



ML Strategies Update

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Energy & Environment Update

ENERGY AND CLIMATE DEBATE

Republicans gained control of the Senate last Tuesday, and, with Republicans picking up several House seats as well, Congress rests in their hands. The question now becomes: can D.C. govern?

Republican gains in the midterm elections bode well for increased oversight of the Environmental Protection Agency, due in large part to Senator James Inhofe's (R-OK) imminent ascension to chairman of the Senate Environment and Public Works Committee. Senator Barbara Boxer (D-CA) will move to the Ranking Member slot. Senator Inhofe, self-proclaimed climate skeptic, has indicated that he will use the committee to investigate the agency's regulations and authority. Senator Mitch McConnell (R-KY) will replace Senator Harry Reid (D-NV) as majority leader, and, he is likely to lead the party's efforts to roll back Environmental Protection Agency rules, including CO2 standards for power plants, ozone air quality standards, and expanded Clean Water Act jurisdiction over U.S. waterways. Senator Mary Landrieu (D-LA) faces a runoff December 6, and she is likely to lose, meaning that Senator Maria Cantwell (D-CA) will join Senator Lisa Murkowski (R-AK) as ranking member and chair of the Senate Energy and Natural Resources Committee, respectively. With a 54-member majority, it is likely that Senate Republicans will be able to find the 60 votes necessary to move legislation to approve the Keystone XL pipeline. The White House is declining to say whether President Obama would veto legislation approving the Keystone pipeline. To reach the 67 votes needed to overcome a presidential veto, Senate Republicans will still have to work closely with their Democratic counterparts, and they will need to employ creative approaches, such as using authorization bills, appropriations riders, oversight hearings, and the Congressional Review Act, to advance their energy agenda. Other agenda items may include altering the Renewable Fuel Standard; expediting liquefied natural gas exports; streamlining transmission project decisions; expanding oil and gas drilling; and funding the Yucca Mountain nuclear waste repository.

In addition to potential agreements over nuclear policy and the Keystone pipeline, President Obama and the Republican Congress may find common ground on other energy issues such as wind energy and energy efficiency. Now that they've assumed control, Republicans will be under increased pressure to legislate, particularly as both parties look to the 2016 elections.

House Republicans are likely to use the first 100 days of the 114th Congress to reapprove many of the same measures they passed this Congress.

Before we turn to the 114th Congress, however, the 113th Congress returns November 12 for the lame duck session, during which the tax extenders debate will take center stage. Senate Majority Leader Harry Reid (D-NV) promised in September to hold a vote before the end of the year on the \$84 billion tax extenders package (EXPIRE Act), that would retroactively extend more than 50 expired tax credits. Supporters and opponents of the package's

pieces are already jockeying for position during the lame duck session. For example, supporters of the production tax credit, and those hoping to tweak it, are primed for an extensive debate this month as Congress considers a more sweeping tax overhaul in the coming session. House Republicans are reluctantly considering a one-year renewal of the extenders package, though some are encouraging the lower chamber to postpone any action on the measures until next year, when Republicans take complete control of Congress. Senate Democrats prefer a two-year renewal that includes a retroactive renewal for calendar year 2014 and a renewal through 2015 as well. House Republicans would like to make permanent several of the provisions, including the research and development tax credit, at a cost running in the hundreds of billions of dollars. Senate Democrats favor the Senate Finance Committee approved package instead. Both chambers would attach the costs to the deficit.

House Majority Leader Kevin McCarthy (R-CA) indicated November 6 that the House would take up three Environmental Protection Agency-related bills this month, voting on them the week of November 17. The first is the Secret Science Reform Act (H.R. 4012), which would require the agency to make public data used in writing regulations. The second, 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 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 Senate will not take up the measures this year.

Senate Democrats, Senate Republicans, and House Republicans will hold leadership elections November 13, while House Democrats will wait until November 18. Negotiating on the expired tax breaks and funding the government past December 11 are likely to wait until after the Thanksgiving recess.

CONGRESS

Recess

The House and Senate both return November 12 for the lame duck session.

Super Pollutants Legislation

Senator Chris Murphy (D-CT) said November 3 that he will reintroduce next year a bill that would hasten global hydrofluorocarbons reductions as well as cut other highly potent greenhouse gas emissions such as methane and black carbon. He hopes the Senate Environment and Public Works Committee will hold a hearing on the Super Pollutants Act (S. 2911) before the end of the year.

EPA Appropriations

Senator John Hoeven (R-ND) said November 5 that the GOP-led Senate is very likely to use the appropriations process to target the Environmental Protection Agency's Clean Power Plan and agency Clean Water Act guidance giving them a better chance of surviving a Democratic filibuster.

PTC Opposition

The American Energy Alliance was joined by 64 other groups in sending a [letter](#) November 6 urging Congress to oppose attempts to reinstate the wind production tax credit.

Strong Climate Pledge Urged

Senators Bob Menendez (D-NJ), Ron Wyden (D-OR), Barbara Boxer (D-CA), and Patty Murray (D-WA) sent a [letter](#) November 7 encouraging President Obama to make a strong pledge early next year in preparation for the 2015 international climate negotiations in order to demonstrate that the United States is ready to work with other nations to address climate change.

EPA Appropriations

Senator Joe Manchin (D-WV) said last week that he hopes that leadership in the upcoming Congress will allow members to take tough votes. He also expressed disappointment that President Obama does not seem to appreciate the difficulties proposed Environmental Protection Agency greenhouse gas rules cause for his state, and is concerned about potential strain to the electric grid.

Upcoming Hearings

The Senate Energy and Natural Resources Committee will mark up November 13 Senator John Hoeven's (R-ND) legislation that would expedite Energy Department approvals of liquefied natural gas export projects. Among other bills, the committee will also mark up Senator Ron Wyden's (D-OR) measure S. 1419, which supports marine and hydrokinetic renewable energy technologies; and Senator Lisa Murkowski's (R-AK) NEWS Act (S. 1971), which would require the administration to establish an interagency entity on the energy-water nexus.

The Senate Permanent Subcommittee on Investigations will hold a hearing November 20-21 on Wall Street banks' involvement in the markets for physical commodities such as oil and metals. The hearing is a culmination of a two-year, bipartisan investigation.

ADMINISTRATION

Ralls Corp. Stay Upheld

The U.S. District Court for the District of Columbia declined to vacate November 6 a presidential order on a Chinese-owned Ralls Corporation wind farm deal that was barred because it was too close to a naval facility in Oregon. The court ordered the administration to grant Ralls access to all unclassified material contained in the Committee on Foreign Investment in the U.S. record and all unclassified factual findings and evidence underlying the recommendation by November 21.

Stronger Ozone Standard Needed

Public health advocacy groups met with the White House Office of Management and Budget November 6 to outline the need for a more stringent ozone standard. The Environmental Protection Agency is under a December 1 court-ordered deadline to propose whether to revise or retain the current standard. If the agency strengthens the current standard, it could trigger additional emissions control requirements for pollution sources in more areas. The agency submitted a proposed rule to the White House for interagency review in October.

Chinese Smog

President Obama meets with Chinese President Xi Jinping this week in Beijing, where efforts to clear the city's thick smog in anticipation of the meeting have failed. U.S. officials hope that the bad air quality will prod the government to make a significant commitment to address climate change. Secretary of State John Kerry mentioned the issue during his address November 8 to American business leaders in Beijing for the Asia-Pacific Economic Cooperation summit. President Obama arrived November 10 and will hold meetings with President Jinping November 11-12.

DEPARTMENT OF COMMERCE

Vietnamese Wind Tower AD Case

The Court of International Trade ordered the Commerce Department November 3 to revisit part of its calculations, remanding the results of an antidumping duty investigation of Vietnamese wind towers from CS Wind Vietnam Co. and CS Wind Corp. for the second time. The court upheld the rest of the agency's final results. Remand results are due January 5.

DEPARTMENT OF DEFENSE

MD Wind Threat

Deputy Defense Secretary Robert Work sent a [letter](#) October 30 to Transportation Secretary Anthony Foxx saying that the Great Bay Wind Energy Center, a planned 150 MW land-based wind farm in Maryland, would "constitute an unacceptable risk" to national security because it could interfere with operations at Naval Air Station Patuxent River. The letter does not mean that the center will or will not be cleared to move forward. The finding departs from an earlier agency stance after Pioneer Green Energy negotiated a curtailment agreement.

DEPARTMENT OF ENERGY

Residential Cooling, Heating Standards

The Nuclear Energy Institute sent a letter November 4 commenting that a \$10.6 billion Department of Energy loan guarantee proposal for new nuclear projects is not large enough, while nuclear power opponents maintain that the amount is too big. Dominion Resources, Duke Energy, and Nuclear Innovation North America have maintained their applications under the 2008 nuclear loan guarantee program, and the remaining loan guarantee volume is not sufficient to cover the needs of all three projects, or the new projects that might come forward under the September 30 solicitation.

Residential Cooling, Heating Standards

The Department of Energy issued November 5 a [request for information](#) seeking information on whether and how to amend standards for residential central cooling and heat pumps.

\$16 Million for Syngas

The Department of Energy awarded November 6 \$16 million to four research projects focused on next-generation gasification systems. The projects will focus on developing technologies that can significantly reduce the cost of producing hydrogen-rich syngas from fossil fuels to use in chemicals and fuels while capturing CO₂.

Fuel Economy Guide Released

The Department of Energy and the Environmental Protection Agency released November 6 the [2015 Fuel Economy Guide](#), providing consumers with resources to help them choose the most fuel efficient and low GHG emitting vehicles that meet their needs.

CPP Report Forthcoming

Energy Information Administration Chief Adam Sieminski said November 7 that the agency will release a report early next year examining the impact of the Environmental Protection Agency's Clean Power Plan.

Furnace Standards Forthcoming

The Department of Energy held a public meeting November 7 to discuss a rewrite of the agency's efficiency standards for certain residential natural gas furnaces. The agency will release a notice of proposed rulemaking sometime this month.

ENVIRONMENTAL PROTECTION AGENCY

SO₂ Standard Review Schedule

The Environmental Protection Agency's October 2014 [Integrated Review Plan](#) identifies the agency's anticipated schedule for review of the SO₂ primary national ambient air quality standard. The schedule calls for the agency to issue a proposed rule on whether to revise or retain the current 75 PPB standard by October 2018. The agency would issue a final rule by July 2019.

AZ Regional Haze

Arizona filed a lawsuit October 31 in the U.S. Court of Appeals for the Ninth Circuit challenging the Environmental Protection Agency's federal implementation plan for regional haze that established more stringent emissions limits at six industrial facilities in the state.

CPP Litigation

Murray Energy argued in a brief before the U.S. Court of Appeals for the District of Columbia Circuit last week that the court should allow a suit brought against the Environmental Protection Agency's Clean Power Plan to continue. The Justice Department asked the court last month to dismiss the case, saying that courts cannot review proposed rules, but Murray Energy charges that the proposed rule subjects coal-fired power plants to double regulation under Section 111(d) and Section 112 of the Clean Air Act. The agency filed a response November 3 claiming that the lawsuit is premature.

RE Mapping

The Environmental Protection Agency posted an [action plan](#) on its website November 4 detailing plans to add more federal and state sites to its list of contaminated properties deemed to have renewable energy project potential. The agency will enhance its RE-Powering Mapper by working with states to identify sites by next summer. The agency has already identified about 11,000 potential sites for renewable energy projects.

RGGI CPP Comments

The Regional Greenhouse Gas Initiative submitted [comments](#) to the Environmental Protection Agency's Clean Power Plan November 5, finding that proposed CO₂ standards for existing power plants could achieve greater emissions reductions than the agency proposed, and at minimal cost. The comments concluded that the proposal might not give states sufficient credit for early action. RGGI states have already reduced CO₂ emissions from the power sector by 40 percent from 2005 levels, while the Clean Power Plan would only require those states to reduce their emissions by a combined 38 percent.

CPP Grid Reliability Concerns

The North American Electric Reliability Corporation released a [report](#) November 5 charging that the Clean Power Plan threatens the country's electricity supply by effectively requiring old coal plants to close before replacement power is in place. The regulator urged the Environmental Protection Agency to consider delaying the first deadline. The agency defended its work, saying that their analysis finds that the proposal would not raise significant reliability concerns.

CPP Rate-Mass Conversion

The Environmental Protection Agency released a [technical support document](#) November 6 offering states two options for converting the proposed CO₂ emissions rates for existing power plants into a mass-based standard for emissions trading programs. One option would calculate mass-based standards using historical generation data, and the second would include new fossil fuel-fired power plants.

Ship Pollution Penalties

The Environmental Protection Agency published a [direct final rule](#) November 6 expanding its administrative civil penalty procedures to include air pollution penalties under the Act to Prevent Pollution from Ships. Comments are due December 8, and the rule will take effect January 5.

FEDERAL ENERGY REGULATORY COMMISSION

CPP Reliability

Federal Energy Regulatory Commission Chair Cheryl LaFleur declined November 7 to judge whether the Environmental Protection Agency's Clean Power Plan would harm the nation's grid reliability, but she said that the agency would work to ensure grid stability when the rules take effect.

OR LNG Favorable Environmental Review

The Federal Energy Regulatory Commission found November 7 that the proposed Jordan Cove liquefied natural gas export project in Oregon would have minimal environmental impacts. The draft [environmental impact statement](#) is the next step in allowing the first LNG export terminal to operate on the West Coast. Public comment will be accepted for the next 90 days.

NUCLEAR REGULATORY COMMISSION

Burns Sworn In

Nuclear Regulatory Commission Chair Allison Macfarlane swore in Stephen Burns as the newest commissioner November 5. The Senate confirmed Mr. Burns in September, and his term runs through June 30, 2019.

INTERNATIONAL

Biofuels Don't Replace Fossil Fuels

The United Nations Conference on Trade and Development released a [report](#) November 3 finding that an increased emphasis on global biofuel policies has not significantly impacted the world's demand for traditional fossil fuels. Though global production of bioethanol from sugar cane, corn, and sugar beets increased from 10.3 billion gallons in 2006 to 22.5 billion gallons in 2012, biofuels account for less than 1 percent of the global energy market.

Global ETS Rules

International Energy Agency climate policy analyst Christina Hood said November 7 that United Nations climate envoys are determining how to include Chinese provinces and United States states into the same global carbon market as countries after 2020. Allowing smaller jurisdictions to link to the international market would increase the size of the market, though some oppose this approach. In a September submission, the European Union indicated its preference for limiting the international market to nations and groups of countries.

STATES

AZ Rooftop Solar Denied

The Arizona Corporation Commission recommended November 3 that the commissioners reject Arizona Public Service Company's request for approval of a program in which the utility planned to install its own rooftop solar systems on 3,000 homes as part of the Arizona Sun Initiative. The commission determined that the company had not reasonably demonstrated its needs to build an additional 20 MW to meet renewable portfolio requirements.

NY Wind Proposed

Virginia's Apex Clean Energy submitted plans November 6 to erect potentially the tallest wind turbines in New York. The proposal is the first in years for near the Lake Ontario shoreline in the western part of the states; other proposals never materialized. The Lighthouse Wind project would generate up to 200 MW of electricity via 60-70 wind turbines, the blades of which would reach 570 feet into the air.

NY DRMS

Alstom delivered its demand response management system to Con Edison in New York November 6. The project, part of the Department of Energy's Smart Grid Demonstration Program, will help the electric service provider manage its growing demand response activities and data within a single platform.

IL Fracking Approved

The Illinois Joint Commission for Administrative Rules granted final approval November 6 to the state Department

of Natural Resources rules implementing the Hydraulic Fracturing Regulatory Act, clearing the way for companies to obtain fracking permits and potentially begin an energy boom in the southern part of the state. The final rules must be submitted to the Secretary of State to be published by November 15.

PA Governor-Elect COS

Pennsylvania Governor-elect Tom Wolf's transition team announced November 10 that the governor-elect will appoint Kathleen McGinty, a fellow gubernatorial candidate and former Council on Environmental Quality chair, as his chief of staff.

MISCELLANEOUS

Adaptation Index Released

The University of Notre Dame released its [Global Adaptation Index](#) November 5, scoring more than 175 countries based on their vulnerability to climate change and their readiness to address it. Scandinavian countries consistently comprise the leaderboard; the United States remained relatively constant in the eighth position, and China, Rwanda, and Mongolia have improved their adaptation scores.

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