

David Leiter

Sarah Litke

DJLeiter@mlstrategies.com

SLitke@mlstrategies.com

ENERGY AND ENVIRONMENT UPDATE
July 25, 2010

Energy and Climate Legislation

After months of negotiations in the Senate over how to move forward on climate and energy legislation, Majority Leader Harry Reid (D-NV) announced Thursday, July 22, that he will bring a scaled down oil spill and energy bill to the floor before the August recess and leave the larger climate and energy package for later this year.

Majority Leader Reid is expected to introduce a four part package this week that will include oil spill language, a Home Star consumer energy efficiency rebate program, incentives for long-haul trucks to switch to natural gas, and funding for land and water conservation efforts. The inclusion of other pieces, including a renewable electricity standard, is yet to be determined, but Majority Leader Reid plans to unveil his package this week.

With the August recess looming and floor time at a premium through the rest of this Congress, the move was announced after two Democratic caucus meetings last week failed to provide consensus on how to move forward on the broad legislation this year. The majority leader vowed to continue to work with climate bill supporters such as Senators John Kerry (D-MA) and Joe Lieberman (I-CT), as well as industry and environmental groups to garner the necessary support to move forward on a larger bill in the future.

Finger pointing has already begun, as Senate Democrats, the Obama Administration, environmental groups, and industry leaders share frustration over the bill's status. With the collapse of Senate climate legislation, the World Resources Institute last week issued a report concluding that significant GHG reductions could be achieved using existing authority if federal agencies and states take leadership to reduce the emissions, but that most scenarios would still leave the US short of the reductions it pledged in the Copenhagen Accord and those that scientists agree are needed to keep global temperatures from rising more than 2 degrees Celsius. As a result of the Senate's failure to bring climate change legislation to the floor this summer, attention will increasingly be drawn to the EPA's upcoming January deadline to begin regulating greenhouse gas emissions from stationary sources under the Clean Air Act. Senator Jay Rockefeller (D-WV) has vowed to bring his 2 year delay amendment to the floor soon, but no date for its consideration has been set. Additionally Senate Republican leaders plan to offer a counterproposal to Majority Leader Reid's scaled back proposal.

Energy and environmental advocates are continuing to work with Senate leadership to solidify language in the bill. The Senate will also need to address a number of other legislative priorities, including the confirmation of a new Supreme Court Justice, before the August recess. One thing is for sure, as time grows short and calendars grow full, this week is sure to be a busy one for energy policy on the Hill.

Senate

Oil Spill Hearings Continued Thursday

The Senate Commerce panel favorably voted out of committee two Gulf Coast oil spill response bills last Thursday, July 22. The first (S. 3600) would amend decades-old federal laws that deal with the liability of

vessel owners and operators. The second (S. 3614) would establish the Maritime Center of Expertise for Maritime Oil Spill and Hazardous Substance Release Response. Also last week, the Senate Health, Education, Labor, and Pensions Committee questioned BP Vice President Steve Flynn on the company's internal protections for workers on rigs, refineries, and in the Gulf of Mexico. And a Senate Homeland Security subcommittee questioned Kenneth Feinberg, who was appointed by the President to handle the \$20 billion claims fund established using money from BP, about how the federal government will be reimbursed for losses.

The Senate Commerce Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard held a hearing last Wednesday to examine clean up and restoration of the Gulf Coast, including whether NOAA and the Coast Guard have adequate resources to coordinate and oversee the process.

Energy Committee Moves Six Energy Pieces

The Senate Energy and Natural Resources Committee held a hearing last Wednesday to mark up nine energy bills, several of which may ultimately end up in a broader energy package later this year. The six bills that moved forward would ramp up production of plug-in cars and trucks and boost solar deployment and nuclear energy.

Agriculture Committee Assesses Energy Programs

The Senate Agriculture Committee met last week to assess potential changes to federal ethanol support and other rural energy programs as the panel begins to consider possibilities for the next farm bill. The Obama Administration and industry groups are beginning to float significant changes to how the federal government supports biofuels and rural energy projects.

Commerce Panel Votes Out COMPETES

The Senate Commerce Committee favorably voted out of committee last Thursday S. 3065, which reauthorizes portions of the 2007 America COMPETES bill, which expires at the end of the year. The House passed its \$84 billion version in late May.

Energy and Water Appropriations Bill Approved

The Senate Appropriations Subcommittee on Energy and Water Development approved a \$35 billion spending bill without objection July 20, and the full committee marked up and approved the bill July 22. The fiscal 2011 energy and water development appropriations bill includes \$28.3 billion for the Department of Energy, \$5.3 billion for the Army Corps of Engineers, and \$1.1 billion for the Department of Interior.

Senate Passes Energy Efficiency Training Bill

The Senate passed the Federal Buildings Personnel Training Act of 2010 (S. 3250) July 20. The legislation would identify necessary skills and establish energy efficiency and other training programs for federal workers who maintain federal buildings. Companion legislation (H.R. 5112) has been introduced in the House.

Legislation Introduced

On Monday, July 19, Senators Chuck Schumer (D-NY) and Chuck Grassley (R-IA) introduced legislation (S. 3608) to amend the Internal Revenue Code of 1986 to modify the credit for qualified fuel cell motor vehicles by maintaining the level of credit for vehicles placed in service after 2009 and by allowing the credit for certain off-highway vehicles.

The same day, Senators Kay Bailey Hutchison (R-TX) and George LeMieux (R-FL) introduced legislation (S. 3614) to authorize the establishment of a Maritime Center of Expertise for Maritime Oil Spill and Hazardous Substance Release Response.

On Tuesday, July 20, Senators Bingaman, Ron Wyden (D-OR), and Jeanne Shaheen (D-NH) introduced legislation (S. 3617) to provide \$1.4 billion for energy investment credits for energy storage property connected to the grid in an effort to promote development of intermittent energy sources like wind and

solar while reducing energy demands during peak times. The bill builds on legislation (S. 1091) that Senator Wyden introduced last year.

Senator George Voinovich (R-OH) introduced legislation (S. 3618) to further enable a nuclear renaissance to the United States to improve energy security, reduce future pollution and greenhouse gas emissions, provide large, reliable sources of electricity, and create thousands of high-quality jobs for American citizens.

Senator Jon Tester (D-MT) introduced legislation (S. 3619) to improve geothermal energy technology and demonstrate the use of geothermal energy in large scale thermal applications.

On July 21 Senators Mike Johanns (R-NE) and Schumer introduced legislation (S. 3622) to require the EPA Administrator to finalize a proposed rule to amend the spill prevention, control, and countermeasure rule to tailor and streamline the requirements for the dairy industry.

Senators Al Franken (D-MN) and Kit Bond (R-MO) introduced the Thermal Renewable Energy and Efficiency Act (S. 3626) to encourage the implementation of thermal energy infrastructure, including by creating a renewable thermal energy production tax credit. Representatives Betty McCollum (D-MN), Jay Inslee (D-WA), and Paul Tonko (D-NY) introduced companion legislation (H.R. 5805) in the House.

On July 22, Senators Amy Klobuchar (D-MN) and George LeMieux (R-FL) introduced legislation (S. 3630) to improve the commercialization potential of National Science Foundation grants and enhance the metrics used to assess such potential.

Senator Patty Murray (D-WA) introduced legislation (S. 3631) to encourage clean technology innovation.

Senators Tom Carper (D-DE) and Olympia Snowe (R-ME) introduced the Federal Procurement of Recycled Materials to Reduce Greenhouse Gas Emissions Act (S. 3633) to amend the Solid Waste Disposal Act to improve a provision relating to Federal procurement of recycled materials to reduce GHG emissions by indicating that the price of recycled products would not be considered unreasonable if they contain at least 25 percent recycled materials and the price is not more than 110 percent of the cost of the highest priced non-recycled material.

Senators Bingaman and Tom Udall (D-NM) introduced legislation (S. 3634) to clarify the types of energy conservation subsidies provide by public utilities eligible for income exclusion.

Senators Barbara Boxer (D-CA), Jeff Merkley (D-OR), Kirsten Gillibrand (D-NY), and Mark Begich (D-AK) introduced legislation (S. 3642) to ensure that the underwriting standards of Fannie Mae and Freddie Mac facilitate the use of property assessed clean energy programs to finance the installation of renewable energy and energy efficiency improvements.

Upcoming Hearings

On Tuesday, July 27, the Senate Small Business and Entrepreneurship Committee will hold a hearing called The Deepwater Drilling Moratorium: A Second Economic Disaster for Small Business?

The Water and Wildlife Subcommittee of the Senate Environment and Public Works Committee will hold a hearing to assess the natural resources damages resulting from the Gulf of Mexico oil spill.

The Senate Judiciary Committee will hold a hearing called "Exxon Valdez to Deepwater Horizon: Protecting Victims of Major Oil Spills" on the 27th.

Also on the 27th, the Joint Economic Committee will hold a hearing on how to promote a clean energy economy.

House

Progress on Energy Tax Package

House Ways and Means Chairman Sandy Levin (D-MI) last week unveiled a draft of an energy tax bill and said that offsets for the package ultimately hinge on what is included in the package. It is likely that there will be no markup or floor vote on the legislation prior to the August recess, but the centerpiece of the bill will be to expand the Advanced Energy Manufacturing Tax Credit. Other pieces of the \$22 billion package will include an extension of the Grants in Lieu of Tax Credits Program, an extension of the ethanol tax credit, and a number of other clean energy and green jobs provisions.

Subcommittee Approves Spending Bill

The House Appropriations Subcommittee on the Department of the Interior, Environment, and Related Agencies approved a FY 2011 environmental program spending bill, rejecting an amendment that would have imposed a two-year delay on the EPA's regulation of GHG's under the Clean Air Act. The bill would provide the EPA with just over \$10 billion for the year, \$271 million less than 2010 funding. The bill would provide the Department of the Interior \$11 billion, \$4 million more than the FY2010 budget.

Oil Spill Hearings and Votes Continue

Last week the House voted on two oil-spill research and development measures that would improve federal cleanup efforts and oil and gas drilling technologies. On Tuesday, the House Ways and Means Subcommittee on Oversight held a hearing to consider the increasing need for charitable assistance and how donations are being used in the cleanup efforts. Also on Tuesday, former Interior secretaries Gale Norton and Dirk Kempthorne joined current Secretary Ken Salazar at an Energy and Commerce Committee hearing to discuss the agency's failures leading up to the Gulf of Mexico oil spill. Last Wednesday, the House Judiciary Committee examined whether victims are being fairly compensated under the claims system.

Committee Approves Clean Energy Technology Exports

The House Energy and Commerce Committee approved legislation (H.R. 5156) last Wednesday to implement a strategy to promote clean energy technology exports. Representative Doris Matsui's (D-CA) Clean Energy Technology Manufacturing and Export Assistance Act would authorize \$75 million over five years for the Department of Commerce's International Trade Association to help implement the program. Floor consideration of the bill could occur as early as July 28.

Legislation Introduced

On Monday, July 19, Congressman Bill Pascrell (D-NJ) introduced legislation (H.R. 5771) to extend the 30 percent investment tax credit for offshore wind facilities.

The same day, Congressman Pete Olson (R-TX) introduced legislation (H.R. 5772) to limit the moratorium on certain permitting and drilling activities issued by the Secretary of the Interior.

On July 20, Congressmen Mike Ross (D-AR) and John Shimkus (R-IL) introduced legislation (H.R. 5778) to facilitate the implementation of the Renewable Fuel Standard.

Congressmen Gary Peters (D-MI) and Peter Welch (D-VT) introduced legislation (H.R. 5780) to reduce deficits and government spending through the elimination of wasteful energy subsidies and programs.

Congressmen Russ Carnahan (D-MO) and Shimkus introduced legislation (H.R. 5789) to create clean energy jobs and set efficiency standards for small-duct high-velocity air conditioning and heat pump systems.

Congressman John Garamendi (D-CA) was joined by eleven cosponsors in introducing legislation (H.R. 5792) to require 100 percent domestic content in green technologies purchased by Federal agencies or by States with Federal funds and in property eligible for the renewable energy production or investment tax credits.

On July 22, Congressman Steve Cohen (D-TN) introduced legislation (H.R. 5821) to require the Secretary of Energy to provide competitive grants to States, Indian tribes, and local governments for rebates and loans to eligible parties for the purchase and installation of solar energy systems on domestic properties.

Congressman Martin Heinrich (D-NM) introduced legislation (H.R. 5839) to clarify the types of energy conservation subsidies provided by public utilities eligible for income exclusion.

Congressman John Sarbanes (D-MD) introduced legislation (H.R. 5846) to require the CEO of each drilling and production operation under a lease under the OCS Lands Act to annually certify the operator's compliance with all applicable laws and operating regulations.

Delegate Eni Faleomavaega (D-American Samoa) introduced legislation (H.Res. 1552) supporting a legally binding global agreement to reduce GHG emissions and provide financial assistance to the poorest and most vulnerable nations for adaptation and mitigation measures.

Upcoming Hearings

On July 27, the House Foreign Affairs Subcommittee on Asia, the Pacific, and the Global Environment will hold a hearing on providing climate change mitigation and adaptation assistance for vulnerable countries.

The same day, the House Energy and Commerce Subcommittee on Commerce, Trade, and Consumer Protection will hold a hearing on the impact of the Gulf of Mexico oil spill on Gulf Coast tourism.

On Wednesday, July 28, the Energy and Environment Subcommittee of the House Science and Technology Committee will mark up pending legislation.

The following day, the House Natural Resources Subcommittee on Water and Power will hold an oversight hearing on investing in low impact and affordable hydropower generation.

Administration

Federal Government to Reduce Travel GHGs

The White House released a statement July 20 saying that the Federal Government will reduce GHG emissions from indirect sources such as employee travel and commuting by 13 percent by 2020. The commitment extends beyond the Administration's January GHG reduction target from direct sources, such as federal fleets and buildings. The new order is an effort to advance the priorities of October's Federal Leadership in Environmental, Energy, and Economic Performance Executive Order.

Department of Agriculture

USFS Maps Climate Strategy

The U.S. Forest Service released a plan July 20 to manage climate change in national forests and grasslands through adaptation, mitigation, education, and reduced consumption of energy and water. In addition to the National Roadmap for Responding to Climate Change, the USFS issued a scorecard that each national forest must complete listing 10 plan elements and outlining how they are accomplished.

Department of Energy

DOE Hosts Clean Energy Ministerial Meeting

Energy officials from 24 countries discussed strategies for increasing the production of clean energy across the world during a Clean Energy Ministerial meeting hosted by the Department of Energy last Monday and Tuesday. Nearly a dozen new initiatives to accelerate clean energy technologies and their use were announced and endorsed during the closed-door meeting, including the development of several technology action plans for renewable energy development. The U.S. has pledged \$10 million for the first year of the initiatives, but the agency is expected to pledge additional funding in the coming years.

Second Phase Funding for CO2 Conversion Program

The Department of Energy announced July 22 that six companies would receive second phase funding to develop and implement pilot projects on converting CO₂ captured from fuel combustion into usable products. The projects will be funded with \$106 million in Recovery Act dollars and \$156 million from private sources.

Reverse Auction for Cellulosic Biofuels

The Department of Energy announced last Thursday a reverse auction to provide \$4.6 million for the production of cellulosic biofuels. DOE will invite biofuels producers to submit pre-auction statements demonstrating their eligibility to participate in the first reverse auction of its kind, which is required annually under the 2005 Energy Act. Statements will be accepted through September 20.

Cool Roofs Initiative Begins

On July 19, the Department of Energy announced a series of initiatives to broadly implement cool roof technologies on DOE facilities across the country. The agency will install a cool roof when cost effective over the lifetime of the roof during construction of a new roof or the replacement of an old one at a DOE facility. The Department also released its Guidelines for Selecting Cool Roofs to offer support for federal and commercial building operators considering cool roofs.

120 Responses to Offshore Wind RFI Received

DOE recently requested information about offshore wind energy demonstration projects and received 120 responses by the July 14 due date. It is probable that the agency will stimulate responsible, cost-effective offshore wind energy deployment in coastal and Great Lakes regions of the country.

DOE Releases Pipeline Study

The Department of Energy released the Dedicated Ethanol Pipeline Feasibility Study last Monday and concluded that a dedicated ethanol pipeline from the Midwest to the East Coast may require federal financial incentives. In order for the line to be economically viable, it would need to transport 4.1 billion gallons per year; current consumption projections are at about 2.8 billion gallons. The study also found that expanding the use of E85 would make the pipeline economically feasible without major financial incentives.

Environmental Protection Agency

Canola Biodiesel Halves GHG Impact

The Environmental Protection Agency is expected to release a notice July 26 demonstrating that lifecycle GHG emissions from biodiesel made with canola oil are half those of petroleum-based diesel fuels. The results would justify classifying canola biodiesel as a renewable fuel, since such a designation requires that a fuel reduces GHG emissions by 20 percent relative to the baseline fuel it replaces.

DE Receives Permit Authority

On July 22, the EPA delegated to the Delaware Department of Natural Resources and Environmental Control the authority to implement and enforce regulations on air pollution from offshore sources. The action makes DE the first state to be delegated this type of primary permitting authority.

\$5.6 Million for Clean Diesel Technologies

The EPA awarded \$5.6 million for five emerging technology projects as part of summer roll out of \$120 million in clean diesel grants. The awards will provide opportunities to advance the technologies in the marketplace, create jobs, and advance environmental innovation.

Settlement Reached on GHG Reporting Rule

Last week the EPA reached a settlement with plaintiffs in litigation challenging its October 2009 final rule that establishes economy-wide GHG emissions reporting requirements (ACC v. EPA). The EPA will propose a revision to the applicability threshold for one source category and revisions to monitoring, recordkeeping, and reporting requirements affecting several industries. Comments will be accepted through August 19 on the proposed settlement.

Miscellaneous

CARB Delays RES Vote

The California Air Resources Board, at the request of Governor Arnold Schwarzenegger (R), has postponed until September 23 consideration of a proposed rule that would require 33 percent of the state's electricity to come from renewable sources by 2020. They were expected to weigh the proposal last Thursday, but will wait as legislation makes its way through the California Assembly this summer. CARB also announced last week that it will delay until November a fee program designed to finance the state's climate change policies because the state first needs to agree on an annual budget. Also on Thursday, CARB adopted a new regulation to require large industrial facilities to analyze their energy consumption and identify potential energy efficiency measures.

Climate Change to Cause Water Shortages

The Natural Resources Defense Council released a report, Evaluating Sustainability of Projected Water Demands Under Future Climate Change Scenarios, July 20 and concluded that climate change will lead to decreased precipitation and increased water demands, causing water shortages across the U.S.

Smart Grid Project Launched

The Building Owners and Managers Association of Chicago and the Korean Smart Grid Association signed a memorandum of understanding last Wednesday to launch a smart grid pilot project in Chicago that will involve 10 office buildings downtown. The project will be the nation's first large-scale test of potential commercial real estate energy savings through smart grid technologies.

Two Major Chinese Energy Developments

The International Energy Association announced last week that China has overtaken the United States to become the world's largest consumer of energy and said that the nation's consumption is lower than expected due to large investments in energy efficiency and renewable energy. Also last week, China announced that as part of its next five year plan, it will cap GHG emissions.

Climate Change Information Coordination Needed

The National Academies' National Research Council concluded last Thursday in Informing an Effective Response to Climate Change that centralized information about the impacts of climate change and the efficacy of emissions reduction and adaption programs is necessary for sound federal climate policy. The report is the fourth in a series commissioned by Congress to research and report on issues related to climate change and steps that could be taken to address it. A concluding report will be released in late 2010.

Litigation over Washington GHG Executive Order

Six people backed by the Evergreen Freedom Foundation filed a lawsuit against Washington Governor Christine Gregoire (D) last week claiming that a 2009 executive order that laid the groundwork for a GHG control program is unconstitutional. The executive order directed the Department of Ecology to continue participating in the Western Climate Initiative to develop a regional program to reduce GHG emissions and to contact industrial facilities to determine GHG emission baselines. It also directed the Departments of Transportation and Natural Resources to work with various groups to establish protocols and mitigation strategies for mobile sources and forestry offsets.

Australia to Delay Emissions Trading

Australian Prime Minister Julia Gillard said July 23 that she would not implement a GHG emissions trading system until the Australian economy and citizenry were ready. She reiterated a decision by the ruling Labor Party in April to delay implementation of such a program until the end of 2012.