

## Climate and Energy Advisory

October 20, 2010

### Opportunity for Bipartisan Cooperation on Energy and Climate Policy in 2011?

With two weeks until the elections, Republicans appear well-positioned to win back a majority in the House and have an outside chance of winning a majority in the Senate. The prospect of one or two Chambers of Congress controlled by Republicans will significantly alter the contours of the federal debate over climate and energy policy for the next Congress. A Republican Congress would likely lead to more partisan gridlock on climate and energy policy, but there could be several areas for agreement with the Obama Administration.

An analysis of the likely areas of policy debate in the 112th Congress with a Republican majority in one or both Chambers follows.

#### Climate Regulations

Congressional battles over EPA's climate regulations are likely to intensify with Republican majorities, particularly with regulations for large stationary sources set to go into effect on January 2, 2011. Over the past year, Congressional Democrats have succeeded in defeating efforts to block EPA's climate regulations. It is unclear whether Democrats in the minority could succeed in defeating similar legislation, particularly given that some Democrats also oppose the agency's regulations.

Earlier this year, the Obama Administration threatened to veto legislation that would strip EPA of its authority to implement climate regulations. If the next Congress does pass legislation prohibiting EPA from implementing climate regulations, whether President Obama would actually veto the measure will likely depend on whether Republicans attach it to an appropriations bill or other popular legislation.

Republicans may also attack other Administration climate-related measures, including the

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Council on Environmental Quality's guidance on the extent to which federal agencies must consider climate change in assessing the environmental impacts of proposed projects. For example, a Republican Congress could push legislation introduced by Representative Rob Bishop (R-UT) that would explicitly state that federal agencies are not required to consider climate effects when conducting environmental reviews in accordance with the National Environmental Policy Act.

### **Oversight of EPA and the Department of Energy (DOE)**

Republican majorities will likely result in increased oversight of EPA and the DOE. If the Republicans win back control of the House in the November mid-term elections, Representative Darrell Issa (R-CA) would likely become the Chairman of the House Oversight and Government Reform Committee. Representative Issa recently indicated that he would pursue an investigation into allegations of misconduct and manipulation of data by climate researchers at the Climatic Research Unit of the University of East Anglia in England. Senator James Inhofe (R-OK) also recently stated that he would pursue much closer oversight over EPA if Republicans win a majority in the Senate. Committee investigations of DOE's administration of stimulus funding would also be likely.

### **Renewable or a Clean Energy Standard**

Environmentalists and some Senators are still pushing for Congress to pass a renewable energy standard (RES) prior to the end of the year, but this possibility appears remote given the short-time frame and other priorities that will face the "lame-duck" session after the November midterm elections. Congress could certainly consider legislation to establish a moderate RES next year. A moderate RES does enjoy bipartisan support in the Senate, where four Republicans are co-sponsors of the current bill. One question is whether an RES could enjoy Republican support in the House where their caucus is likely to be more conservative than their counterparts in the Senate. A related issue is whether House Republican leadership would make passing an RES a legislative priority.

Republicans could also push for a clean energy standard similar to draft legislation being circulated by Senator Lindsay Graham (R-SC) instead of an RES. Senator Graham's draft legislation would require that utilities generate a certain percentage of electricity from "clean" sources that include not only renewables but also nuclear energy and sources employing clean coal technology. The Obama Administration has yet to opine on whether it would support such a clean energy standard.

### **Legislative Response to Deepwater Horizon, EnCana and San Bruno Accidents**

Images of oil seeping into the Gulf dominated the news for several months, but Congress has thus far been unable to pass legislative responses to this and the other recent energy-related accidents. Momentum for such legislation appears to have weakened when the Gulf well was capped. Congressional Republicans, many of whom will have campaigned on the overreach of the federal government, will also be hesitant to enact new regulations on the oil and gas industry.

When the investigations of these accidents are complete, Congress may gain new momentum to act, but a Republican Congress would likely resist broader regulations. A potential starting point for Congress could be a bipartisan bill that the Senate Energy and Natural Resources Committee passed this summer responding to the Gulf disaster. This legislation would increase the safety requirements for drilling wells, establish new research

programs, create an independent advisory board for the Department of the Interior, impose a fee on companies to pay for inspections, increase the penalties on bad operators, and increase the time the department has to carry out reviews before approving exploration plans. Notably, this legislation would not remove the liability cap for companies from economic damages resulting from an oil spill.

A Republican Congress could increase its oversight of the Administration's response to the Gulf disaster.

### **Nuclear Incentives**

The Obama Administration and Congressional Republicans generally agree on the importance of nuclear energy to our nation's energy future and this issue could be one of the few where there could be consensus. A Republican-led House could work with the Administration on incentives and other regulatory reforms to spur growth in the nuclear industry. That being said, the Administration's support for closing Yucca Mountain as a permanent storage site for nuclear waste could become a major issue in a potential debate over nuclear energy. Another flash point could be loan guarantees for new nuclear facilities. While the Administration and many Republicans support increased funding for loan guarantees, both sides will have to reconcile the importance of these guarantees with their cost, particularly with growing concern over federal spending and deficits.

### **Regulation of Conventional Pollutants**

Earlier this year, Senator Thomas Carper (D-DE) and Senator Lamar Alexander (R-TN) introduced bipartisan legislation that would mandate reductions in sulfur dioxide, nitrous oxide and mercury. These Senators hoped to pass a bill this year, but they failed to reach an agreement with Senator Inhofe, the Ranking Member on the Senate Environment and Public Works Committee, and Senator George Voinovich (R-OH), another key member of the Committee who was seeking to ease restrictions on power plants. Though a staunch opponent of climate legislation, Senator Inhofe has expressed support for the emissions trading of conventional pollutants under the Carper-Alexander bill, and negotiations are likely to continue over this measure into the next Congress. The real question will be whether there will be bipartisan cooperation on a similar effort in the House next year.

### **Conclusion**

In a recent interview, President Obama identified climate and energy policy as one of his top legislative priorities for next year. President Obama acknowledged that Congress would be unlikely to pass comprehensive legislation, such as a cap-and-trade bill, but that it could address these issues in a piecemeal fashion. Whether President Obama can achieve progress on energy and climate matters could depend on the extent to which he and Congressional Republicans will be willing to cooperate and compromise on these issues. While a Republican Congress would very likely trigger enhanced oversight of the Administration, including a battle over climate regulations, there are opportunities for the two sides to work together on a renewable energy standard, nuclear incentives and regulation of conventional pollutants, among other issues.

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