electricity instead of the asphalt for which it was intended makes little sense, considering the condition of our city streets.

Despite generous salaries, our city management team seems unable to operate the city efficiently. Another consultant, an efficiency expert, is apparently in the cards to get the city back on track. Discipline, a little bit of common sense, and a focus on a program that affects everyone, not just a chosen few, are really what's needed, and that, my friends, is maintenance of our public streets.

Rick Rohde
Pendleton

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