

**David Leiter**

**Sarah Litke**

*DJLeiter@mlstrategies.com*

*SLitke@mlstrategies.com*

**ENERGY AND ENVIRONMENT UPDATE**  
**June 27, 2010**

**Energy and Climate Legislation**

After another full week of climate strategy meetings, it is becoming increasingly likely that Majority Leader Harry Reid (D-NV) will soon offer a comprehensive climate, energy, and oil spill package in the Senate. Key staff are still working to cobble pieces of the bill together, but titles are likely to draw from numerous pieces of climate, energy, and now oil industry regulation legislation offered earlier this Congress.

On Thursday, members emerged from the Senate Democratic Caucus energized over the prospect of moving clean energy legislation to the Senate floor in July and still uncertain about whether or not the legislation will include a proposal to put a price on carbon or otherwise set a mandatory limit on GHG emissions.

Majority Leader Reid said in a press conference after the meeting that there is flexibility on the form of the bill, but agreement that it is time to move forward on clean energy legislation this summer that addresses the oil spill in the Gulf of Mexico, creates millions of new jobs, reduces pollution, and strengthens our national security and energy independence. There is also growing consensus to include a "polluter pays" principal, which underpins a number of existing environmental laws, including the Clean Air Act.

Senator Maria Cantwell (D-WA) is said to have argued forcefully that the window of opportunity for Congress to address climate change is closing as the EPA moves forward on regulations to limit stationary source GHG emissions. During a press conference after the meeting, she said that Congress and industry both want predictability in the marketplace, and that three years after the Supreme Court ruled that CO<sub>2</sub> and other GHGs are pollutants that can be regulated by the EPA under the Clean Air Act, businesses have no sense of how to move forward in reducing CO<sub>2</sub> because there are not helpful guidelines in place.

The Democratic caucus meeting, the second in seven days to strategize on next steps for energy and climate legislation, came as climate bill supporters led by Senators John Kerry (D-MA) and Joe Lieberman (I-CT) struggled to find 60 votes. Senator Kerry said after the meeting that there was not a discussion about specific approaches to a climate change bill, including whether to pursue an economy wide cap, cover only the utility sector, or opt for an energy-only approach, all of which Senator Lieberman alluded to as possibilities earlier in the week. But Senate Majority Whip Dick Durbin (D-IL) told reporters after the meeting that Senate Democrats are in general agreement that energy legislation will move forward this summer. Senator Kerry reiterated that the US has a broad portfolio of energy possibilities, including coal, nuclear, renewable and alternative energies and energy efficiency, and with industries seeking regulatory certainty, it is important to come up with an inclusive solution to energy policy, and quickly.

As the week came to an end, Majority Leader Reid offered that he is likely to build the floor package around a bill fast-tracked for approval this week in the Energy and Natural Resources Committee that would impose new safety and environmental rules and increase oversight of oil companies doing offshore exploration. Chairman Jeff Bingaman (D-NM) and Ranking Member Lisa Murkowski (R-AK) introduced

the legislation together on Monday, with plans to amend it this week with more oil spill ideas from Senator Bob Menendez (D-NJ), Mark Udall (D-CO), and Scott Brown (R-MA). Interior Secretary Ken Salazar testified at a hearing on Thursday that the underlying package was a good bill. Senator Menendez, a vocal opponent of offshore drilling, has said that he is wary of combining all of the bills as he believes it is important to get something done, and with the April 20 oil spill continuing to pump millions of gallons into the Gulf Coast, he believes that there is more support to move oil company regulation legislation more quickly than energy and climate legislation.

Last week, some Democrats, including Senator Bernie Sanders (I-VT) suggested that they should combine climate and energy legislation with reforming offshore oil drilling regulations and then dare Republicans to vote against it. Yet, Democrats may not have enough support within their party for comprehensive legislation, with some concerned about coal, manufacturing, and oil and gas issues looking like possible defections, which would require yes votes from a number of Republicans who are currently sitting on the fence in the debate. Senator Chuck Schumer (D-NY) suggested last week that Majority Leader Reid consider creating a group of roughly 10 Senators to develop a piece of compromise legislation and serve as de facto whips to keep the caucus in line when the bill reaches the floor.

Any energy and climate bill will need strong backing from President Obama, who cancelled a June 23 meeting with a bipartisan group of about a dozen Senators, including Senators Kerry, Lieberman, Bingaman, Murkowski, Dick Lugar (R-IN), and Judd Gregg (R-NH) to address a national security issue. It is likely that the meeting will be rescheduled for June 29.

In addition to securing enough support for passage of a bill, another obstacle to overcome will be the short timeframe Senators will have to accomplish their goal. Both the House and the Senate have one work week before a weeklong recess for the Independence Day holiday, and then just four weeks until the August recess. During that time, the deliberative body will also need to confirm a Supreme Court nominee and move on the House-Senate conference report on Financial Services Reform as well as finish a supplemental war spending bill, and a climate debate could take months. One scenario that some are discussing depicts the Senate acting swiftly to pass a bill before the August recess, and then undertaking a conference with the House after the elections. Before that is even considered, the Senate will have to decide, and soon, what pieces to include in a climate and energy package, and how to most effectively move it forward.

## **Senate**

### Committee Examines Future of Electric Vehicles

The Senate Energy and Natural Resources Committee held a hearing June 22 to examine Senator Byron Dorgan's (D-ND) Promoting Electric Vehicles Act (S. 3495). During the hearing, Assistant Energy Secretary for Policy and International Affairs David Sandalow said that the legislation complements actions taken by the Obama Administration to promote the deployment of plug-in electric hybrid vehicles. The legislation may be included as part of an energy package the Senate is expected to consider later this summer.

### Oil Spill Hearings Continue

The Senate Appropriations Interior, Environment, and Related Agencies Subcommittee met last Wednesday with Interior Secretary Ken Salazar to discuss the plans for his agency, specifically the reorganization of the Minerals Management Service into three separate agencies after it was found to be too close to the oil and gas industry.

The Energy and Natural Resources Committee met last Thursday to discuss similar issues, including a bill (S. 3431) from Senators Menendez and Nelson (FL) that would ban Interior Department employees from taking jobs in the oil industry for two years after leaving the federal government as well as increase punishments for making fraudulent statements and require financial disclosure for senior regulators, including prohibiting certain stock ownership, as well as legislation (S. 3497) that would require oil companies to have peer-reviewed oil spill response plans before drilling. Interior Secretary Salazar also

testified in support of the bipartisan Outer Continental Shelf Lands Act (S. 3516) that updates regulations regarding offshore oil drilling. Senator Bingaman plans to mark up the legislation June 30.

The Senate Judiciary Committee approved legislation (S. 3466) by voice vote last week that seeks heavier fines and longer sentences for environmental crimes.

In light of the questions surrounding the safety of offshore drilling, the Senate Commerce Committee examined the safety of the onshore pipeline system and implementation of a 2006 bill's requirements by the Pipeline and Hazardous Materials Safety Administration.

Senator Mary Landrieu (D-LA) began talking last week about creating a new government agency to fund as much as \$1 billion annually to direct the long-term Gulf Coast environmental restoration that President Obama called for in his Oval Office address recently. The Senator sent a white paper to the White House last week outlining a new governing authority to coordinate and expedite completion of restoration plans.

#### Legislation Introduced

Senator Byron Dorgan (D-ND) introduced (S. 3511) legislation with Senators Lamar Alexander (R-TN) and Jeff Merkley (D-OR) June 18 to promote the deployment of plug-in electric drive vehicles.

Senators Bingaman and Murkowski introduced legislation (S. 3516) on June 22 to codify steps Interior Secretary Ken Salazar is taking to reorganize the Minerals Management Service. The Outer Continental Shelf Reform Act would amend the Outer Continental Shelf Lands Act (43 U.S.C. 1332) and overhaul offshore drilling regulations and the Department of Interior. The legislation was the subject of a June 24 hearing in the Senate Energy and Natural Resources Committee.

The same day, Senator Murkowski proposed the Rare Earth Supply Technology and Resources Transformation Act, which would require the Administration to consider federal loan guarantees and stockpiling to promote domestic production of rare earth elements. The elements are increasingly used in clean energy technologies and products such as compact fluorescent lights and batteries for hybrid electric vehicles. The legislation would require the secretaries of the Interior and Energy Departments to send Congress a report within 180 days assessing whether rare earth materials critical to these technologies should be procured and stockpiled. The legislation is similar to H.R. 4866, which Congressman Mike Coffman (R-CO) introduced in March.

On June 24, Senators Richard Burr (R-NC) and Saxby Chambliss (R-GA) introduced legislation (S. 3535) to enhance the energy security of the United States by promoting natural gas production, nuclear energy, and some renewable energy products.

#### Upcoming Hearings

On Wednesday, June 30, the Senate Energy and Natural Resources Committee will mark up legislation that would revise the management of energy and mineral resources on the outer continental shelf.

The same day, the Housing, Transportation, and Community Development Subcommittee of the Senate Banking, Housing, and Urban Affairs Committee will hold a hearing on green housing, including examining building retrofits and planning for energy efficient construction.

Also on the 30th, the Senate Commerce, Science, and Transportation Committee will hold a hearing on holding the oil industry accountable, especially in light of the Gulf Coast oil spill.

The Senate Health, Education, Labor, and Pensions Subcommittee on Employment and Workplace Safety will hold a hearing July 1 on workplace safety and worker protections at BP.

## **House**

### Oil Spill Hearings Continue

Several House Committees held hearings examining response plans to the Gulf of Mexico oil spill and deepwater drilling technology last week. Congressman Ed Markey (D-MA) also sent letters to BP leadership and the EPA requesting additional information on the company's continued use of dispersants in the spill. The Science and Technology Subcommittee for Energy and Environment considered the current deepwater drilling and spill cleanup technology last Wednesday and the following day, the House Natural Resources Subcommittee on Insular Affairs, Oceans, and Wildlife considered state, local, and non-governmental spill response plans.

#### Legislation Introduced

On Tuesday, June 22, Congressman Vern Buchanan (R-FL) introduced legislation (H.R. 5572) to reform the Minerals Management Service and offshore drilling for oil and gas and to repeal the limitation of liability of a responsible party for discharge of oil from an offshore facility.

#### Upcoming Hearings

On Tuesday, June 28, the Readiness Subcommittee of the House Armed Services Committee will hold a hearing to examine the compatibility of wind farms with military readiness.

At the same time, the Water Resources and Environment Subcommittee of the House Transportation and Infrastructure Committee will hold a hearing titled "Putting America Back to Work through Clean Water Infrastructure Investment."

Two days later, on June 30, the Energy and Environment Subcommittee of the House Energy and Commerce Committee will hold a hearing on legislation to respond to the Gulf Coast oil spill and to prevent future well blowouts.

The same day, the House Natural Resources Committee will hold a hearing on a discussion draft substitute to legislation (H.R. 3534) that would establish the Office of Federal Energy and Minerals Leasing in the Interior Department.

On July 1, the Conservation, Credit, Energy, and Research Subcommittee of the House Agriculture Committee will hold a hearing on the administration and delivery of conservation programs.

The same day, the Technology and Innovation Subcommittee of the House Science and Technology Committee will hold a hearing on smart grid electricity technology.

### **Administration**

#### OMB Completes Review of EPA GHG Rule

On June 17, the White House Office of Management and Budget completed and returned an interagency review of an EPA draft rule that would require facilities in four industrial sectors to report greenhouse gas emissions. The draft rule would impose reporting requirements on industrial landfills, wastewater treatment facilities, underground coal mines, and magnesium production, all of which were excluded in the EPA's October 2009 economy wide reporting rule that requires facilities that emit more than 25,000 tons of CO<sub>2</sub>e to provide annual reports beginning in March 2011. The new sources will be required to begin monitoring on January 1, 2011, with first reports due in March 2012.

### **Department of Agriculture**

#### Investments Needed to Meet Biofuel Goals

The Department of Agriculture released a report, A USDA Roadmap to Meeting the Biofuels Goals of the Renewable Fuels Standard by 2022, June 23 that concluded that in order to meet federal biofuel production goals, regional resources and infrastructure will need to be expanded, including building additional plants and investing in transportation equipment. A standard set forth in the Energy Independence and Security Act requires the domestic transportation fuel supply to include 36 billion gallons of ethanol or other renewable fuels by 2022, 21 billion of which must be derived from cellulosic sources. The following day, Secretary of Agriculture Tom Vilsack announced 13 recipients of woody

biomass utilization grants. The International Energy Agency released a report June 23 signaling that it is unlikely that commercial production of second-generation biofuels is unlikely to make significant contribution to environmental and energy security goals in the next five years.

## **Department of Transportation**

### Departments Finalize Livability Grant Process

The Departments of Transportation and Housing and Urban Development announced June 21 their first joint grant process, offering \$75 million for coordinated planning activities that integrate transportation and housing decisions. The Department of Transportation will provide \$35 million in Transportation Investment Generating Economic Recovery funds for transportation planning and design, and HUD will provide \$40 to the program, part of the joint venture's Partnership for Sustainable Communities.

## **Environmental Protection Agency**

### Organizations Call for Quick Biomass Review

A coalition of 163 organizations sent a letter to EPA Administrator Lisa Jackson June 18 asking the agency to review its greenhouse gas emissions from biomass regulations before the end of the year, especially as the Agency prepares to regulate stationary source emissions January 2, 2011. This letter follows a similar request from a bipartisan group of 63 House members a couple of weeks ago.

### Administration Calls for Reinstatement of Polluter Pays

EPA Administrator Jackson sent a letter to House and Senate leaders last week asking them to reinstate taxes that once paid for the Superfund program. Administrator Jackson said that the draft legislation would ensure that parties that benefit from the "manufacture or sale of substances commonly found in contaminated sites" contribute to the cost of cleanup. The polluter pays program would require oil refiners and chemical manufacturers, primarily, to pay for the cost of environmental cleanups of affected areas. Reinstatement of the tax would raise approximately \$18.9 billion over the next 10 years.

## **Federal Aviation Administration**

### \$125 Million to Advance Environmental Technologies

The Federal Aviation Administration announced June 24 that it will provide \$125 million in contracts to further environmentally friendly aviation technologies within the next five years. The contracts, part of the FAA's Continuous Lower Energy, Emissions, and Noise program, were awarded to Boeing, GE, Honeywell, Pratt & Whitney, and Rolls-Royce-North America. The companies will work to find sustainable alternatives to aviation fuel, lighter and more efficient parts for gas turbine engines, and flight management systems that can improve flight trajectories.

## **Personnel**

The Senate approved by voice vote June 22 the nomination of Cheryl LaFleur and the reappointment of Philip Moeller to the Federal Energy Regulatory Commission. The same day, the Senate confirmed Patricia Hoffman as Energy Assistant Secretary for Electricity Deliver and Energy Reliability.

The following day, the Senate confirmed the nominations of Malcolm Jackson to be the EPA's Chief Environmental Information Officer as well as Rafael Moure-Eraso to be Chairman of the Chemical Safety and Hazard Investigation Board.

## **Miscellaneous**

### Trade Agency Signs Renewables Agreement

Last week the United States Trade and Development Agency signed grant agreements with Egypt, Jordan, and Lebanon to boost renewable energy, particularly solar power, in the three countries. The USTDA will fund feasibility studies in the three countries on how to best develop regional renewable energies.

#### APEC Energy Ministers Promote Nuclear and Efficiency

Energy ministers from the 21 APEC nations agreed to launch a Collaborative Assessment of Standards and Testing June 19 to boost trade and investment in energy-efficient appliances and they called for a Nuclear Power Emission Reduction Potential Study to analyze the potential of nuclear energy to reduce GHG emissions.

#### Offshore Wind Has Little Impact on Environment

The New Jersey Department of Environmental Protection released new findings June 18 that concluded that wind energy projects could be developed and operated three to 20 miles off the coast of southern New Jersey with minimal environmental impact.

#### IEA Promotes SE Asia's Renewable Energy Potential

The International Energy Agency released a report June 21 outlining policy changes that would allow Southeast Asian countries to tap into their vast potential for renewable energy. The report examined the economic and political barriers to their development and market penetration and recommended greater transparency and stability in the marketplace.

#### Suspension of Climate Change Legislation Makes CA Ballot

On June 22, a measure that would suspend implementation of the California Global Warming Solutions Act of 2006 qualified for the November general election ballot. If approved, the proposal would halt many of the state's climate change policies until the statewide unemployment rate dropped to 5.5 percent for four consecutive quarters.

#### Canada to Phase out Coal-Fired Plants

Canadian Environmental Minister Jim Prentice said June 23 that the national government planned to phase out coal-fired power plants by regulating greenhouse gases from the plants beginning in 2015. The regulations will impose strict performance standards on the power plants, which account for 13% of Canada's total GHG emissions.

#### China Needs Greater Investment in Biomass

The Asian Development Bank released a report, Rural Biomass Energy 2020 in the People's Republic of China, June 24 that said that China would need to invest roughly \$60.5 billion in the next decade to optimize its biomass energy potential in less developed rural areas. China has a set a renewable energy target of 15 percent by 2020.

#### CPUC Approves Smart Grid Guidance

The California Public Utilities Commission approved guidelines June 24 for plans by the state's investor-owned utilities to deploy smart grid technologies to modernize the electricity grid. Major utilities in the state must submit deployment plans by July 1, 2011.