

**David Leiter**

**Sarah Litke**

*DJLeiter@mlstrategies.com*

*SLitke@mlstrategies.com*

## **ENERGY AND ENVIRONMENT UPDATE** **January 17, 2011**

### **Energy and Climate Debate**

Following the tragedy in Tucson last weekend, Senator John Kerry (D-MA) called on his colleagues last week to work in a bipartisan fashion on infrastructure and clean energy to lift the U.S. economy and overcome negative political rhetoric.

During a speech at the Center for American Progress January 11, Senator Kerry said that supporters of U.S. climate action are considering new strategies to reignite support for legislation that addresses climate change and expands renewable energy sources following last Congress' failure to pass cap and trade legislation.

As the U.S. Court of Appeals for the District of Columbia lifted an emergency stay January 12 that had blocked the Environmental Protection Agency from taking over Texas' greenhouse gas permitting program, there continues to be talk that the Obama Administration may postpone the agency's regulations for utilities, refiners, manufacturers, and other stationary emitters of GHGs in exchange for the passage of energy legislation through a divided Congress. While the stay has been lifted, the court will continue to consider the Texas case, as well as cases brought against the EPA by 12 other states that charge that the EPA should not regulate GHGs under the Clean Air Act.

A clean renewable electricity standard that required electric utilities to achieve a certain percentage of their power from renewable and clean energy sources from wind, solar, nuclear, clean coal, hydro, natural gas, and other clean sources could be the central piece of an energy bill that includes additional tax incentives for energy efficiency and renewable energy initiatives as well as funding for research and development and assistance for clean tech exports. The CES concept is continuing to receive new supporters. Joining Senators Lindsey Graham (R-SC), many of his moderate colleagues, as well as a growing number of energy and environmental organizations, Third Way called for a flexible clean energy mandate on utilities that includes nuclear, clean coal, and natural gas, in addition to the traditional renewable energy sources generally counted toward a renewable electricity standard, as qualifying options last week.

With the President's State of the Union address scheduled for January 25 and the March 4 expiration of the current Continuing Resolution looming, energy issues are expected to be high on Congressional and Administration agendas for the coming months.

### **Congress**

#### **Democrats Assigned to House Committees**

Led by former Chairman Henry Waxman (D-CA), Democrats assigned 23 members to the House Energy and Commerce Committee January 11. House Republicans hold a seven-vote edge, including a dozen new committee members, half of which are freshman congressmen. Subcommittee assignments for House Energy and Commerce Committee Democrats are anticipated over the coming week.

### EPA Rules Top Industry Concerns

Responding to an early January request from House Oversight and Government Reform Chairman Darrell Issa (R-CA), auto, petrochemical, and other industry leaders submitted their top concerns for the 112th Congress. Environmental Protection Agency GHG stationary and mobile rules were cited among the most burdensome regulations by industries, and Congressman Issa is already planning extensive oversight of the agency this Congress.

### Home Star Legislation's Facelift

Home Star legislation, an energy efficiency rebate program proposed last congress, may be recast as a tax incentive program in the 112th Congress. The House approved legislation last May that would have authorized \$5.7 billion for a Home Star home retrofit program to provide rebates for homeowners who made energy efficiency improvements, but as the political will for spending diminishes, the program may be altered to fit into a tax incentive scheme in order to attract more Republican support. Senator Olympia Snowe (R-ME), who introduced energy efficiency tax legislation (S. 3935) last September with Senator Jeff Bingaman (D-NM), is working on Home Star legislation that would emphasize tax credits over grants and create a new section of the Internal Revenue Code that would provide credits for homeowners who make improvements after conducting whole home energy efficiency audits.

### Legislation Introduced

Congressman Frank Pallone (D-NJ) introduced legislation (H.R. 261) January 11 to amend the Outer Continental Shelf Lands Act to prohibit the leasing of any area of the OCS for the exploration, development, or production of oil, gas, or any other mineral.

On January 13, Congressman Mike Thompson (D-CA) introduced legislation (H.R. 264) to permanently prohibit oil and gas leasing off the coast of Mendocino, Humboldt, and Del Norte Counties in the State of California.

The same day, Congressman Jeff Fortenberry (R-NE) introduced legislation (H.R. 271) to direct the Secretary of Agriculture to establish a program to provide covered institutions loans for conversion to use of biomass for energy generation. He also introduced legislation (H.R. 279) to prohibit any Federal agency or official in carrying out any Act or program to reduce the effects of GHG emissions on climate change, from imposing a fee or tax on gaseous emissions emitted directly by livestock.

Congresswoman Maxie Hirono (D-HI) introduced legislation (H.R. 288) to establish a pilot program to provide assistance for partnerships supporting applied sciences in renewable energy.

## **Administration**

### CEQ Finalizes NEPA Guidance

The White House Council on Environmental Quality issued final guidance January 14 to federal agencies on mitigation and monitoring. The guidance, part of a four-pronged effort to modernize the National Environmental Policy Act on its 40th anniversary, emphasizes that if agencies condition approval of federal projects on environmental mitigation steps, they should adhere to those commitments by monitoring their implementation and effectiveness and making their observations available to the public.

### Energy on Agenda for Chinese Visit

During Chinese President Hu Jintao's visit to Washington this week, climate negotiations with President Obama may be one of the areas of greatest successes. There are numerous tensions over clean-tech trade issues, including the Administration's World Trade Organization petition that China illegally subsidizes its wind industry as well as China's recent decision to reduce its rare-earth metal exports, and President Obama's recent signature on a Defense Authorization bill that prohibits the Defense Department from purchasing solar panels from China, but the two leaders are expected to have productive conversations about energy efficiency, clean coal, electric and alternative vehicles, and several other issues of shared concern.

### Oil Spill Commission Unveils Report

The National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling unveiled its final report last week, in which they called for an unspecified increase to the current \$75 million liability cap, more time for federal regulators to review drilling permits, and the creation of an independent entity to draw up industry-wide safety standards and help facilitate best practices among companies. The bipartisan panel recommended that no new major Arctic drilling be allowed until the industry and government regulators can prove that drilling can be done safely and that oil companies are prepared to respond quickly to a major accident. The report also suggested setting aside 80 percent of the Clean Water Act fines tied to last April's Gulf of Mexico spill to use to help rebuild the area's ecosystem and called for significant increases to funding and manpower for the Bureau of Ocean Energy Management Regulation and Enforcement.

### **Department of Commerce**

#### 2010 Ties Warmest Record

The National Oceanic and Atmospheric Administration's National Climatic Data Center released a preliminary analysis January 12 that found that 2010 tied 2005 as the warmest year on record. Making 2010 the 34th consecutive year above the 20th century average, the average global temperature was 1.12 degrees above the average, and 2010 was also the wettest year on record as measured by average precipitation.

### **Department of Interior**

#### Western Project Meetings Scheduled

The Department of Interior announced last week a schedule for 13 public meetings to discuss a draft programmatic plan to accelerate the development of solar power on public lands in the West. The Department is considering a draft plan to allow solar development on 22 million acres of land managed by the Bureau of Land Management with a goal of encouraging developers to use 677,000 acres of solar-rich zones deemed to pose minimal risks to habitat and wildlife.

### **Environmental Protection Agency**

#### Court to Hear CA Mobile Emissions Arguments

The U.S. Court of Appeals for the District of Columbia Circuit is scheduled to hear arguments January 18 over whether the Environmental Protection Agency's 2009 decision to allow California to move forward with GHG limits for cars and light trucks was justified by the Clean Air Act. Fourteen states have adopted the California standards.

#### EPA Defers Biomass GHG Permitting

The Environmental Protection Agency announced plans January 12 to defer for three years GHG permitting requirements for new and modified industrial facilities that use biomass, including wood, crop residues, and grass, for energy. The agency will use the time to seek additional independent scientific analysis of biomass emissions and develop a rule that evaluates whether they should be considered emissions that trigger Clean Air Act permitting requirements. Resulting in protests from rural Congressmen and biomass-consuming industries, the EPA included biomass-related emissions in permitting requirements for new and modified sources when it issued the tailoring rule last May. The agency will soon issue guidance on whether biomass energy can be considered a best available control technology in limiting GHGs at new and modified sources.

#### Judge to Rule on EPA's Boiler Extension Request

U.S. District Court for the District of Columbia Judge Paul Friedman will rule by January 21 on the Environmental Protection Agency's request to push back the date for issuing hazardous air pollutant rules for industrial boilers until 2012. If the court does not grant the agency's motion to extend the deadline, the EPA would want the deadline to be extended to June 15.

## Personnel

Nancy Stoner will serve as the Environmental Protection Agency's assistant administrator for water beginning February 12, following the departure of Peter Silva, who will return to California. Ms. Stoner, a veteran of the Natural Resources Defense Council and the Clinton Administration EPA, currently serves as deputy assistant administrator for water. Mr. Silva's departure will signal two additional hires as well. Attorney Bicky Corman, previously a general counsel for the District of Columbia Department of the Environment with service also at the EPA and the Department of Justice, will become a deputy associate administrator for the Office of Policy. Joel Beauvais, who most recently served on the staff of the House Energy and Commerce Subcommittee on Energy and Environment, will become a senior advisor in the Office of General Counsel.

Succeeding Ron Klain later this month, Bruce Reed will become chief of staff to Vice President Joe Biden. Mr. Reed is currently the executive director of President Obama's deficit commission.

House Energy and Commerce Committee Chairman Fred Upton (R-MI) hired eight new staff aides to the panel and its various subcommittees January 13 and promoted several others to oversight, energy, and environmental policy positions. Congressman Upton announced Gary Andres as staff director for the energy committee in December. Michael Bloomquist, previously with the energy panel as well as the House Science Committee, will serve as deputy general counsel to the energy committee. David McCarthy will serve as chief counsel for the Subcommittee on Environment and the Economy. Mr. McCarthy was previously the Republican chief counsel on the subcommittee from 2006-2008. Jeff Mortier, from the office of Congressman Ed Whitfield (R-KY), will serve as a staff member to the committee as the congressman becomes chairman of the Energy and Power Subcommittee. Gerald Couri, a longtime Republican policy aid to the committee, will serve as senior environmental policy advisor. Garrett Golding formerly a Republican legislative analyst for the committee, will serve as staff member for the Subcommittee on Energy and Power.

## Miscellaneous

### Transportation Emissions Reductions Examined

The Pew Center on Global Climate Change released a report January 11 in which it found that a combination of policy change, public support, and technology development is needed to achieve significant decreases in GHGs from domestic transportation. Examining policy and technology developments for light-duty vehicles, commercial light trucks, freight truck and rail, domestic and international shipping, and air transportation, the report, *Reducing Greenhouse Gas Emissions from U.S. Transportation*, outlined three scenarios that would lead to emissions reductions from 2010 levels of 17.2, 40.1, or 65.1 percent, respectively. The report considered policy changes such as altering fuel taxes to incentivize lower-emissions or alternative-fuel vehicles, changing vehicle insurance so that rates increase the more a driver uses the vehicle, and establishing stricter fuel-economy and emissions standards.

### LA Cements Clean Fuel Fleet

The Los Angeles Metro system became the only major public transportation system in the country to rely entirely on a clean fuel bus fleet January 12 when it retired its last diesel bus. The city has been transitioning to clean-fueled buses since 1993, relying largely on compressed natural gas.

### Solar Company to Close Plant

Massachusetts solar panel manufacturer Evergreen Solar Inc. is closing and laying off 800 employees. Citing dropping prices and increasing competition, the recipient of \$58 million in state aid, announced last week that it will shut down its Devens plant during the first quarter of 2011, but branches in China and Midland, MI, will continue to operate.

### Chinese Regions to Begin Binding Emissions Targets

China's director general of the climate change department at the National Development and Reform Commission announced last week that China's regions will face binding emissions targets as the country

works to meet its 2020 national carbon intensity goals. The government is creating a working group to designate specific targets and policies and study ways to introduce a domestic carbon trading platform.

#### New Standards for Chinese Rare Earth Minerals

Chinese officials said last week that the nation's government will release new standards for the mining of rare earth minerals in late February. The new standards, which will include measures to reduce water pollution, will raise the cost of mining rare earth minerals.

#### CDM Not Yet Fully Embraced

New Delhi's Federation of Indian Chambers of Commerce and Industry released an analysis January 10 in which it found that while a broad range of Indian corporations have tried to benefit by selling certified GHG reductions through the United Nations' Clean Development Mechanism, the number of projects is low, and the approach has remained conservative.

#### CA Budget Cuts Environmental Programs

California Governor Jerry Brown (D) released a fiscal year 2011-2012 budget January 10 in which overall funding for the state's environmental and natural resources programs was reduced by about \$84 million. The spending plan, which is designed to help close an estimated \$25 billion budget cap, would reduce state spending by \$12.5 billion by reducing general fund support for nearly all state agencies and cut pay for most state workers by 10 percent.

#### NM Group Sues over GHG Regs Moratorium

New Energy Economy petitioned the New Mexico Supreme Court January 11 to compel Governor Susana Martinez (R) to reverse her moratorium on implementing proposed and pending regulations, including newly adopted curbs on GHGs and the establishment of a state cap and trade program. In its petition, the nonprofit argues that the governor's action violates the state Constitution in a bid to permit increased pollution.

#### Brookings CCS Event Scheduled

Brookings will host a clean coal event Tuesday, January 18 at which a number of major American energy companies will sign memorandums of understanding with Chinese energy companies committing to joint research on clean coal technology.

#### PATH Decision Accepted and Rejected

Divisions of Allegheny Energy and American Electric Power were granted a postponement by West Virginia but not Virginia last week regarding consideration of their applications to build a high-capacity power line through the two states. West Virginia will postpone its ruling until 2012, but Virginia officials will meet with company representatives January 18 on the plan to build a 765 KW Potomac-Appalachian Transmission Highline through 14 counties in West Virginia, Virginia, and Maryland to significantly expand the amount of power available in populous portions of the region.