



ML Strategies Update

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Energy & Environment Update

ENERGY AND CLIMATE DEBATE

Prior to recessing for the Thanksgiving holiday, the House and Senate both took several votes and introduced numerous pieces of legislation on energy and environment related issues last week.

After the House approved their version of Keystone XL pipeline (H.R. 5682) legislation the previous week, the Senate failed to move an identical bill (S. 2280), from Senators Mary Landrieu (D-LA) and John Hoeven (R-ND) November 18. The one-vote loss, 59-41, is yet another hit to Senator Landrieu's runoff election campaign against Representative Bill Cassidy (R-LA), and soon-to-be Majority Leader Mitch McConnell (R-KY) is confident that the upper chamber will pass Keystone language in the 114th Congress. Republican gains in the midterm elections may bring the vote count in favor of Keystone passage to 63, but bill supporters would still need 67 votes to override a presidential veto.

The House considered three measures last week to curtail the Environmental Protection Agency's procedures for writing new regulations. The first, the EPA Science Advisory Board Reform Act (H.R. 1422), would alter the selection process for the panel and increase public participation in its activities. The second, the Secret Science Reform Act (H.R. 4012), would require the agency to make public data used in writing regulations. The third, the Promoting New Manufacturing Act (H.R. 4795), is aimed at reducing delays and increasing transparency in the agency's process for Clean Air Act preconstruction permits for new or modified stationary sources. The House passed the first November 18, the second November 19, and the third November 20. The Senate will not take up the measures this year. The White House Office of Management and Budget released statements of administration policy November 17 about the three bills, saying that they would recommend that President Obama veto them if they were to reach his desk.

When they return, the top issues on the agenda will include appropriations, of course, as the current continuing resolution expires December 11, and tax extenders.

The tax extenders debate could have a few different outcomes. House Republicans are reportedly only interested in a one-year retroactive extension through the end of the year. House and Senate Democrats believe such a short-term extension to be unacceptable, as they believe the tactic is a back-door approach to killing their priorities when Republicans take control of both chambers in January. Another scenario is a two-year extension package along the lines of the Senate Finance Committee's EXPIRE Act (S. 2260), which House Republicans may accept in exchange for making certain provisions permanent. The wind energy production tax credit, favored by Democrats in both houses, a few Republicans, environmentalists, and clean energy producers, may be jeopardized as some Republicans eye the break as a way to stand against President Obama's climate policies.

Clean energy and environmental groups, including the Alliance to Save Energy, the Advanced Biofuels Association, Clean Water Action, the Offshore Wind Development Coalition, the Sierra Club, and Tetra Tech Inc., sent congressional leaders a letter November 19 asking them to ensure market stability and the deployment of clean energy technologies by extending or making permanent alternative energy technology and energy efficiency tax provisions during the lame duck session. The group warned that delaying the extension could change purchasing and hiring decisions in the industry. Separately, more than 500 organizations representing a broad array of American businesses and industries [urged](#) Congress the previous day to work together to extend expired and expiring tax incentives during the lame duck session. Panelists from around the industry echoed those sentiments during a Pew event last week, saying that short-term extensions are already having a profound impact on renewable energy deployment.

House Republicans plan to wrap up the current lame duck session by December 11.

Look for our next weekly energy and environment update December 8. In the meantime, keep your eyes open for a special edition energy and environment lame duck, 114th Congress, and forthcoming regulatory action outlook next week.

CONGRESS

Yucca Mountain Funding

Senator Patty Murray (D-WA) sent Nuclear Regulatory Commission Chair Allison Macfarlane a letter November 18 asking if the commission has sufficient funding to complete its safety evaluation on Yucca Mountain, and urged thorough consideration of the licensing application. The nuclear waste repository has better prospects next Congress, with Senator Harry Reid (D-NV) out as majority leader. Senator Murray also asked when the remaining sections of the safety evaluation report would be completed and whether the agency had adequate funding to update an environmental impact statement on the site and consider public comments.

Shaheen-Portman Return Possible

Senator Rob Portman (R-OH) said November 19 that a bipartisan energy efficiency package along the lines of the Shaheen-Portman energy efficiency language (S. 2262) of this Congress, to return to the Senate floor in January, and that he is discussing bringing the measure up again with leadership in both parties. Senator Portman said that legislation would likely be considered along with a broader package of energy amendments, including approval of the Keystone XL pipeline or potential legislation on liquefied natural gas exports.

Energy and Commerce Ranking Member

Representative Frank Pallone (D-NJ) narrowly defeated, 100-90, Representative Anna Eshoo (D-VA) in the vote November 19 to become ranking member of the House Energy and Commerce Committee. Representative Pallone succeeds retiring Representative Henry Waxman (D-CA).

Fracking Waste Letters

Representative Matt Cartwright (D-PA) sent letters November 19 to Randy Huffman, the Cabinet Secretary for West Virginia's Department of Environmental Protection, and Craig Butler, the Director of Ohio's Environmental Protection Agency, regarding fracking waste disposal. Representative Cartwright is leading an investigation in his role as ranking member of the Oversight and Government Reform Subcommittee on Economic Growth, Job Creation, and Regulatory Affairs, and is requesting information about each state's regulatory process for monitoring the handling and disposal of fracking waste. Representative Cartwright sent a similar letter to Pennsylvania Department of Environmental Protection Acting Secretary Dana Aunkst.

Legislation Introduced

Senator Martin Heinrich (D-NM) introduced legislation (S. 2932) November 17 to direct the Secretary of Energy to establish microlabs to improve regional engagement with national laboratories.

Representatives Dan Benishek (R-MI) and Gary Peters (D-MI) introduced legislation (H.R. 5722) November 17 to amend the Federal Power Act to require the Federal Energy Regulatory Commission to review the decisions of the North American Electric Reliability Corporation affecting cost allocation under system support resources agreements. Senator Stabenow has introduced companion legislation.

Representative Steve Stockman (R-TX) introduced legislation (H.R. 5726) November 17 to allow for energy exploration in the Arctic National Wildlife Refuge. Senator Lisa Murkowski's (R-AK) ascent to the chairmanship of the Senate Energy and Natural Resources Committee is likely to reignite the debate; other priorities include oil and natural gas exports and reducing regulatory hurdles to energy production.

Senators Sheldon Whitehouse (D-RI) and Brian Schatz (D-HI) introduced the America Opportunity Carbon Fee Act (S. 2940) November 19 to require large greenhouse gas emitters to pay \$42 for every ton of CO₂ pollution they emit beginning in 2015. The fee would increase annually by an inflation-adjusted two percent. The estimated \$2 trillion over 10 years in revenue would be returned to taxpayers through several methods, including economic assistance to low-income families, tax cuts, and infrastructure investments.

Senator Martin Heinrich (D-NM) introduced legislation (S. 2947) November 19 to grant the Federal Energy Regulatory Commission the authority to use demand response as an alternative to prescribing increased power generation. The legislation is in response to a U.S. Court of Appeals for the District of Columbia Circuit ruling in May that vacated the commission's Order No. 745.

DEPARTMENT OF ENERGY

Plug-In EVs

The White House [announced](#) November 18 commitments made by more than 70 electric utilities to purchase plug-in electric vehicles. The investor-owned utilities will devote at least five percent of their annual fleet acquisition budgets to purchase the vehicles at about \$50 million a year. Additionally, 61 businesses, schools, and nonprofit organizations committed to install workplace charging stations for their employees. The Department of Energy will provide funding to help companies coordinate their efforts to purchase the vehicles via group discounts. Meanwhile, several states, from Wisconsin to Colorado, Nebraska, North Carolina, Virginia, and Washington, are considering, or have adopted, special fees on hybrid and electric vehicles as a source of revenue to replace dwindling funds designated for highway construction and maintenance. The National Conference of State Legislatures notes that 37 states and the District of Columbia offer incentives to consumers who purchase hybrid and electric vehicles, including tax credits, registration fee reductions, vehicle inspection or emissions test exemptions, parking and utility rate reductions, and access to high-occupancy vehicle lanes.

DEPARTMENT OF TRANSPORTATION

Climate-Based CH₄ Regs Authority Lacking

Pipeline and Hazardous Materials Safety Administration Deputy Associate Administrator for Policy and Programs Alan Mayberry told the Pipeline Safety Trust in New Orleans November 20 that the agency does not have the authority to issue climate change regulations, particularly those related to methane emissions from the natural gas value chain. Though the agency has not issued climate-specific regulations, some have the added benefit of reducing methane emissions.

DEPARTMENT OF TREASURY

Net Metering Boosts Solar REITs

The Solar Energy Industries Association sent a comment letter November 14 to the Internal Revenue Service encouraging the Treasury Department to include language allowing net metering in proposed rules describing which assets qualify as real property for real estate investment trust purposes.

ENVIRONMENTAL PROTECTION AGENCY

US-China Agreement Impact

Environmental Protection Agency Administrator Gina McCarthy said November 17 that the United States-China climate agreement will not impact how stringently the Environmental Protection Agency establishes CO₂ standards for power plants. She said that the agency is developing its power plant rules at it would with any other Clean Air Act regulation.

Texas Grid CPP Comments

The Electric Reliability Council of Texas Inc. posted an analysis November 17 concluding that Texas will endure coal unit retirements, higher electricity bills, weaker transmission reliability, and an increased risk of blackouts if the Environmental Protection Agency's Clean Power Plan is implemented as proposed. Midcontinent Independent System Operator Inc., Southern Co, and American Electric Power come to similar conclusions, and are asking for more time to comply with the proposal. The North American Electric Reliability Corporation has urged the agency to consider delaying the first deadline of its plan.

Ozone Suit

The Sierra Club and WildEarth Guardians filed a lawsuit in the U.S. District Court for the Northern District of California November 18 as they seek to require the Environmental Protection Agency to take action against 21 states that have not accounted for cross-state pollution in plans for implementing the 2008 national ambient air

quality standards for ozone. The suit charges that the agency is in violation of the Clean Air Act and seeks a mandatory injunction requiring it to make its findings of failure by a certain date.

Biomass Guidance

The Environmental Protection Agency issued November 19 new CO2 [guidance](#) for biomass power. The methodology offers a more robust method for calculating the net CO2 emissions from biomass feedstocks such as wood waste, forestry, and wood. The rule is intended to help account for fuels that would otherwise be waste, and consequently have minimal or no net contributions to CO2 pollution, and in some cases, when burning them for fuel actually reduces the eventual CO2 emissions. States can use the framework to issue permits or develop compliance plans under the Clean Power Plan. The agency will seek peer review from the Science Advisory Board, which raised concerns with the previous framework.

CPP's Economic Benefits

During a Center for American Progress event November 19, Environmental Protection Agency Administrator Gina McCarthy defended the economics of the proposed Clean Power Plan and praised President Obama's leadership on the effort. The agency estimates that the proposed rule will have \$93 billion in benefits, and will generate \$7 in health benefits for every \$1 of cost. Other efforts to reduce CO2 emissions have also been proving successful for job creation and economic growth, not just for positive environmental benefits.

Cellulosic Ethanol Exceeds Expectations

The Environmental Protection Agency released data November 19 finding that cellulosic ethanol production has met and exceeded agency projections for the first time. The first commercial-scale cellulosic facilities have begun operation and a recent rule change dramatically increased production this year. The industry produced nearly 18.2 million gallons of the fuel as of November 10, exceeding the 17 million the agency proposed by blending into the nation's gasoline supply. The agency reclassified in July millions of gallons of advanced biofuels being produced from compressed and liquefied natural gas from landfills and wastewater treatment as cellulosic ethanol.

Wastewater Treatment

The Environmental Protection Agency [submitted](#) to the Office of Management and Budget November 19 a set of proposed guidelines and standards for effluent limitations to govern wastewater from unconventional oil and natural gas wells, such as shale oil, shale gas, and coalbed methane, that could go to publicly owned water treatment plants. The rule, under the Clean Water Act, will be issued in its proposed form early next year.

Enviros Call for Strong CH4 Regs

The Clean Air Task Force, Natural Resources Defense Council, Sierra Club, Environmental Defense Fund, and Earthjustice released a [report](#) November 20 finding that the Environmental Protection Agency could reduce the equivalent of 320 MMT CO2 a year by setting Clean Air Act standards for the oil and gas industry's methane emissions. The agency is scheduled to make a decision on whether and how to regulate methane emissions from the oil and gas industry by the end of the year.

Lead Standards Suit

The Center for Biological Diversity and the Center for Environmental Health filed a lawsuit in the U.S. District Court for the Northern District of California November 20 charging that the agency violated the Clean Air Act when it failed to take mandatory action to implement the 2008 national ambient air quality standards for lead.

Regulatory Agenda Released

The Environmental Protection Agency released its fall 2014 [regulatory agenda](#) November 21. The agenda details agency rules that are now in process.

CSAPR in Effect

The Environmental Protection Agency released a [rule](#) November 21 announcing that the Cross-State Air Pollution Rule will take effect January 1. The change in compliance dates, from January 1, 2012, was expected as the agency works to compensate for the years the regulation awaited the conclusions on judicial rulings. The Supreme Court ruled earlier this year in favor of the rule. Phase two emissions budgets will apply in 2017. The agency also issued a [notice of data availability](#) updating the emissions allowance allocations to make up for the new timeline and subsequent rulemakings that impacted the rule.

2014 RFS Delayed

The Environmental Protection Agency [announced](#) November 21 that it will not issue a final renewable fuel standard for 2014 by the end of the year, and will instead pursue a multiyear rule, 2014-2016, to bring the program back on track. Renewable fuels producers are concerned that the delay causes additional uncertainty, while the petroleum industry continues to call for the law's repeal.

FEDERAL ENERGY REGULATORY COMMISSION

MATS Extension Supported

The Federal Energy Regulatory Commission issued comments November 20 supporting the Kansas City Board of Public Utilities, which is seeking more time to comply with the Environmental Protection Agency's mercury and air toxics rule for its Nearman 1 coal-fired power plant for a six month period, from April 16, 2016, to October 15, 2016, citing grid reliability concerns.

GOVERNMENT ACCOUNTABILITY OFFICE

Insurance Loss Increase Expected

The Government Accountability Office released a [report](#) November 20 finding that climate change and related increases in extreme weather events could significantly increase insured and uninsured losses in the United States by 2040 and potentially double annual losses by 2100. The federal government's exposure to potential insurance losses increased from \$1.3 trillion in 2007 to \$1.4 trillion in 2013. Property insured under the Federal Emergency Management Agency's National Flood Insurance Program accounted for 91 percent of the exposure in 2013, with the remaining nine percent coming from a Department of Agriculture Risk Management Agency federal crop insurance program.

INTERNATIONAL

G-20 Communiqué Climate Focus

G-20 leaders issued a [joint communiqué](#) November 16 agreeing to focus their policies and investments on cleaner and renewable energy sources with the goal of mitigating climate change. The high level commitments from the United States, China, the European Union, and other wealthy nations will increase momentum on the issue as negotiators prepare to forge an international climate agreement next December in Paris, with the next step scheduled to begin at the upcoming United Nations Framework Convention on Climate Change conference starting December 1 in Lima, Peru.

Indian Renewables

India's Coal and Power Minister Piyush Goyal said November 17 that the country's renewable energy industry must eventually learn to live without government support, and in the meantime, the country is seeking to generate five times more solar power, 100 GW, by 2022 than is currently installed.

Australia Backs Coal Project

Queensland, Australia issued its support November 17 for the nation's largest coal project, a 241-mile rail line to link Adani Enterprises Ltd.'s Carmichael coal project to the port of Abbot Point near the Great Barrier Reef. Adani is seeking \$2.8 billion from banks and South Korean lenders to help fund the project. Two days prior, President Obama called on the country to address climate change.

China's Regional Coal Consumption Caps

Speaking at a Natural Resources Defense Council forum November 18, China's Ministry of Environmental Protection Deputy Director of the Pollution Emissions Control Yan Gang said that the nation will establish caps on coal consumption for state-level administrative efforts in the next Five-Year Plan, which runs 2016-2020. Eastern China will face the most restrictions to address air pollution, greenhouse gas emissions, and water conservation. The nation hopes to reduce coal-fired power as part of the national energy mix to around 62 percent by 2020, and plans to peak carbon emissions by 2030, if not earlier, and increase non-fossil fuels as a proportion of its national energy mix to 20 percent by 2020.

UNEP GHG Gap Report

The United Nations Environment Programme issued a [report](#) November 19 finding that gap between the greenhouse gas cuts needed to prevent a disastrous rise in global temperatures and what the world is actually reducing is increasing, despite pledges by more than 90 countries to reduce their emissions. The report challenges international climate negotiators to agree upon a substantial global climate accord in 2015. The report concludes that the world needs to be carbon neutral between 2055 and 2070, and overall greenhouse gas emissions need to reach net zero between 2080 and 2100 in order to maintain the average global temperature rise below two degrees Celsius. This translates into a global emissions reduction of 55 percent by 2010 levels by 2050.

CA-Quebec CO2 Permit Auction Postponed

California and Quebec cut short their first joint sale of greenhouse gas allowances November 19, citing technical difficulties. Qualified bidders will receive an email about rescheduling the sale for another day. Nearly 23.1 million

allowances, each permitting the release of one metric ton CO₂ as soon as this year, were scheduled to be sold in the auction; an additional 10.8 million permits could be used as early as 2017.

UK GCF Pledge

The United Kingdom pledged November 19 to give £720 million to the United Nations Green Climate Fund to help developing nations adapt to and mitigate climate change.

Carbon Markets Necessary for Paris Agreement

International Emissions Trading Association Board Director David Hone told a London launch meeting of the IETA's [2014 Markets Matter Report](#) November 20 that any final international climate agreement next year must include a key role for carbon markets and carbon pricing policies.

Climate Spending Falls

The Climate Policy Initiative published a [report](#) November 20 finding that government and industry spending on CO₂ reduction and climate protection measures fell for a second year. World expenditures on renewable energy, energy efficiency, and climate measures fell \$28 billion, by eight percent, to about \$331 billion in 2013. The International Energy Agency has said that in order to keep the world's temperature increase since the Industrial Revolution under two degrees Celsius, related annual spending needs to more than double to \$790 billion by 2020.

Climate Accord Must Factor in Energy Use

The International Energy Agency said November 20 that international climate negotiations must consider the central role energy consumption has in growing the economy and emitting CO₂. The agency will present its recommendations for five key actions necessary to undertake to reduce CO₂ emissions next week in Lima, Peru. The give energy consumption [recommendations](#) include taking immediate action; focusing on electricity decarbonization; reshaping investment and accelerating innovation in low carbon technologies; mobilizing non-climate goals to promote energy sector decarbonization; and strengthening energy-sector resilience to climate change.

Chinese Solar Case

The Court of International Trade rejected November 20 most challenges to final results of antidumping duty review of Chinese solar cells, but granted the Department of Commerce voluntary remand to reconsider the separate-rate eligibility of four respondents to the investigation.

GCF Nears Goal

The United Nations Green Climate Fund approached its goal November 20 of raising \$10 billion for projects to fight climate change, bringing in investments from Mongolia to Mexico in a break with tradition that funding only comes from industrialized nations. The fund has received promises totaling \$9.3 billion to date.

World Bank Climate Impacts

The World Bank and the Potsdam Institute for Climate Impact Research and climate Analytics released a [report](#) November 24 [finding](#) that the world is already locked into 1.5 degrees of warming over pre-industrial levels by mid-century, and temperatures will continue to rise without significant action. The World Bank will stay away from funding any more coal projects.

20th COP/10th MOP

The United Nations Framework Convention on Climate Change celebrates its 20th anniversary this December, with international climate negotiations scheduled for December 1-12 in [Lima, Peru](#). The Lima talks mark the 20th Conference of Parties to the UNFCCC and the 10th Meeting of Parties to the Kyoto Protocol. Issues to watch most closely as negotiators work to kick off the past 12 months of talks toward a global climate accord that would enter into force in 2020 include whether parties can agree on a draft text that distills areas of agreement and disagreement into one document; more specifics on the \$100 billion/year industrialized countries are to provide beginning in 2020 to help developing nations; and a mechanism to strengthen the accord if after 2020 it is insufficient to halt the rise in global temperatures.

MISCELLANEOUS

Amazon RE Commitment

Amazon vowed November 19 to run its cloud entirely on renewable energy, but did not set a deadline for achieving the goal. Amazon Web Services already uses 15% clean energy, which is less than Google, Facebook, and Microsoft, according to Greenpeace.

American Solar Potential

The Environment America Research and Policy Center issued a [report](#) November 20 finding that the United States could power itself 100 times over with solar photovoltaic and concentrating solar power installations.

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