

**David Leiter**

**Sarah Litke**

*DJLeiter@mlstrategies.com*

*SLitke@mlstrategies.com*

**ENERGY AND ENVIRONMENT UPDATE**  
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**Energy and Climate Debate**

Government funding will be the central focus for Congress and the Administration this week, with the House considering a continuing resolution (CR) for the remainder of fiscal year 2011, and President Obama releasing to Congress unveiling his proposed fiscal year 2012 budget on February 14.

After agreeing to reduce spending by \$100 billion from what the president requested for the current fiscal year, House Republicans released a CR (H.R. 1) February 11 that would fund the federal government for the remaining seven months of the fiscal year. House Republicans had announced \$35 billion and then \$74 billion in cuts February 9, but bowed to Tea party-backed demands of meeting last November's Pledge to America. The House will debate the CR for three days this week, coming to the floor under an open rule that allows unlimited amendments, and Republicans expect a number of amendments that will try to push the spending reductions beyond the \$100 billion figure.

Spending reductions for the Department of Energy include a \$786.3 million reduction for the Office of Energy Efficiency and Renewable Energy, an \$893 million reduction to the Office of Science, a \$250 million reduction to loan guarantee authority, a \$116 million reduction for the nuclear energy program, a \$35 million reduction for the Office of Energy Delivery and Energy Reliability, an \$18 million reduction for Clean Coal Technology, and a \$10.5 million cut from the EnergyStar program.

The proposal would cut EPA spending by about \$3 billion, from \$10.3 billion in FY 2010 to \$7.3 billion. The clean water state revolving fund program would be reduced by \$1.41 billion; the drinking water revolving fund would be cut by \$557 million, and the superfund program would be slashed by \$32.8 million. Additionally, the measure includes a provision that would restrict funding for the duration of the CR to limit the Environmental Protection Agency's authority to prohibit or restrict stationary source emissions of CO<sub>2</sub> or CH<sub>4</sub>.

The Senate has not yet offered any formal proposals on a continuing resolution, and the two chambers have less than three weeks to reach an agreement before the continuing CR expires March 4. Some have expressed concern that the increased reductions in the new version of the CR could decrease the chances of a compromise with the Senate, and Senate Appropriations Chair Daniel Inouye (D-HI) has already come out against the House measure. If the House and Senate are unable to compromise on a long-term CR before March 4, a series of short term continuing resolutions could keep the government funded until they can resolve their differences.

Looking toward fiscal year 2012, President Obama is expected to send his budget to Congress around noon February 14, in which he favors a five-year freeze on non-security spending, which would save \$400 billion over 10 years. The Congressional Budget Office will finish scoring the president's budget sometime in March, at which point Congressional Democrats and Republicans will offer their own versions; House Republicans hope to use the debt ceiling as leverage with the White House for spending cuts and budget restraints.

Some energy highlights from President Obama's proposed FY12 budget request include \$36 billion in additional loan guarantee authority for nuclear power plants; \$8 billion for energy research, development, demonstration, and deployment projects; \$8 billion for high-speed passenger rail; an additional \$5 billion for the 48C Advanced Energy Manufacturing Tax Credit program; \$2 billion in loan guarantees for renewable and energy efficiency projects; \$588 million for vehicle technologies at the Department of Energy; \$500 million for the development of small modular reactors; \$200 million for a program modeled on Race to the Top that provides an incentive for communities to invest in electric vehicle infrastructure and purchases; \$100 million Race to Green competition for state and municipal governments to implement innovative approaches to building codes, performance standards, and regulations so that commercial building efficiency is the norm; and \$43 million to review and permit new renewable energy projects on Federal lands with the goal of permitting at least 9,000 MW of new solar, wind, and geothermal electricity generation capacity at Department of Interior managed lands.

Additionally, the president's budget would further extend the 1603 grants in lieu of tax credits program; transform the existing \$7,500 tax credit for electric vehicles into a rebate that will be available to all consumers at point of sale; double the number of Department of Energy Energy Innovation Hubs; and establish a new Department of Energy loan guarantee program to increase financing opportunities for universities, schools, and hospitals and encourage the use of the Certified Development Company loan guarantee program to support energy efficiency retrofit investments in commercial buildings.

The budget will also call for steep reductions in fossil fuel programs, including zeroing out several programs and eliminating \$3.6 billion worth of oil and gas subsidies. The Department of Energy's Office of Fossil Energy Fuels Program, Fuel Cells Program, Oil and Gas Research and Development Program, and Unconventional Fossil Technology Program receive no funds in the proposed budget. Two national labs – the Tevatron at Fermi National Laboratory and the Holifield Radioactive Ion Beam Facility at the Oak Ridge National Laboratory – would be closed. The Office of Energy Efficiency and Renewable Energy's hydrogen technology program will be cut by more than 41 percent. The Low Income Home Energy Assistance Program would see funding drop by about \$3 billion from the \$5.1 billion authorized in 2009.

## **Congress**

### House Bipartisanship on CES Sought

House Energy and Commerce Committee Ranking Member Henry Waxman (D-CA) and Subcommittee on Energy and Power Ranking Member Bobby Rush (D-IL) sent a letter to committee Chairman Fred Upton (R-MI) February 7 seeking compromise in developing a clean energy standard. Congressman Upton earlier this year opposed the idea of a national standard, but last Congress supported a measure that would have established a similar mandate, has previously supported state standards, and just last week expressed some support for a clean energy standard that included renewable energy as well as nuclear, CCS, and natural gas; he noted that he first hopes to see language from both the Obama Administration and the Senate Energy Committee before he moves forward.

### Waxman Opposes EPA Attacks

Congressmen Waxman and Rush circulated a memo February 8 that details what they claim would be far-reaching ramifications if lawmakers enact draft legislation from Congressman Upton that aims to strip the Environmental Protection Agency's authority under the Clean Air Act to regulate GHGs. They note that the draft proposal would effectively overturn the Supreme Court's finding that the EPA has the authority to regulate GHGs under the Clean Air Act as well as override the EPA's endangerment finding, as well as threaten the renewable fuels standard, prevent the EPA from acting on any future amendments to the Montreal Protocol, create ambiguity about existing vehicle standards, and limit the EPA's voluntary programs to reduce emissions. Congressman Upton plans to introduce his Energy Tax Prevention Act of 2011 soon. The House Energy and Commerce Subcommittee on Energy and Power held its first heated hearing on this issue last week, pitting Senate Environment and Public Works Ranking Member James Inhofe (R-OK) against EPA Administrator Lisa Jackson.

### Spill Response Legislation Encouraged

Chaired by Congressmen Jay Inslee (D-WA) and Steve Israel (D-NY), forty members of the House Sustainable Energy and Environment Coalition called on House leaders last week to take legislative action on the recommendations released last month by the presidential panel investigating the Gulf of Mexico oil spill. The House passed spill-response legislation last year, but Senate debate on similar legislation stalled. Congressmen Earl Blumenauer (D-OR), Ed Markey (D-MA), John Conyers (D-MI), Jim Moran (D-VA) Lois Capps (D-CA), Peter Welch (D-VT), and David Price (D-NC) rolled out their Ending Big Oil Tax Subsidies Act (H.R. 601) legislation last week, which will reduce the budget by ending roughly \$40 billion over five years in subsidies to the oil industry.

### Lugar Crafting CES

Senator Dick Lugar (R-IN) is crafting broad energy legislation that could include a clean energy mandate similar to the one President Obama called for in his January 25 State of the Union address. Though the legislation is still weeks away, it could include a clean energy standard as well as some sort of energy efficiency standard. Senator Lugar introduced legislation (S. 3464, The Practical Energy and Climate Plan) last Congress that would have increased fuel efficiency standards for cars and trucks, new efficiency requirements in building codes and federal buildings and incentives to retire the most-polluting power plants. The language included a "diverse energy standard," that would have required utilities to source a percentage of their electricity from renewables, nuclear energy, coal-mined methane, waste to energy, and clean coal. Though not committing to use the same language as last year's bill, the Senator indicated last week that he is open to the idea of including a clean energy standard similar to the one President Obama called for last month, which reflects a departure from comments he made earlier this month that he would prefer including his more broadly defined diverse energy standard in the bill.

### Oversight Committee Initiates Work

The House Oversight Committee released its Assessing Regulatory Impediments to Job Creation: Preliminary Staff Report last week, drawing from hundreds of letters from steel, chemical, petrochemical, and other industry groups. The report includes a 10-page listing of environmental rules viewed as overly burdensome, including EPA GHG limits, reporting requirements, revised air pollution rules governing lead and SO<sub>2</sub>, and vehicle efficiency rules. The Oversight Committee held a hearing February 10 and approved an oversight plan to guide it in its investigation, evaluation, and review of federal rules and policies in the 112th Congress.

### Pipeline Approval Sought

In a February 10 letter initiated by House Foreign Affairs Subcommittee Chair on the Western Hemisphere Connie Mack (R-FL), a bipartisan group of 20 House members urged Secretary of State Hillary Clinton to approve a permit for TransCanada's Keystone XL crude oil pipeline as soon as possible. The same day, Congressman Upton urged the Administration to expedite approval of the pipeline project, noting that Canada's oil sands production would be diverted to overseas markets if the pipeline is not built.

### Legislation Introduced

Senator Debbie Stabenow (D-MI) introduced the Charging America Forward Act (S. 298) February 7. The legislation would provide consumers with a \$7,500 tax rebate at the dealership when purchasing an electric vehicle, rather than a tax credit in that amount, extend a business tax credit worth up to \$100,000 for an electric or hybrid truck that expands the credit to apply to plug-in hybrids, and raise the manufacturer's cap on the \$7,500 incentive, offering the full credit until manufacturers sell 500,000 vehicles rather than the current 200,000.

Congressman Emanuel Cleaver (D-MO) introduced legislation (H.R. 627) February 10 to require energy audits to be conducted for any single-family and multifamily housing purchase using federally related housing loans.

### Upcoming Hearings

The Senate Environment and Public Works Subcommittee on Green Jobs and the New Economy will hold a hearing February 15 on green jobs and trade. Leo Gerard, international president of the United Steelworkers, is scheduled to appear as a witness.

The Senate Committee on Energy and Natural Resources will consider the President's proposed fiscal year 2012 budget for the Department of Energy on February 16. Energy Secretary Steven Chu will testify.

The House Energy and Commerce Subcommittee on the Environment and the Economy will hold a February 15 hearing on environmental regulations to examine their impact on the economy and job creation.

## **Department of Agriculture**

### GE Corn Deregulated

The Department of Agriculture deregulated a strain of genetically engineered corn February 11 that has a built-in enzyme that speeds up the breakdown of starch into sugar, hastening up the production of ethanol. The decision, made in response to a 2005 request by Syngenta Seeds Inc., is designed to help the US meet its ethanol production goals.

### Biorefinery Loan Guarantee Program Updated

The Department of Agriculture will publish an Interim Final Rule for its Integrated Biorefinery Loan Guarantee Program February 14. The new rule makes the program more workable for the financing of otherwise non-commercial advanced biofuels technologies by adopting a bond financing mechanism credit-enhanced by the Program's loan guarantees for 100 percent of the project debt and providing lower interest rates.

## **Department of Energy**

### Electric Vehicle Plan Unveiled

Department of Energy released a report February 8 outlining its plan to put one million electric vehicles on the road by 2015. The report concludes that the goal can be met if Congress approves new cash incentives for buyers, and says that automakers' production estimates show a supply of more than 1.2 million electric cars by 2015. The Obama Administration, supported by legislation recently introduced by both Senators Carl Levin (D-MI) and Debbie Stabenow (D-MI), is proposing an incentive program to offer \$7,500 as a rebate at the point of purchase rather than as a tax credit. The budget proposal that President Obama will unveil Monday, February 14, will also include additional spending for research on electric drive trains and batteries and a grant program offering as many as 30 communities funding to achieve widespread electric vehicle adoption.

### Offshore Wind Plan Announced

Energy Secretary Steven Chu and Interior Secretary Ken Salazar unveiled a coordinated strategic plan to accelerate the deployment of domestic offshore wind energy. The program includes new funding opportunities for up to \$50.5 million for projects that support offshore wind deployment and four high priority Wind Energy Areas in the mid-Atlantic that will spur rapid development of the resource. Up to \$25 million over five years will be dedicated to technology development; up to \$18 million over three years will be directed toward removing market barriers; and up to \$7.5 million over three years will be guided toward the development of next-generation drivetrains.

### Fossil Expertise Leveraged for Geothermal Development

The Department of Energy's Office of Fossil Energy and Office of Energy Efficiency and Renewable Energy announced plans February 7 to leverage oil and gas expertise to test the reliability and efficiency of geothermal power generation at oil and gas fields. The technologies will be tested at the Rocky Mountain Oilfield Testing Center in Wyoming.

### Solar Support for Communities Announced

The Department of Energy introduced the second edition of Solar Powering Your Community: A Guide for Local Governments as a part of the agency's SunShot initiative February 9. The guide is a comprehensive resource that will help communities accelerate their adoption of solar energy technologies, and offers guidance on how to develop a plan for expanding the use of solar energy.

#### Efficiency Standards Enforced

The Department of Energy adopted a final rule last week that expands its authority to enforce energy efficiency and water conservation standards for consumer products and commercial and industrial products. The rule repeals requirements in current regulations that require the department to receive a written complaint alleging a violation of energy use standards before it can initiate enforcement.

#### **Department of Interior**

##### Voluntary Turbine Guidelines Unveiled

The Department of Interior released draft voluntary guidelines February 8 to protect wildlife from the adverse effects of wind turbines. The rule calls on project developers and others to use scientifically rigorous surveys and increased monitoring, assessment, and research designs. The U.S. Fish and Wildlife Service Draft Land-Based Wind Energy Guidelines will be available for public comment for 90 days.

#### **Environmental Protection Agency**

##### Industries Oppose Ozone Standard

In comments submitted to the Environmental Protection Agency's Clean Air Scientific Advisory Committee, industry groups have questioned the research used by the agency when it proposed setting more stringent national ambient air quality standards for ozone. CASAC meets February 18 to discuss the agency's plans, which set the health-based ozone standard in a range between .060 and .070 ppm and a secondary seasonal standard within a range between 7 and 15 ppm-hours.

##### AEP v. CT Arguments Scheduled

The Supreme Court has scheduled oral arguments April 19 in a challenge to a court of appeals decision allowing a public nuisance lawsuit against American Electric Power and other utilities for their GHG emissions. If the lawsuit by Connecticut and other states and environmental groups were to go forward, it would allow challenges to a company's emissions under federal common law, thus providing environmental advocates with another tool to curb emissions. Indiana's Attorney General filed an amicus brief February 7 signed by the attorneys general of 22 other states in support of AEP, as did House Energy and Commerce Committee Chairman Fred Upton (R-MI). Responses from CT and others are due March 11.

#### **Federal Energy Regulatory Commission**

##### Financing Method Upheld

The U.S. Court of Appeals for the District of Columbia Circuit upheld a Federal Energy Regulatory Commission order February 8 authorizing a new method for financing electric generation capacity in the Northeast. The case involves an initiative of the 13 state PJM Interconnection LLC to replace its old pricing model with a reliability pricing model.

#### **Miscellaneous**

##### MD Climate Report Unveiled

The Maryland Commission on Climate Change released a report in late January outlining more than 70 long- and short-term recommendations for reducing the state's coastal vulnerability and adapting to the effects of climate change. The strategy report includes an overview of potential impacts and makes recommendations in the areas of human health, agriculture, forest and terrestrial ecosystems, Chesapeake Bay and aquatic ecosystems, water resources, and population growth infrastructure.

#### Permit with GHG Rules Approved

Louisiana regulators approved in late January the first air quality construction and operating permit in the US that includes emissions control requirements for GHGs. The permit will allow work to proceed on a direct reduction iron production facility. The Nucor permit includes an energy efficiency standard for the plant as a surrogate for a CO2 emissions limit, a decision that followed November EPA guidance that PSD permits for GHGs are likely to emphasize energy efficiency.

#### CARB Urges Automakers to Disavow Claim

The California Air Resources Board urged auto manufacturers February 7 to denounce recent claims by their trade association accusing the state of reneging on its commitment to work with federal regulators in developing the next generation of vehicle standards. The Alliance of Automobile Manufacturers sent letters to the House Oversight Committee and Energy and Commerce Committee in January that claimed that CARB was pursuing a separate path in developing emissions standards for model years 2017-2025 rather than a national approach.

#### Asian Climate Migration Report Released

The Asian Development Bank released a draft report last week that found that governments in Asia and the Pacific should prepare for a large increase in climate change-induced migration in the coming years. The final version of Climate Change and Migration in Asia and the Pacific is scheduled for early March.

#### Energy Audits Mandated

The San Francisco board of supervisors voted last week to require owners of nonresidential buildings to disclose their energy use. Property owners will be required to publish their buildings' energy footprints once a year, and owners of commercial structures larger than 10,000 square feet will eventually be required to conduct in-depth efficiency audits every five years.

#### Building Energy Measurement Standard Released

ASTM International developed and published a standard of measuring energy use in corporate buildings February 10. The guidelines, called the Standard Practice for Building Energy Performance Assessment for a Building Involved in a Real Estate Transaction, could be used to develop data to comply with regulatory reporting requirements, develop action plans for improving energy efficiency, assess a building during a real estate transaction, or qualify for loans for energy use improvements.

#### EV Sales Better with Incentives

The Center for Automotive Research released a report February 11 finding that electric vehicle makers and consumers will need incentives from state governments and the federal government to encourage sales and advance clean energy goals. Businesses, communities, and states are considering what level of support they should give and in what form, including monetary incentives, preferred parking, and carpool lanes, to encourage the use of these cars.

#### Renewables in Diesel Required

Canada's Environment Minister announced plans February to implement a commitment July 1 to require an average of 2 percent renewable content in all diesel fuels and heating oils sold in the country. The government will amend the Renewable Fuels Regulations to implement the requirement, which was included in the original regulations but delayed pending a feasibility study. The regulations are part of an effort to reduce emissions from the nation's transportation sector, a key element in meeting Canada's commitment to reduce emissions by 17 percent from 2005 levels by 2020.

#### CARB Opposes Tentative Finding

The California Air Resources Board asked the San Francisco County Superior Court February 8 to hear its objections to a tentative decision that found the agency, in adopting its blueprint for implementing the state's climate law (A.B. 32), violated the California Environmental Quality Act. CARB's filing takes issues with the tentative finding that its analysis of alternatives was inadequate.