

David Leiter

Sarah Litke

DJLeiter@mlstrategies.com

SLitke@mlstrategies.com

ENERGY AND ENVIRONMENT UPDATE **November 14, 2010**

Energy and Climate Debate

With Congress set to return for the lame duck session this week and winners of the midterm elections and the Obama Administration preparing their agendas for the 112th Congress, there are a number of opportunities for clean energy to move forward in the coming weeks and months.

We have been suggesting for quite a while now that the current political and economic terrain is not fertile for comprehensive climate change legislation, but that does not rule out progress on many other solutions on which there is more bipartisan agreement. It remains to be seen if the creation of a renewable electricity standard, the extension of the 1603 Grants in Lieu of Tax Credits, the expansion and extension of the 48C Advanced Energy Manufacturing Tax Credit, funding for a HomeStar energy efficiency home retrofit program, or the establishment of a Green Bank along the lines of a Clean Energy Development Administration can be accomplished as part of some grand compromise on tax and appropriations measures in the lame duck session. If not, they will remain very much alive as the House and Senate consider energy legislation in the 112th Congress. Additionally, the Obama Administration is preparing numerous regulations to address climate change and energy independence in the coming year.

Efforts to block the Environmental Protection Agency from regulating greenhouse gas (GHG) emissions under the Clean Air Act remain uncertain as well. Though the issue is not extraordinarily likely to get a vote during the lame duck session, current counts anticipate that at least 56 Senators are likely to support efforts to delay or deny the agency of its authority in the next Congress. A number of moderate Democrats facing re-election in 2012 could put the filibuster-proof 60 well within reach. The White House continues to reiterate its commitment to veto any EPA delay or block, but Administration sources also said last week that they are open to exploring a wide variety of carbon pricing methods.

Officials in the wind, solar, and geothermal industries met with the White House's National Economic Council last Wednesday to discuss their two major objectives for the lame duck session: extension of tax credits, such as the 1603 Grants in Lieu of Tax Credits program and the 48C Advanced Energy Manufacturing Tax Credit, and the creation of a national renewable electricity standard.

With eight House races still undecided and ballot counting underway for the Alaska Senate seat, Democrats and Republicans are preparing to vote on House and Senate leadership positions in the next few days. House Democrats reached a deal late last week regarding leadership positions for the coming Congress. Speaker Nancy Pelosi (D-CA) is expected to become Minority Leader, Majority Leader Steny Hoyer (D-MD) is expected to serve as Minority Whip, Majority Whip James Clyburn is likely to take a new, yet to be defined number-three position, and Congressman John Larson (D-CT) will serve as Democratic Caucus chairman.

Congress

Senate Lame Duck Agenda Uncertain

Facing a long list of must-pass items, the Senate will reconvene November 15th to begin the Lame Duck session amid uncertainty over whether it will be possible to compromise after a close midterm election. The initial issues on the agenda will be to extend tax cuts, wrap up work on 12 unfinished appropriations bills or adopt another continuing resolution, and continue unemployment benefits. First, though, the Senate will swear in officers who ran in special elections this month, including West Virginia Governor Joe Manchin (D), Chris Coons (D), and Mark Kirk (R). Additionally, Democrats and Republicans will both elect their roster of leaders for the 112th Congress November 16th.

Senators Urge Volumetric Ethanol Excise Tax (VEETC) Extension

Senators Tom Harkin (D-IA), Tim Johnson (D-SD), Amy Klobuchar (D-MN), and Christopher Bond (R-MO) sent a letter November 9th to Majority Leader Harry Reid (D-NV) calling for the consideration of legislation extending the volumetric ethanol excise tax credit. The 45-cent-per gallon VEETC, also known as the blender's tax credit, is slated for expiration at the end of the year.

Upcoming Hearings

The Senate is expected to consider a motion to proceed to the Promoting Natural Gas and Electric Vehicles Act (S. 3815) this week, with votes anticipated November 17th. The legislation would authorize \$3.8 billion in rebates for consumers to purchase vehicles that run on natural gas and mixed fuels as well as funding for the installation of infrastructure to support the use of vehicles that use alternative fuels.

The House Science Subcommittee on Energy and Environment will hold a hearing November 17th on climate change issues. Representatives from the National Academy of Sciences, the National Oceanic and Atmospheric Administration, and the Department of Housing and Urban Development will testify.

Administration

Recovery Through Retrofit Announced

The White House Council of Environmental Quality and the Office of the Vice President announced the Recovery Through Retrofit initiative November 9th. The initiative is the culmination of an 18-month interagency effort designed to overcome barriers to home energy efficiency and to grow the home retrofit industry while saving homeowners money and energy. A Department of Energy home energy scoring program, detailed below, and a new loan guarantee program backed by the Federal Housing Administration are among the new efforts.

U.S. and India Cooperation Announced

President Barack Obama and Indian Prime Minister Manmohan Singh last Monday signed three agreements to work together to promote clean energy and energy efficiency. Under a U.S.-India Partnership to Advance Clean Energy, the nations agreed to establish a Joint Clean Energy Research and Development Center to mobilize up to \$100 million in public and private sector funding over five years for research and development of building efficiency, solar energy, and advanced biofuels. An accord on Unconventional Natural Gas Cooperation is directed toward assisting India in achieving greater energy security by tapping its natural gas reserves, and the U.S.-India Energy Cooperation Program will leverage business resources in both countries for commercial projects and pilot initiatives in clean energy and efficiency. President Obama also pledged November 8th to encourage private investment in clean energy infrastructure in India through the Overseas Private Investment Corp. and the Export-Import Bank.

Department of Commerce

Patent and Trademark Office (PTO) Expands Green Pilot Program

The Patent and Trademark Office extended last week the deadline for filing petitions under the Green Technology Pilot Program until December 31, 2011. Pending green technology-related patent applications filed with the Office on or after December 8, 2009, will be eligible for consideration under the program. Under the program, inventors who have previously submitted patent applications will be able to file petitions for accelerated examination in technologies that contribute to the discovery or development of renewable energy resources, energy efficiency utilization, or GHG reduction.

Department of Energy

Home Energy Score Program Launched

Vice President Joe Biden and Energy Secretary Steven Chu launched the Home Energy Score pilot program November 9th. The Home Energy Score will offer homeowners straightforward, reliable information about their homes' energy efficiency, by providing home energy scores between 1 and 10 and showing how their homes compare to others in their regions. The report also includes customized, cost-effective recommendations that will help reduce energy costs. Using a standardized assessment tool from the Department of Energy and Lawrence Berkeley National Laboratory, the Score will initially be tested with local government, utility, and non-profit partners in 10 pilot urban and rural communities across the country. The agency expects to launch the Home Energy Score nationally in late 2011, based on the findings from the initial programs.

Workforce Guidelines Released

During a meeting of the White House Middle Class Task Force November 9th, Vice President Joe Biden and Energy Secretary Steven Chu released the Workforce Guidelines for Home Energy Upgrades. The guidelines will help develop and expand the skills of the workforce, ensuring work quality while laying the foundation for a more robust worker certification and training program nationwide.

Advanced Biofuels Webinar Forthcoming

The Department of Energy's Biomass Program will host a webinar November 18th called Advanced Biofuels Research Pathways. The second in the Biomass Program's webinar series, the conference will feature an overview of the Program's ongoing advanced biofuels research and will include presentations on biochemical and thermochemical conversions as well as progress in the National Advanced Biofuels Consortium.

Clean Energy Advisory Committee Announced

The Department of Energy announced the establishment of the Energy Efficiency and Renewable Energy Advisory Committee November 12th. The 19-member federal advisory committee will report to the Secretary of Energy twice a year with advice on the portfolio of the Office of Energy Efficiency and Renewable Energy.

Efficiency Improvement Report Released

The Department of Energy's Lawrence Berkeley National Laboratory released a report November 10th on how governments and industry can spark homeowners to seek out home energy improvements. The Driving Demand for Home Energy Improvements report will help ensure that the Agency's investment in energy efficiency provides taxpayers with a high rate of return on their investments, delivers the maximum impact on local communities, and supports a self-sustaining industry for residential energy efficiency improvements.

Department of Housing and Urban Development

PowerSaver Announced

The Department of Housing and Urban Development will offer homeowners loans of up to \$25,000 through a PowerSaver pilot program, part of the Administration's Recovery Through Retrofit initiative. The program, funded by the Federal Housing Administration, is aimed at energy efficiency improvements such as the installation of duct sealing, doors, geothermal systems, insulation, solar panels, water heaters, and windows.

Department of Interior

Outer Continental Shelf (OCS) Wind Energy Request for Interest Published

The Department of Interior's Bureau of Ocean Energy Management, Regulation, and Enforcement published a request for interest November 9th in the Federal Register asking wind energy developers to indicate whether they are interested in obtaining commercial leases for construction of wind energy projects on the Outer Continental Shelf off the coast of Maryland.

Department of Treasury

Expanded Credits for Energy Savings

The Internal Revenue Service announced November 9th that homeowners who undergo energy savings modifications may be eligible for two weatherization tax credits: the nonbusiness energy property credit and the residential energy efficient property credit, both of which were expanded to a 30% credit under the Recovery Act.

Environmental Protection Agency

Cement Lawsuits Filed

The Sierra Club filed a lawsuit November 8th against the Environmental Protection Agency (EPA) to restrict greenhouse gas emissions from Portland cement plants. The lawsuit, filed in the U.S. Court of Appeals for the D.C. Circuit, challenges new source performance standards announced August 9th for Portland cement manufacturing facilities. The lawsuit marks the 19th filed against EPA challenging the final rule.

Local GHG Guidance Issued

The Environmental Protection Agency released a guidance document November 10th to help states and localities determine the technology that stationary sources may use to curb their GHG emissions. The document gives guidance to industry, state, and local permitting agencies on how to determine best available control technologies for GHG emissions from new and modified sources.

White Papers Released

The Environmental Protection Agency released a series of technical white papers November 10th detailing GHG control options in seven industrial sectors—electricity generating units; industrial, commercial, and institutional boilers; pulp and paper; cement; iron and steel; refineries; and nitric acid plants—that emit the most GHG emissions. The Agency also established a GHG Mitigation Strategies Database that, according to the agency, includes specific performance and cost data on current and developing emissions control emissions, as well as data on potential environmental impacts.

Oil and Gas Reporting Rules Released

The Environmental Protection Agency released final rules November 9th that will require oil and gas facilities and certain electronics manufacturing plants to begin keeping tabs on their GHG emissions next year. The new regulations will add those industries to EPA's Greenhouse Gas Reporting Program, which began last January, and in which companies are not required to achieve emissions reductions, but to produce annual emissions reports than are intended to inform the public and guide Congress and the Administration as they work to address climate change. The oil and gas industries will be required to submit their first annual emissions reports in March 2012.

Home Energy Upgrade Comments Requested

On November 9th, the Environmental Protection Agency released for comment a series of best practice tools to maintain or improve indoor air quality and residents' health when performing home energy retrofits. The Agency's draft Healthy Indoor Environment Protocols for Home Energy Upgrades are intended for voluntary adoption by weatherization assistance programs, federally funded housing programs, private sector home performance contractors, and others working on residential retrofit efforts of single- and multi-family low-rise residential homes.

Clean Air Act (CAA) Enforcement Effort Collaboration Underway

The Environmental Protection Agency and the U.S. Customs and Border Protection announced November 9th that they will collaborate to ensure that all imported vehicles and engines comply with Clean Air Act requirements. According to agency records, more than \$6.5 million worth of vehicles were imported into the U.S. and found to be in violation of the Clean Air Act.

Biomass Guidance to Be Issued

The Environmental Protection Agency announced November 10th that it plans to issue guidance in January on what type of environmental, energy, and economic benefits may be attributed to the use of biomass to produce energy at new and modified stationary sources of GHG emissions. The guidance will help states determine whether the use of biomass qualifies as the Best Available Control Technology (BACT) for GHG emissions at some facilities. Additionally, the EPA will make a final determination by May on whether CO₂ emissions from biomass combustion must be controlled at new and modified sources.

National Aeronautics and Space Administration

Rising Temperatures to Increase Wildfires

The National Aeronautics and Space Administration unveiled a study November 9th that concluded that rising global temperatures are likely to increase wildfires over the next several decades in arid regions such as the western U.S. The *Driving Forces of Global Wildfires over the Past Millennium and the Forthcoming Century* study was published in the September Proceedings of the National Academy of Science.

Miscellaneous

International Energy Agency (IEA) Issues World Energy Outlook

The International Energy Agency released its World Energy Outlook November 9th in which it found that world energy demand will increase by 36% by 2035, and, current national commitments to reduce emissions and increase energy efficiency and renewable energy use will fail to hold climate change to levels necessary to avoid catastrophic consequences. The increase will be attributed to Chinese consumption and increased uses of coal, oil, and natural gas. The Outlook also showed that renewable energy was subsidized globally by \$57 billion last year, with about \$37 billion to electricity from renewable power and \$20 billion to biofuels. Additionally, the IEA advised that wealthy nations will need to spur roughly \$13.5 trillion through 2035 in new business and consumer spending on low-carbon technologies to ensure clean energy helps to hold CO₂ emissions to sustainable levels.

Emissions Down in Regional Greenhouse Gas Initiative (RGGI) States

A November 5th report from the New York State Energy Research and Development Authority found that annual CO₂ emissions from electricity generators in the 10 states participating in the Regional Greenhouse Gas Initiative were 33% lower in 2009 than in 2005. The report, which was prepared for a November 12th RGGI stakeholders meeting, attributed the decline to a lower electricity load, fuel-switching from petroleum and coal to natural gas, and increased use of nuclear, wind, and hydropower.

International Energy Conservation Code (IECC) Revisions Approved

Local and state building code officials approved revisions to the commercial section of the 2012 International Energy Conservation Code last week that represent the largest single-step efficiency increase in the history of the national energy code. The proposal, part of a comprehensive proposal submitted jointly by the Department of Energy, the New Buildings Institute, and the American Institute of Architects, addresses measures such as cooling, lighting, quality assurance, and renewable energy standards.

New York Unveils Climate Action Plan

New York Governor David Paterson (D) released a climate action plan November 9th that calls for an 80% reduction in emissions by 2050 through changes in nearly every sector of the state's energy economy. The blueprint targets enhanced building codes, low-carbon fuel standards, an upgrade of the electrical grid, increased use of electric vehicles, and new land management practices to store more carbon.

European Commission (EC) Outlines Energy Plan

The European Commission outlined a \$1.4 trillion 10-year energy plan November focused on boosting infrastructure spending in order to build electricity and gas transmission grids that will ensure all 27 European Union member states are interconnected. The plan, which is designed to serve as a focal point for a February EU energy summit, also includes numerous energy efficiency ideas for the transport and

the building sector and energy certificates for companies to invest in technology that is less energy intensive.

Electrification Roadmap Forthcoming

The Electrification Coalition will release a roadmap November 15th to putting more electric vehicles on the road. The study will advise that temporary purchase incentives for electric-drive vehicles will allow them to become the most cost-competitive for medium- and heavy-duty truck fleets by 2012. General Electric announced plans November 11th to purchase 25,000 electric vehicles, and plans to convert at least half of its 30,000 global fleet by 2015.

Hawaii Issues Technology Tax Guidance

The Hawaii Department of Taxation issued guidance on October on the effect of cash payments to taxpayers related to the renewable energy technologies income tax credit. The credit is available against corporate and individual income tax for eligible renewable energy technology systems and is equal to 35% of the cost of a solar system or 20% of the cost of a wind system not to exceed cap amounts based on property location.

North Carolina Renewable Standard Challenged

On November 12th, environmental groups appealed a recent determination by the North Carolina Utilities Commission that state renewable energy requirements may be met by burning whole trees. In 2007, the state enacted a law (Session Law 07-397) that requires public-utility electricity generators to meet a renewable energy and efficiency portfolio standard of 12.5% by 2021 and listed biomass resources as an applicable source. In October, the commission decided that utilities could burn whole trees to meet the state's requirements.

Commitment to End Subsidies Reaffirmed

Members of the Group of 20 reaffirmed their commitment to phase out subsidies for fossil fuels during a November 12th summit in Seoul. At a 2009 summit in Pittsburgh, G-20 leaders committed to gradually eliminate fossil fuel subsidies by 2020, and since then, member nations have been developing strategies and time frames to meet the commitment.