



ML
STRATEGIES

David Leiter DJLeiter@mlstrategies.com
Sarah Litke SLitke@mlstrategies.com
Bryan Stockton BStockton@mlstrategies.com
Jordan Collins JMCollins@mlstrategies.com
Neal Martin RNMartin@mlstrategies.com

ML Strategies, LLC
701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004 USA
202 434 7300
202 434 7400 fax
www.mlstrategies.com

ENERGY & ENVIRONMENT UPDATE **February 10, 2014**

ENERGY AND CLIMATE DEBATE

With Senator Max Baucus' (D-MT) confirmation February 6 to be the next Ambassador to China, the committee leadership shuffle begins. In advance of the moves, Senators Ron Wyden (D-OR) and Mary Landrieu (D-LA) are beginning to outline their agendas as they prepare to lead the Senate Finance and Energy committees, respectively. Senator Wyden announced last week that he would focus on tax extenders as a catalyst into comprehensive tax reform. Senator Landrieu, a domestic energy development advocate, said that the turnover is likely to be settled during the Senate Democratic Caucus weekly meeting February 11, and that she looks forward to working with members of the committee for several weeks before finalizing her agenda. The senator has been a vocal supporter of the Keystone XL pipeline, for lifting the crude oil export ban, for building liquefied natural gas export terminals, and for moving quickly on permitting energy infrastructure projects in general. Senator Landrieu will relinquish her current chairmanship of the Small Business Committee in the move, and is looking forward to working with Senator Lisa Murkowski (R-AK), who will remain as the Energy Committee's ranking member.

In other news, the Senate approved February 4 the Agricultural Act of 2014 ([H.R. 2642](#)), sending the farm bill to the president for signature. The five-year reauthorization includes an energy title that protects programs on conservation, biofuels, and forestry.

The Senate will resume work on a military cost-of-living benefits bill (S. 1963) this week, while the House will focus on consumer protection bureau legislation (H.R. 3191) and potentially consider a measure to extend the debt limit.

CONGRESS

House Democrats Applaud RGGI

House Minority Whip Steny Hoyer (D-MD) led 40 of his colleagues in promoting the Regional Greenhouse Gas Initiative as a model for limiting greenhouse gas emissions from existing power plants across the country. In a January 31 [letter](#), the group urged the Environmental Protection

Agency to ensure that its GHG limits for existing plants provide flexibility for states that have already implemented similar regulations.

Crude Oil Export Data Requested

Senate Energy and Natural Resources Chair Ron Wyden (D-OR) and Senator Maria Cantwell (D-WA) sent a letter to Energy Information Administrator Adam Sieminski February 3 requesting more information about how lifting the decades-old crude oil export ban would impact domestic oil production and consumption; domestic supplies and price; and refined petroleum product exports.

Quick Keystone Action Urged

A bipartisan House-Senate coalition joined business groups and labor unions at a February 4 news conference to call on President Obama to approve quickly the Keystone XL pipeline. In the Senate, there are three options under consideration to approve the pipeline: legislation to approve the project; a joint resolution expressing support for the project; and a time limit for the administration to make a decision, which was done in December 2011. Senator John Hoeven (R-ND) has introduced legislation for the first two options. Representative Lee Terry (R-NE) said that the Senate could also take up House-passed legislation (H.R. 3) that approves the pipeline.

EPA Sound Science Questioned

Testifying before the House Science, Space, and Technology Committee February 5, witnesses and Republican representatives accused the Environmental Protection Agency of overreaching its regulatory authority in a number of regulations, from greenhouse gas emissions on power plants; to utility maximum achievable control technology standards; to fracking; to cross-state air pollution; to clarifying the scope of American waters. The group charged that many of the regulations were not based on sound science.

Nolan Joins SEEC

Representative Rick Nolan (D-MN) joined the House Sustainable Energy and Environment Coalition February 6.

Energy Efficiency Legislation Future Uncertain

Representative Joe Barton (R-TX) said February 6 that he does not believe that energy efficiency legislation will make it through Congress this year. Representative Diana DeGette (D-CO) responded that everyone should be able to agree on efficiency, as it is a bipartisan issue.

House Climate Press Forthcoming

Representative Henry Waxman (D-CA) announced February 6 that the Safe Climate Caucus will run weekly op-eds in The Huffington Post and YouTube videos this year as part of a pledge to capture more attention for the climate change issue.

Grid Security Evaluation Requested

Senate Majority Leader Harry Reid (D-NV), Senate Energy and Natural Resources Committee Chair Ron Wyden (D-OR), and Senators Dianne Feinstein (D-CA) and Al Franken (D-MN) asked the Federal Energy Regulatory Commission and the North American Electric Reliability Corporation February 7 to ensure that utilities are taking steps to guard against physical attacks that could harm the system. An attack on California's electricity grid last spring has renewed concern over grid security, and the senators are seeking responses by March 3. The senators also asked the commission to implement minimum security standards at critical electric substations.

Legislation Introduced

- Senator James Inhofe (R-OK) introduced (S. 1988) legislation February 4 to allow states to opt out of the Environmental Protection Agency's greenhouse gas power plant standards, allowing state to keep plants open if they believe doing so is necessary to maintain electricity production, reliability, and affordability.
- Senators Michael Bennet (D-CO) and Dean Heller (R-NV) introduced legislation (S. 2003) February 6 to amend the solar and geothermal investment tax credit's qualifying language so that any project that has begun construction by December 21, 2016, will still qualify for the credit. Currently, only solar and geothermal projects that are placed in service by the deadline will receive the credit.
- Senators Roy Blunt (R-MO) and Joe Manchin (D-WV) introduced legislation (S. 2006) February 6 to establish a National Rare Earth Refinery Cooperative. The measure would encourage domestic production and refinement of rare earth materials, making the United States less vulnerable to China's supply disruption and price manipulation.
- House Science Committee Republicans led by Environment Subcommittee Chair David Schweikert (AZ) introduced legislation (H.R. 4012) to prohibit the Environmental Protection Agency from proposing, finalizing, or disseminating regulations or assessments based upon science that is not transparent or reproducible.
- Representative Richard Neal (D-MA) introduced legislation (H.R. 3939) to make the research and development tax credit permanent. The measure includes provisions to renew, expand, or make permanent a series of other tax credits and infrastructure-related bond programs.

Upcoming Hearings

- The House Science Committee's environment panel will hold a hearing February 11 on "open science" at the Environmental Protection Agency
- The same day, the House Energy and Commerce Committee's Oversight and Investigations Subcommittee will consider the status of Department of Energy clean coal programs.
- The Senate Energy Subcommittee will hold a hearing February 12 to examine state efforts to implement energy efficiency and renewable energy policy. Witnesses include Minnesota Department of Commerce Commissioner Mike Rothman; Randy C. Clark, Senior Vice President and General Manager of NORESKO; Steve Nadel, Executive Director of the American Council for an Energy Efficient Economy; Mark Glick, State Energy Director of Hawaii's Department of Business, Economic Development and Tourism; William E. Taylor, Director of Texas' Energy Conservation Office, Texas Comptroller of Public Accounts; and GoodCents CEO and President William Rodgers.
- The same day, the Homeland Security and Governmental Affairs Committee will hold a hearing to consider preparations for extreme weather events.

ADMINISTRATION

CEQ Acting Chair Announced

The White House announced February 6 that White House Council on Environmental Quality Chief of Staff Mike Boots would become acting chairman February 18 to replace department Chair Nancy Sutley. The search for a permanent replacement is ongoing.

DEPARTMENT OF AGRICULTURE

Seven Climate Hubs Announced

Agriculture Secretary Tom Vilsack established February 5 seven regional climate hubs aimed at helping farmers and rural companies respond to climate change. The hubs will be located in Ames, Iowa; Corvallis, Oregon; Davis, California; Durham, New Hampshire; El Reno, Oklahoma; Fort Collins, Colorado; and Raleigh, North Carolina; and will consider the impacts of climate change on farms, ranches, and forests, and help to develop adaptation and mitigation strategies.

DEPARTMENT OF INTERIOR

OR Offshore Wind Green Lighted

The Department of Interior [approved](#) February 5 Principle Tower's plan to begin moving forward with a floating offshore wind pilot project near Oregon. The agency announced that there is no competitive interest in the 15 square mile area for the proposed 30MW project, which would consist of five floating 6MW turbines. The company has received \$4 million in Department of Energy funding for the demonstration project, and can now submit to the Bureau of Ocean Energy Management a plan for the proposed lease area.

ENVIRONMENTAL PROTECTION AGENCY

Sierra Club Intends to Sue Over Ozone Standard

The Sierra Club [announced](#) February 3 its intent to sue the Environmental Protection Agency over 57 areas that allegedly do not meet the ozone air quality standard. The Sierra Club petitioned the agency last November to redesignate the areas as not meeting the 2008 national ambient air quality standard for ozone, but the agency has not yet responded to the petition.

Schedule for GHG Regs for Existing Power Plants

Environmental Protection Agency Acting Administrator for Air and Radiation Janet McCabe told the Energy Utility and Environment Conference 2014 February 3 that the agency has set an ambitious, but achievable, set of deadlines for regulations on greenhouse gas emissions from existing power plants. The agency plans to issue its proposal this June, with a final proposal expected the following June, and state implementation plans due June 2016.

Further CCS Review Necessary

The Center for Regulatory Effectiveness sent a letter to the Environmental Protection Agency February 3 charging that the agency did not adequately peer review studies showing that carbon capture systems are viable for new coal fired power plants in its proposed new source performance standards. The group is asking the agency to outline its review process before the next comment period closes March 10, or extend the comment period. The American Coal Council, National Mining Association, American Petroleum Institute, and American Public Power Association made similar comments at a public hearing on the proposed standard February 6.

Science Supports Stricter Ozone Standard

The Environmental Protection Agency released a [draft document](#) February 3 finding that scientific evidence justifies setting a more stringent ozone air quality standard. The agency is in the process of deciding whether to [revise](#) the current 75 ppb standard to between 60 ppb and 70 ppb. The Clean Air Act requires the agency to review and consider revising the standards every five years, with the most recent revision coming in 2008 and litigation underway that would require the agency to propose a new rule this December with finalization by October 2015.

2013 RFS Level Defended

The Environmental Protection Agency filed a [brief](#) February 4 in the U.S. Court of Appeals for the District of Columbia Circuit saying that it has broad statutory discretion under the Clean Air Act to determine when to reduce annual renewable fuel volume requirements, and that reducing the 2013 requirement would go against Congress's intention of promoting renewable fuel consumption. Reply briefs are due February 20.

Fracking with Diesel Guidance Reviewed

The White House Office of Management and Budget completed February 5 its interagency review for an Environmental Protection Agency final [guidance](#) on regulation of fracking with diesel fuels. The guidance requires fracking with diesel fuels to be permitted through the Underground Injection Control program. The office received the guidance September 21, and the agency is expected to issue it as soon as this week.

Economywide GHG Regs Methods Consideration

The Environmental Protection Agency posted [draft questions](#) February 5 soliciting public input on how to assess the economywide costs and benefits of greenhouse gas regulations. A yet-to-be-formed panel of advisers will advise the agency on the responses, which are due April 7.

Fracking's Impact on Water Considered

The Environmental Protection Agency's Inspector General released a [notice](#) February 5 that it is beginning preliminary research on the agency's and states' ability to manage potential threats to water resources from fracking. The Inspector General will meet with the Office of Water to discuss the project soon.

CCS Requirements Not Invalidated by 2005 Provision

The Environmental Protection Agency filed a [notice](#) of data availability February 6 containing rationale for why a provision of the 2005 Energy Policy Act does not invalidate its proposal to require coal fired power plants to capture and store a portion of their greenhouse gas emissions. The agency will accept public comments until March 10 on its interpretation of the law.

Climate Change Impacts on Human Health to be Considered

The Environmental Protection Agency [announced](#) February 6 that it is seeking public engagement on a multi-agency report that will consider the impacts of climate change on human health in the United States. The agency is collecting public comment through March 31 on the draft prospectus for the technical report, as well as scientific information that could be included in the assessment and nominations for contributing authors.

Tier 3 Finalization Requested

The National Association of Clean Air Agencies sent a letter February 6 to White House regulatory chief Howard Shelanski and Environmental Protection Agency Administrator Gina McCarthy urging them to finalize the delayed Tier 3 rule that would require refiners to reduce gasoline's sulfur content. The association asked that the rule be finalized by the end of the month so that the program could take effect with the 2017 model year.

Recycled Coal Ash Safety

The Environmental Protection Agency released a [study](#) February 7 finding that the two largest uses for recycled coal ash are safe. The agency evaluated the use of encapsulated coal ash that is bound in products like wallboard, concrete, roofing materials, and bricks; half of recycled coal ash goes

into concrete and gypsum panel products. The agency faces a court-agreed December 19 deadline to finalize its coal ash rulemaking.

Efficiency Mechanism Considered for GHG Regs

Environmental Protection Agency Administrator Gina McCarthy told the National Association of State Energy Officials February 7 that the agency is considering requests to include an energy efficiency crediting mechanism in its upcoming greenhouse gas rule for existing power plants. Such a mechanism is available to states participating in the Regional Greenhouse Gas Initiative.

GHG Permit Authority Granted to TX

The Texas Commission on Environmental Quality confirmed February 7 that the Environmental Protection Agency has delegated to Texas regulators authority to process greenhouse gas permits. The agency signed February 4 the Federal Register notice to propose approval of the state clean air implementation plan and lift the federal implementation plan; the notice includes a 30-day public comment period on the program.

INTERNATIONAL

EU Parliament Approves 2030 Targets

Confirming a January 9 position by the environment and industry committees February 5, the European Parliament [voted](#) in favor of the European Union adopting binding greenhouse gas reduction, renewable energy, and energy efficiency targets for 2030. The proposal would require member states to reduce greenhouse gas emissions by 40 percent compared to 1990 levels, to achieve a 40 percent energy efficiency savings from business as usual levels, and to have renewables provide 30 percent of consumed energy. Member states will consider the nonbinding resolution in March.

Cities Lead Climate Efforts

United Nations Framework Convention on Climate Change Executive Director Christiana Figueres told the C40 Cities Climate Leadership Group summit in Johannesburg February 5 that national governments should follow cities' example on climate issues, removing regulatory barriers in order to hasten action on climate change. The group released a report, "[Climate Action in Megacities Volume 2.0](#)," the same day, showing that mayors across the C40 cities were driving positive change, nearly doubling climate activity since 2011, with more than 8,000 efforts underway.

STATES

PA Power Companies Not Liable

The U.S. District Court for the Western District of Pennsylvania [ruled](#) February 6 that power companies are not liable for alleged modification, reconstruction, and operation violations of the Clean Air Act and Pennsylvania Air Pollution Control Act. The decision reverses an earlier decision that held that certain state law claims for damages were not time-barred based on a continuing violation.

Massive Coal Ash Spill in NC

Environmental groups are increasing vocal about coal ash following the February 2 spill from a storage lagoon at Duke Energy's Dan River Stream Station in North Carolina. Tens of thousands of tons of coal ash have been released into the river as a result of the ongoing spill, and utility employees finally controlled the release this weekend. Utility employees and federal and state regulators are working to fully assess its scope and impact. Duke announced February 3 that coal

ash and ash basin water had been released into the Dan River the day before, when a stormwater pipe beneath the storage lagoon burst. The three coal-fired units at the site were retired in April 2012 and replaced by a combined cycle station. As a result, the Southern Environmental Law Center is calling for coal ash to be moved away from drinking water reserves, and particularly not to be stored in unlined lagoons. The Sierra Club and others are making similar statements.

SUSTAINABILITY

Green Goods Production Boom

The International Institute for Sustainable Development, the International Institute for Environment and Development, the Finance Alliance for Sustainable Trade, Environment and Trade in a World of Interdependence, and the Sustainable Trade Initiative released a report January 31 finding that the production of commodities grown according to green sustainability standards is booming. The “State of Sustainability Initiatives Review 2014” concluded that some goods have significantly penetrated a number of key crop markets, though actual sales have not grown as rapidly as production.

Storm Surge Damages Costly

According to a study published February 6 in the Proceedings of the National Academy of Sciences, global average storm surge damages could increase from \$10-\$40 billion per year today to up to \$100 trillion per year, more than the world’s current Gross Domestic Product, by the end of the century in coastal regions. The authors conclude that timely investments in coastal protection could reduce the cost by more than 99.9 percent.

MISCELLANEOUS

Fuel Efficient Trucks Save Billions

The Consumer Federation of America released a [report](#) February 3 finding that reducing the fuel consumption of medium- and heavy-duty trucks by 50 percent could save American consumers \$32 billion per year. The report, “Paying the Freight: The Consumer Benefits of Increasing the Fuel Economy of Medium and Heavy Duty Trucks,” concludes that the necessary technologies are available and cost-effective.