



## ML Strategies Update

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## Energy & Environment Update

### ENERGY AND CLIMATE DEBATE

Congress returns for the 114<sup>th</sup> session January 6, and efforts are underway to prepare for an eventful two years on Capitol Hill as well as the final two years of the Obama Administration.

Energy and environment issues, in particular, are likely to play a key role in 2015, much like they did in 2014, from the Keystone XL debate to international climate negotiations to a host of Environmental Protection Agency regulations.

New Senate Majority Leader Mitch McConnell (R-KY) vowed late last year to make the Keystone XL pipeline the first order of business for the upper chamber, and his colleagues are already moving quickly on the issue. The Senate Energy and Natural Resources Committee will hold a hearing January 7 to consider [legislation](#) approving the Keystone XL pipeline and will take a vote on the measure the following day, setting the stage for a floor vote as early as next week. The committee approved identical language from Senate Energy and Natural Resources Chair Lisa Murkowski (R-AK) in June. Senate Democrats are expected to introduce several amendments to the bill, but only a few will ultimately vote for the measure – how many that few actually is remains the key question, with many predicting that there are at least 61 votes for the bill, including seven Democrats. If the upper chamber does approve the legislation and the president vetoes it, both sides are confident that they could win the fight, as getting to the necessary 67 votes to override a presidential veto will be the truly difficult battle. The House, which has passed several pro-Keystone measures in the past couple of years, will take up similar language in the near future. President Obama last month expressed skepticism over the project's economic benefits, but the White House has yet to outright threaten to veto Keystone legislation. The president did say December 29 that he expects to veto legislation this year that would block or impede his climate and environmental policies. In the meantime, the Nebraska Supreme Court will soon rule on the route approval process, and a federal decision is likely to follow soon thereafter.

The Lima climate negotiations, and the United States' and Chinese climate pledges just weeks prior, served as preparatory stages for the main event in Paris this December. Just before the close of 2014, the United Nations reached its \$10 billion goal for the Green Climate Fund, though the United States and others still must make good on their commitments. International climate negotiators will have serious work to do to hammer out a new global climate change accord before the end of 2015, as most of the contentious issues are still unsolved.

As part of President Obama's "year of action," the Environmental Protection Agency had a big year in 2014, releasing, among many other regulations, the Clean Power Plan in June. Administrator Gina McCarthy and other Administration officials continue to reiterate that they will finalize the rule this summer, despite the facts that there are millions of comments to sort through and an ugly legal battle is already underway. The Administration has also

repeatedly asserted that the proposed rule is legally defensible, a statement that is certain to be tested as litigation piles up once the rule is final. In the meantime, the Republican Congress is planning efforts to attack the regulation, and other agency efforts as well, via oversight hearings and the appropriations process. In addition to the Clean Power Plan, we expect that Congress is likely to target revisions to the National Ambient Air Quality Standards for ozone and a jurisdictional rule defining the scope of the Clean Water Act, and methane standards are forthcoming from the agency later this month.

In other judicial branch news, the Supreme Court will hear this spring arguments in a suit challenging the Environmental Protection Agency's Mercury and Air Toxics Standards. The agency has a near impeccable success rate in recent high court history, but we expect this case to see a lot of focus in the coming weeks and months. The Supreme Court may also take up the Federal Energy Regulatory Commission's Order No. 745, which appellate judges struck down last year and the Solicitor General is planning an appeal.

Not every issue will leave the executive and legislative branches at odds, though. Just before the end of the year, President Obama and Senate Majority Leader McConnell identified trade, long term infrastructure financing, and the possibility of tax reform as areas of potential agreement. Senate Finance Committee Chair Orrin Hatch (R-UT) intends to pursue broad tax reform before considering another short-term extension, and Ranking Member Ron Wyden (D-OR) plans to work with him to find compromise over which incentives to keep, improve, and discard, while he also hopes to encourage new energy technology via a continuation of the production tax credit or other renewable energy and energy efficiency tax provisions. Another area that may afford some amount of bipartisan support is energy efficiency legislation, and Senators Jeanne Shaheen (D-NH) and Rob Portman (R-OH) are planning to reintroduce their legislation early this session. We will know more about how the legislative schedule will proceed this Congress after Democrats and Republicans take their retreats in the next couple of weeks.

## CONGRESS

### FERC/EPA Collaboration

Senate Energy and Natural Resources Committee Chair Lisa Murkowski (R-AK), House Energy and Commerce Committee Chair Fred Upton (R-KY), and Energy and Power Subcommittee Chair Ed Whitfield (R-KY) sent a [letter](#) December 22 asking the Federal Energy Regulatory Commission to describe meetings and exchanges with the Environmental Protection Agency regarding the proposed Clean Power Plan.

### Upcoming Hearings

The Senate Energy and Natural Resources Committee will hold a hearing January 7 on [legislation](#) to approve the Keystone XL pipeline. Witnesses include Association of Oil Pipe Lines President and CEO Andrew Black, Center for American Progress Vice President Greg Dotson, and Laborers' International Union of North America Legislative Director David Mallino. The committee will hold a business meeting the following day to markup the legislation.

## DEPARTMENT OF AGRICULTURE

### REAP Updated

The Department of Agriculture published December 29 a [final rule](#) to update requirements for applicants seeking funding under the Rural Energy for America Program. The program provides awards for renewable energy systems and energy efficiency improvements as well as energy audits, and the final rule implements a three-tiered application process and reduces technical reporting requirements.

## DEPARTMENT OF COMMERCE

### Reexamination Denied

The Department of Commerce rejected a request December 31 by SolarWorld to review 2012 cases that resulted in antidumping and countervailing duties on solar products from China in light of cyber espionage allegations. SolarWorld is pursuing another set of cases against China and Taiwan.

## DEPARTMENT OF ENERGY

### LNG Export Opposition

114 environmental organizations sent a [letter](#) December 22 to Energy Secretary Ernest Moniz urging him to oppose Senator John Hoeven's (R-ND) legislation, the Natural Gas Export Certainty Act (S. 2638), to accelerate exports of liquefied natural gas by requiring the Department of Energy to make a decision on an export license within 45 days of a company filing for a construction permit with the Federal Energy Regulatory Commission. The groups charge that the practice only increases global methane emissions.

## **HVAC Efficiency Standards**

The Department of Energy proposed December 30 revised energy efficiency [standards](#) for commercial single package vertical air conditioners and single package vertical heat pumps, which are primarily used in hotels, modular classrooms, modular office buildings, and telecommunication shelters. The agency estimates that the proposed standards could result in net benefits of up to \$51 million per year. The agency will hold a public meeting on the proposed standards on February 6 and will accept public comment until March 2.

## **Light Bulb, Ice Maker Efficiency Standards**

The Department of Energy finalized December 31 energy efficiency standards for [general service fluorescent lamps](#) and [automatic commercial icemakers](#) as part of President Obama's Climate Action Plan. The updated standards for general service fluorescent lamps, which go into affect in 2017, are expected to reduce CO2 emissions by 90 million metric tons and save Americans more than \$15 billion in electricity costs through 2030. The updated standards for commercial icemakers are expected to reduce greenhouse gas emissions by four million metric tons and save Americans almost \$600 million on their electric bills through 2030.

## **DEPARTMENT OF INTERIOR**

### **Secretary on Fracking Bans**

Interior Secretary Sally Jewell said January 2 that she thinks that local and statewide initiatives to stop or prevent fracking create uncertainty for industry and are often in response to local residents' fears, which are sometimes based on incomplete information. The White House Office of Management and Budget began its review of final agency rules last August, and federal regulations on fracking on federal land are expected soon.

## **ENVIRONMENTAL PROTECTION AGENCY**

### **Ruling on NH Plant Sought**

The Sierra Club filed a suit in the U.S. District Court for the District of Columbia December 18 charging that Environmental Protection Agency Administrator Gina McCarthy failed to perform her non-discretionary duty to grant or deny the organization's request for a review of an air pollution permit issued by New Hampshire to a coal-fired power plant within the 60-day period. The organization seeks to compel the agency to grant or deny the petition.

### **Carbon Sequestration Waste Rule Challenged**

The Carbon Sequestration Council, Southern Co. Services Inc., and American Petroleum Institute filed a brief in the U.S. Court of Appeals for the District of Columbia Circuit December 18 arguing that CO2 streams used in geologic sequestration should not be regulated as hazardous waste under the Environmental Protection Agency's Resource Conservation and Recovery Act rules. The agency must file replies to the case by January 21.

### **Minor MATS Rule Changes**

The Environmental Protection Agency proposed December 19 several [technical changes](#) to its 2012 mercury and air toxics standards for power plants, including corrections that would resolve conflicting language. The proposal also removes affirmative defense language that protects power plant operators from being subject to civil penalties for malfunction-related regulatory violations.

### **CPP Litigation**

The National Mining Association and the American Coalition for the Clean Coal Electricity Trade Associations filed an amicus brief on behalf of Murray Energy Corp. December 23 arguing that the Environmental Protection Agency's proposed Clean Power Plan is ripe for judicial review. Two dozen states intervening in the case also submitted briefs, twelve on behalf of the company, and twelve on behalf of the agency, and nine trade associations filed an amicus brief December 22 in support of Murray Energy.

### **Ozone Hearings Scheduled**

The Environmental Protection Agency scheduled December 23 three public hearings to take public comment on the agency's proposal to tighten National Ambient Air Quality Standards for ozone. The agency proposed in November strengthening the standard to a range of 65 parts per billion to 70 ppb, down from the current 75 ppb standard. The public hearings will take place January 29 in Arlington, Texas, and Washington, D.C., and February 2 in Sacramento, California.

### **2008 NAAQS Litigation**

The U.S. Court of Appeals for the District of Columbia Circuit ruled December 23 that the Environmental Protection Agency overstepped its statutory authority in regulations aimed at easing states' implementation of the 2008 National Ambient Air Quality Standards for ozone, which extended the compliance deadlines and removed some

transportation conformity requirements. The Natural Resources Defense Council filed the suit in May 2012. States will have six months less to demonstrate compliance with the 2008 standard.

### **Volvo Emissions Case**

Volvo Powertrain Corp. asked the Supreme Court December 23 to review a U.S. Court of Appeals for the District of Columbia Circuit decision that imposed a fine against the company for more than 8,000 engines manufactured by a Swedish sister company that failed to meet a NOx standard under a 1999 Clean Air Act consent decree with the Environmental Protection Agency. Volvo Powertrain was ordered to pay about \$72 million, and the company charges that the agency offered no evidence that 7,262 of the 8,354 engines at issue were actually sold in or imported to the United States.

### **Biomass Sorghum Under RFS**

The Environmental Protection Agency published December 31 a [preliminary analysis](#) in which it anticipated that biofuels from biomass sorghum could meet the necessary greenhouse gas reductions required to qualify as cellulosic fuel under the renewable fuel standard. The agency is requesting comment by January 30 on the methodology and results of its preliminary analysis.

## **FEDERAL ENERGY REGULATORY COMMISSION**

### **New Energy Capacity**

The Federal Energy Regulatory Commission released its [monthly update](#) last week in which it found that wind power was the leading source of new electric generating capacity in November, with 333 MW out of 873 MW of new capacity coming from wind power, followed by solar power at 294 MW, natural gas at 140 MW, and 106 MW from new coal sources. Natural gas led the way for the first eleven months of the year, making up just over half of the nearly 11 GW of new capacity brought online through November.

### **Paying to Keep Plants Online**

PJM Interconnection LLC filed a notice with the Federal Energy Regulatory Commission December 24 identifying plans to ask the Administration to let it pay power plant owners to retain at least 2,000 MW of generation in operation through next winter, running beyond their scheduled closures to ensure grid reliability next winter. The companies had planned to close the plants before the Environmental Protection Agency's mercury rule goes into effect in 2015.

### **LNG Export Authorized**

The Federal Energy Regulatory Commission announced December 30 that it will allow Cheniere Energy Inc. to build a liquefied natural gas export terminal and pipeline in Corpus Christi, Texas. The company was the first developer to receive a permit in decades, and is now authorized to build a second terminal. The Department of Energy will not consider if the project can ship LNG to countries with which the United States does not have a free trade agreement. The company's Sabine Pass terminal in Cameron Parish, Louisiana, is expected to begin operating as early as October 2015.

### **Honorable Sworn In**

The Federal Energy Regulatory Commission swore in Colette Honorable as its newest commissioner January 5. The Senate confirmed last month the former president of the National Association of Regulatory Utility Commissioners.

## **NUCLEAR REGULATORY COMMISSION**

### **Burns to Chairmanship**

The Nuclear Regulatory Commission announced December 23 that President Obama designated Stephen Burns as chairman of the commission, effective January 1. Mr. Burns, a former general counsel and 33-year-veteran of the agency who was confirmed to the commission in September, replaces Chairman Allison Macfarlane, who left the commission January 1 to begin a teaching position at George Washington University.

## **INTERNATIONAL**

### **OECD Environment/Economics Report**

The Organization for Economic Cooperation and Development released a [study](#) December 16 concluding that implementing strong, flexible, well-defined policies to address pollution and climate change will not harm nations' economic growth, and could help companies to become more productive.

## Chinese Air Pollution Violations

The Standing Committee of China's National People's Congress released a statement December 23 outlining plans to remove a cap on penalties from drafts of the country's updated Air Pollution Prevention and Control Law. China is expected to approve the law this year, which could go into effect by the end of the year or early next year, and violations could become more expensive with no maximum penalty and accumulating daily penalties under the most recent proposals.

## STATES

### EV Hastening

67 utilities, private companies, business groups, electric vehicle advocacy groups, and environmental advocates sent a [letter](#) December 17 to 11 Northeastern and Mid-Atlantic governors and governors-elect urging them to deploy quickly electric vehicles in their states.

### VT Wind

The U.S. District Court for the District of Vermont denied December 24 Vermonters for a Clean Environment's effort to block a wind farm from being installed in Vermont's Green Mountains. The project is a priority for the Obama Administration, as it works to increase the number of renewable energy projects on public lands. The court concluded that the Forest Service complied with the National Environmental Policy Act's procedural requirements and that its permit decision was well within its discretion.

### Picker to Head CPUC

California Governor Jerry Brown (D) named last week California Public Utilities Commissioner Michael Picker as president of the commission. Mr. Picker formerly served as the governor's renewable energy advisor, and he replaces Michael Peevey, whose term expired December 31. The governor named Liane Randolph, general counsel at the California Natural Resources Agency, as Mr. Picker's replacement.

### KY Pollution Control

The Tennessee Valley Authority Board of Directors [approved](#) December 30 the installation of \$185 million in additional pollution control technology to reduce emissions of ozone precursors from two coal-fired generating units at the Shawnee Fossil Plant in Kentucky. Selective catalytic reduction, flue gas desulfurization systems are projected to significantly reduce SO<sub>2</sub> and NO<sub>x</sub> emissions from the plant, allowing the plants to remain in operation. Under a 2011 settlement with the Environmental Protection Agency, the board is required to install the controls by December 31, 2017.

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## MISCELLANEOUS

### Cheap Oil's Impacts

Bloomberg New Energy Finance released a report December 22 finding that electric cars are likely to be most hurt within the renewable energy industry by lower oil prices. The 45 percent reduction in Brent crude oil prices since June will also slow the move away from fossil fuels in oil-producing nations and increase the cost of natural gas in the United States.

### Comcast Energy Bill Reduction

Comcast vowed last week to introduce serves to reduce gas and electric bills for New Yorkers as it seeks approve for a merger with Time Warner Cable from the state Public Service Commission. Comcast/Xfinity launched last a year an EcoSaver service that learns the heating and cooling patterns of a customer's home and adjusts the thermostat using real-time weather data, resulting in air conditioning and heating usage by 15 percent. Xfinity Home Control 150 allows customers to control their lights, appliances, and video cameras remotely. Time Warner has a similar program.

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