

David Leiter

Sarah Litke

DJLeiter@mlstrategies.com

SLitke@mlstrategies.com

ENERGY AND ENVIRONMENT UPDATE

April 25, 2010

Energy and Climate Legislation

After Congressional leaders discussed moving immigration reform ahead of comprehensive climate and energy legislation last week, which prompted Senator Lindsey Graham (R-SC) to pull out of negotiations with Senators John Kerry (D-MA) and Joe Lieberman (I-CT), Senator Kerry announced Saturday, April 24, that the trio would postpone the Monday release of their long-awaited bill. Senator Kerry said that this is the best and perhaps the last chance for Congress to pass comprehensive legislation for the foreseeable future, and that he and Senator Lieberman will release legislation as soon as possible.

The trio has been meeting for months with industry and environmental organizations as well as their Senate colleagues in hopes of garnering 60 votes to pass the legislation. The legislation, which will reduce greenhouse gas emissions 17 percent by 2020 and 80 percent by 2050, is expected to take effect in 2013 for electric utilities and 2016 for energy intensive and trade sensitive manufacturing industries. Oil companies would purchase emissions allowances from outside the carbon trading market. Two-thirds of the revenue generated by auctioning allowances to utilities would be returned to utility consumers. Instead of a carbon linked fee, as had originally been discussed, oil companies would be issued pollution allowances and revenue would be dedicated to the Highway Trust Fund. The bill would preempt the EPA and state governments from regulation GHG emissions under the Clean Air Act, and the EPA would monitor and enforce compliance with standards outlined in the legislation. Loan guarantees and liability protections would be authorized for the construction of up to 12 new nuclear power plants, and the legislation would provide \$10 billion for the carbon capture and sequestration of emissions as well as award additional bonuses for early action. The proposal would set a hard price collar, and would incorporate Senator Bingaman's energy bill that was approved last summer by the Energy and Natural Resources Committee. Agriculture would be exempt from a CO2 cap.

When the legislation does come out, Senate Majority Leader Harry Reid said late last week that he will leave it to the six relevant committee leaders whether they will mark up the comprehensive legislation.

Senator George Voinovich (R-OH) threw another wrench in the mix last week when he circulated an amendment that would preempt efforts to regulate greenhouse gas under state or local law or through any federal policy outside of climate legislation approved by Congress. The amendment would also give sole authority for regulating GHG mobile emissions to the Department of Transportation.

A budget resolution approved by the Senate Budget Committee last week includes a provision that would make it highly unlikely that climate legislation could pass the Senate through reconciliation.

While the three Senators continued to meet with oil companies and environmental groups last week, the White House worked behind the scenes with environmental groups and other industry leaders to discuss the importance of putting a price on carbon in order to transfer to a clean energy economy and stimulate job growth here in the US. President Obama reiterated his desire for the Senate to address a comprehensive climate and energy package as soon as it finishes its financial services reform debate. Thus far, the Administration has signaled support for the compromise measure, and the President's chief

climate advisor, Carol Browner, said last week that they are looking forward to seeing what Senators Kerry, Graham, and Lieberman introduce, and then plan on working closely with them to craft a 60 vote strategy that protects the environment and creates jobs.

Senate

Multipollutant Markup

Senator Tom Carper (D-DE) said last week that he anticipates that the Senate Environment and Public Works Committee will markup and vote on his legislation that reduces NOx, SO2 and mercury emissions from coal-fired power plants before Memorial Day. Senator Carper said that the legislation may move forward as a stand-alone bill or as part of larger climate legislation. The EPA is currently undertaking an analysis of the legislation as it crafts a replacement for the Clean Air Interstate Rule.

Energy Committee Considers CCS

The Senate Energy and Natural Resources Committee considered three carbon capture and sequestration measures on April 20. The bills, including S.1134, S. 1856, and a measure recently introduced by Senators Voinovich and Jay Rockefeller (D-WA), promote the research and development of CCS technologies, incentivize commercial-scale projects, and clarify ownership of underground pore space in rock to facilitate sequestration projects on federal lands.

Tribal Energy Reform

The Senate Indian Affairs Committee held a hearing last Thursday to examine, and ended up praising, a draft bill aimed at streamlining energy permitting for the nation's 562 federally recognized American Indian tribes. Tribal leaders at the hearing also called for stronger provisions on consultation, transmission, and funding in Senator Byron Dorgan's (D-ND) legislation.

Senators Opposed to Diverting Offshore Drilling Revenue

Senators Dorgan, Bingaman, and Rockefeller urged their colleagues last week to oppose proposals to shift federal funds from offshore energy development in federal waters to a small group of coastal states. The senators said that such a giveaway would increase the federal budget deficit, reduce future federal budget revenues, and send funds that should belong to the entire country to just a few of the coastal states. Funds from Outer Continental Shelf energy development are one of the most significant non-tax revenue sources to the US Treasury.

Legislation Introduced

Senator Sherrod Brown (D-OH), along with Senators Carper, Susan Collins (R-ME), Olympia Snowe (R-ME), and Ted Kaufman (D-DE) introduced legislation (S. 3226) to require the Secretary of Energy to take actions to stimulate the emergence of an offshore wind power industry in the US. The bill will boost the allowance of renewable energy credits for offshore wind under a national renewable electricity standard.

Earlier the previous week, Senator Bob Menendez (D-NJ) introduced legislation (S. 3212) to provide that qualified energy efficiency property is eligible for the grants in lieu of tax credits 1603 program and Advanced Energy Manufacturing Program.

Senators Chuck Grassley (R-IA) and Kent Conrad (D-ND) introduced legislation (3231) April 20 to extend a number of ethanol tax incentives through 2015. The extensions would apply to the blenders' tax credit, the small ethanol producers tax credit, the cellulosic producers tax credit, and the ethanol import tariff. Congressmen Earl Pomeroy (D-ND) and John Shimkus (R-IL) introduced companion legislation (H.R. 4940) in March.

Upcoming Hearings

The Energy and Water Appropriations Subcommittee will hold a hearing April 28 to explore a national assessment of energy policies. Energy Secretary Steven Chu is scheduled to testify.

The Senate Energy and Natural Resources Committee will examine the nominations of Philip Moeller and Cheryl LaFleur to be members of the Federal Energy Regulatory Commission on April 27.

House

Subcommittee Holds Loan Guarantee Hearing

At a hearing of the Domestic Policy Subcommittee of the House Oversight and Government Reform Committee, Chairman Dennis Kucinich (D-OH) said at the hearing that he is concerned that the Administration's plan to triple federal loan guarantees to \$54.5 billion to build the first wave of new nuclear power plants in 30 years is too risky for taxpayers. The hearing was prompted by President Obama's fiscal year 2011 budget requests for an additional \$36 billion in Department of Energy loan guarantee authority. DOE has awarded only one nuclear loan guarantee so far.

Committee Approves HUD Energy Grants

The House Financial Services Committee approved by voice vote legislation (H.R. 2336) April 22 that would authorize \$2.5 billion for a Department of Housing and Urban Development block grant program for making residential buildings more energy efficient. Congressman Ed Perlmutter (D-CO) sponsored the Green Resources for Energy Efficient Neighborhoods Act, which could create or save up to 140,000 jobs in building design and construction every year; Senator Sheldon Whitehouse (D-RI) introduced companion legislation (S. 1379) last June.

Legislation Introduced

Congressman Bart Gordon (D-TN), Chairman of the House Science and Technology Committee introduced legislation (H.R. 5116) last Thursday to reauthorize the America COMPETES Act, a research effort for innovative, high-risk energy technologies (ARPA-E) in a broad science research and education bill that expires at the end of 2010.

Congressman Phil Hare (D-IL) was joined by a number of cosponsors late week before last when he introduced legislation (H.R. 5041) to extend the qualifying advanced energy project credit.

The same day, Congressman Harry Teague (D-NM) introduced a bill (H.R. 5062) to promote domestic natural gas research and development.

On April 20, Congressman Mike Honda (D-CA) introduced legislation (H.R. 5070) to assess the potential of smart electronics to reduce home and office electricity demand and incorporate smart electronics into the Energy Star program.

Upcoming Hearings

The House Energy and Commerce Subcommittee on Energy and Environment will hold a hearing April 28 to examine policies that could reduce the nation's dependence on foreign oil.

The same day, the House Science and Technology Committee will mark up The America COMPETES Reauthorization Act of 2010 (H.R. 5116), which Congressman Gordon introduced last week.

Department of Commerce

The Commerce Department released a report April 21 that said that while US energy-related CO2 emissions increased between 1997 and 2007, they did so slower than expected because the economy became more energy efficient. The US Carbon Dioxide Emissions and Intensities over Time: A Detailed Accounting of Industries, Government, and Household report measured changes in energy-related emissions and intensity for US households, nearly 350 industries, and the government.

Later the same day, the Department released another report claiming that while the domestic economy appears poised to grow quickly, a lack of data and multiple definitions of green products will make identifying trends quickly.

Department of Defense

The Pew Project on National Security, Energy, and Climate released a report April 20 called Reenergizing America's Defense: How the Armed Forces Are Stepping Forward to Combat Climate Change and Improve US Energy Posture. The report said that Department of Defense recognizes the challenges associated with climate change and energy security and is taking steps to address them. The Army, Navy, Air Force, and Marine Corps have both existing and planned renewable energy and energy efficiency programs.

Department of Energy

\$200 Million for Solar and Water Power Technologies

Secretary of Energy Steven Chu announced on Earth Day that the department will invest more than \$200 million over five years to expand and accelerate the development, commercialization, and use of solar and water power technologies throughout the US.

\$452 Million for Energy Efficiency Projects

Vice President Joe Biden announced April 21 that the Department of Energy is awarding \$452 million in stimulus funding for programs that aim to increase building energy efficiency on a scale that includes entire buildings and towns. Part of the department's Retrofit Ramp-Up Initiative, the competitive program received applications seeking more than \$3.5 billion, and though the program was oversubscribed, the funding provides millions to 25 projects across the US.

\$30 Million to Accelerate Weatherization

DOE announced April 21 that it will provide up to \$30 million to fund the new Weatherization Innovation Pilot Program to accelerate innovations in whole-house weatherization technologies and services. The competitive funding opportunity is open to collaborative partnerships and seeks projects that will deliver measurable improvements in the cost, scope, and energy savings of low-income weatherization programs across the nation.

\$28 Million to State Building Energy Retrofits

The Department of Energy announced April 21 that it will provide up to \$28 million in funding to states to help lower the cost and increase the availability of energy efficiency retrofits. Administered by the department's State Energy Program, the funding will also assist states in developing the necessary policy and program frameworks to stimulate investment in cost-effective, long-term energy efficiency deployments.

Department of Interior

The Minerals Management Service issued a formal request April 21 to the renewable energy industry for expressions of interest in commercial leases authorizing the construction and operation of an energy project off the coast of Delaware. This is the first step in developing a wind energy project on the OCS under the regulatory framework that was finalized by MMS in April 2009.

Department of Transportation

The Department of Transportation released a report April 22 that shows that transportation accounts for 29 percent of US greenhouse gas emissions and 5 percent of global emissions. 59 percent of US transportation emissions come from cars and light trucks, 19 percent from freight trucks, and 12 percent from aircraft. The report also said that more fuel-efficient gasoline vehicles could reduce emissions per vehicle by 8 to 30 percent, hybrids by 26 to 54 percent, and plug-in hybrids by 46 to 75 percent.

Environmental Protection Agency

EPA Sends Tailoring Rule to OMB

The EPA sent April 20 a final version of the greenhouse gas tailoring rule to the White House Office of Management and Budget for interagency review. The tailoring rule would limit GHG emissions reduction and reporting requirements for new and modified sources to only the largest stationary sources. The OMB and interagency review is usually the last step before an agency takes significant action such as issuing a final rule, which the agency plans to do by the end of April.

GHG Regulations Won't Impact Small Businesses

EPA Administrator Lisa Jackson confirmed last Sunday at an environmental justice conference in South Carolina that the EPA's upcoming greenhouse gas regulations will focus exclusively on large emitters in the early years of the program, and would only take effect when a business builds a new plant or undertakes a major expansion.

Clean Air Act Benefits Outweigh Costs

The EPA issued a draft report last week of The Benefits and Costs of the Clean Air Act: 1990 to 2020 in which they concluded that pollution controls required under the Clean Air Act have resulted in more than \$174.8 billion in annual health, economic, and environmental benefits since 1990 at a cost of \$45 billion per year for regulated industries. Though EPA is still calculating some of the benefits, the initial data show that the benefits far exceed the costs to regulated industries through 2010.

EPA Announces More Rigorous Standards for Energy Star Homes

The EPA announced April 19 that home builders who wish to participate in the Energy Star labeling program will face more rigorous standards beginning in January 2011. The new standard will require that homes be at least 20 percent more efficient than homes built to the 2009 International Energy Conservation Code.

Personnel

EPA Administrator Lisa Jackson announced April 21 that James B. Martin will head the EPA's Regional 8 office in Denver, Colorado. Mr. Martin is currently the executive director of the Colorado Department of Natural Resources.

Miscellaneous

Smart Grid Market to Increase Quickly

A report from market research company Global Industry Analysts released last week said that the world market for smart grids is projected to reach \$186.7 billion by 2015. Increasing demand for electricity, the need for more efficient electrical energy systems, requirements to replace aging electric infrastructure, and environmental concerns will drive the increase. While the US currently dominates the smart grid market, worldwide smart grid development is expected to ramp up in the coming years and include software, hardware, and communications equipment and device providers.

Solar Invested in Most

The Solar Energy Industries Association released figures last week showing that venture capitalists invested more in the US solar market than in any other clean technology sector in 2009.

Regional Efforts Necessary in East Asia

The World Bank released a report April 19 that said that East Asia could stabilize greenhouse gas emissions if it adopted a costly regional effort to low-carbon growth renewable energy development. Winds of Change: East Asia's Sustainable Energy Future outlined a paradigm shift that would require an estimated \$80 billion in additional investments per year through the next two decades in order to improve energy efficiency in power, industrial, and transportation sectors as well as increase the use of renewable energy and nuclear power. The cost would be offset by gains in energy savings after the first three years.

CA to Provide Loan Guarantees

The California Energy Commission and the State Treasurer's Office signed an agreement April 20 to advance the development of alternative fuels and vehicles and create clean energy jobs through loan

guarantees. Three programs will provide about \$40 million in loan guarantees for ethanol plants, advance biofuel production, and alternative vehicles and components manufacturing. The Energy Commission's Alternative and Renewable Fuel and Vehicle Technology Program will provide the funds and the California Alternative Energy and Advanced Transportation Financing Authority as well as the State Treasurer's Office will help to oversee the financing. The financing authority will vote on final approval of the programs April 28.

CA to Ease Vehicle Emissions Requirements

The California Air Resources Board determined April 22 to ease the nation's only mobile source greenhouse gas emissions requirements for off-road trucks and construction equipment. Owners must install diesel exhaust filters and replace engines or purchase new equipment and vehicles over 5 horsepower according to pre-determined schedules. The change comes as a result of recent studies showing that with reduced construction in CA, emissions are expected to be lower than previously anticipated.

Swing States to Benefit from CCS Deployment

A report last week from the Clean Air Task Force showed that Pennsylvania, Ohio, and Indiana, three crucial swing states, would be the major beneficiaries of new jobs from clean coal technologies. The study also found that CCS technology deployment would prompt about \$120 billion in private investment by 2030.

NJ Exempts Solar Panels

New Jersey Governor Chris Christie (R) signed legislation (S. 921) last Thursday exempting solar panels from "impervious surface" restrictions in municipal land use laws, waterfront and coastal development laws, and stormwater management ordinances. The measure eliminates a potential impediment to the installation of solar panels in environmentally sensitive areas of NJ.

Christie's Launches a Green Auction

To commemorate the 40th anniversary of Earth Day last week, Christie's launched the world's first green auction. The green auction sold dozens of art pieces, collectibles, events, and excursions, and sent 100 percent of the proceeds to the Natural Resources Defense Council, Conservation International, Oceana, and the Central Park Conservancy. The auction also purchased carbon offsets to cancel greenhouse gas emissions associated with the event.