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David Leiter
Sarah Litke
DJLeiter@mlstrategies.com
SLitke@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 AND ENVIRONMENT UPDATE **November 18, 2012**

Energy and Climate Debate

With the lame duck session underway, all in Washington are focused on the fiscal cliff. President Obama and congressional party leadership met November 16 to begin laying out a basic framework for negotiations going forward. Though they avoided discussion of particular proposals, the group attempted to demonstrate their willingness to work together in order to prevent the automatic tax increases and spending cuts scheduled to take effect on January 1.

With an increased interest in raising revenue in the face of the looming fiscal cliff, the idea of a carbon tax resurfaced as one potential resource, and debates quickly became heated last week. President Obama announced November 14 that the administration is unlikely to pursue a carbon tax before addressing the fiscal cliff. Gilbert Metcalf, deputy assistant treasury secretary for environment and energy, said the previous day that the administration had no plans to propose a carbon tax, and that any legislative action on climate change would need bipartisan support. House Republican leaders pledged November 15 to oppose a carbon tax. Americans For Prosperity spearheaded the No Carbon Tax Pledge, in which signatories vowed to oppose "any legislation relating to climate change that includes a net increase in government revenue." Americans for Tax Reform pledged November 13 to ensure that a carbon tax does not become law, and the Competitive Enterprise Institute filed a lawsuit against the Treasury Department the same day seeking emails related to a carbon tax.

The Congressional Budget Office released a paper November 13 finding that a carbon tax would impose a disproportionate burden on low-income households. Meanwhile, the Massachusetts Institute of Technology released a report this summer finding that a carbon tax starting at \$20/MT in 2013 and rising 4 percent annually could raise \$1.5 trillion and reduce CO2 emissions 20 percent below 2006 levels by 2050.

At the same time, the president vowed last Wednesday to continue discussing with scientists, engineers, and elected officials in the coming weeks and months ways to make short-term progress on reducing carbon emissions and long-term progress on addressing climate change. The administration made it clear that it will not support any action that harms the economy, and offered no concrete agenda to expand on current administration policies to address climate change during his second term.

Other energy-related issues that may continue to be a part of the fiscal cliff negotiations include various tax extenders pieces, Defense Reauthorization, which includes a debate over the military's use of biofuels, and energy efficiency legislation.

Members of the Governors' Wind Energy Coalition sent a letter November 12 to congressional leaders calling for a multiyear extension of the production tax credit during the lame duck session. The group argued that letting the tax credit expire could place 37,000 jobs and up to \$10 billion in private investment in wind energy in jeopardy.

Congress

Legislation Prohibits US Airline Inclusion in EU ETS

The House passed the European Union Emissions Trading Scheme Prohibition Act of 2011 (S. 1956) November 13 to prohibit United States airlines from participating in a European Union plan to include international airlines in its Emissions Trading System for greenhouse gas emissions. The vote came on the heels of a November 12 European Commission proposal to delay the inclusion of flights into and out of the European Union's emissions cap and trade system to allow more time to reach a global solution for reducing airline emissions. Over 20 countries, including China and India, have also expressed opposition to the plan. President Obama is expected to soon sign the bill into law.

ENR Issues

Senator Ron Wyden (D-OR), incoming chairman of the Senate Energy and Natural Resources Committee, said last week that legislation promoting the use of natural gas will be one of the first measures the committee addresses in the 113th Congress. He is working with Ranking Member Lisa Murkowski (R-AK) to find common ground on energy legislation. Senator Wyden also said that renewable energy sources, especially biomass, geothermal, and hydropower, should play a larger role in domestic energy.

Military's Use of Biofuels

Senator Dick Durbin (D-IL) said November 14 that the Senate will bring the National Defense Authorization Act for Fiscal Year 2013 (S. 3254) to the floor by the end of the year. The \$631.4 billion legislation includes a provision that would prohibit the Defense Department from producing or procuring biofuels if the cost exceeds the price of traditional fossil fuel, and prohibits the Pentagon from entering into a contract to plan, design, or construct a biofuel refinery unless it is specifically authorized to do so. The House passed its version of the bill (H.R. 4310) in May with similar restrictions.

Keystone XL Pipeline

A bipartisan group of 18 senators lead by Senator John Hoeven (R-ND) and Senator Max Baucus (D-MT) sent a letter November 16 to the White House calling for swift action on TransCanada Corp's permit application for the Keystone XL Pipeline and requesting a meeting with President Barack Obama. State Department officials have said that a final decision on the pipeline will have to wait until early 2013, when a process to select an alternate route through Nebraska and an environmental review will be completed.

Legislation Introduced

Senator Mark Begich (D-AK) introduced legislation (S. 3629) November 14 to amend the Alaska Natural Gas Pipeline Act to promote the availability of affordable, clean-burning natural gas to North American markets.

Department of Agriculture

BioPreferred Expansion

Speaking November 14 at the first meeting of the Society for Commercial Development of Industrial Biotechnology, Kate Lewis, Deputy Manager of the Department of Agriculture's BioPreferred program, said that the agency is hoping to expand the program to include biobased chemicals that are not final goods but rather intermediates. The agency is also planning to offer online applications to make its procedures more efficient. During the conference, biobased chemical manufacturers said that standardized definitions for the terms "green" and "natural" would be helpful as they work to differentiate their products from fossil fuel-derived goods.

Department of Interior

Offshore Wind

The Department of Interior's Bureau of Ocean Energy Management announced November 13 that it plans to begin auctioning off renewable energy leases for the Wind Energy Area on the Outer Continental Shelf off the coast of Massachusetts by next fall. The bureau issued its draft environmental assessment October 31, analyzing potential environmental and socioeconomic impacts from issuing renewable energy leases and related site characterization activities within the Wind Energy Area.

Environmental Protection Agency

MATS Revisions

In a November 13 status report to the U.S. Court of Appeals for the District of Columbia, the Environmental Protection Agency said that it intends to sign a proposed rule by November 20 to revise mercury and air toxics limits issued last December for new coal- and oil-fired power plants. On Friday, the agency proposed the revised standards, limiting mercury emissions of new plants that do not use low-rank virgin coal to 0.03 lbs/GWh. The White House Office of Management and Budget received the proposed rule for expedited interagency review November 7, and the agency is on track to sign the final rule this coming March.

RFS Waiver Rejected

The Environmental Protection Agency rejected November 16 a waiver request by six states for relief from an ethanol mandate under the Renewable Fuels Standard. The states had requested that the agency waive the requirement following a drought this summer that hurt corn crops and drove up the price of feed for livestock and other agricultural uses. The agency received over 2,500 comments on the potential waiver. Immediately following the announcement, Senator Pat Toomey (R-PA) promised to challenge the agency's decision.

Boiler Standards Forthcoming

Appearing November 15 during a meeting of the Ozone Transport Commission and Mid-Atlantic/Northwest Visibility Union, Gina McCarthy, Environmental Protection Agency assistant administrator for air and radiation, announced that the agency plans to finalize air toxics emissions standards for boilers within the next few months. The agency issued final air toxics standards for boilers in March 2011 under a court-ordered deadline but immediately planned to reconsider the rules. There are 1.5 million boilers in the country, but only 5,500 are expected to be subject to the emissions limits, as the remainder can implement work practice standards to comply or are already sufficiently clean.

OK Utility Retirement Proposal

The Environmental Protection Agency issued a notice November 14 requesting comments on a proposed settlement agreement in which Public Service Co. of Oklahoma would take one coal-burning unit out of commission and install better pollution control equipment on another. An electric utility owned by American Electric Power would be required to phase out the first coal-burning unit and install new technology on a second at its Northeastern Plant by April 16, 2016.

Emissions Limits for Existing Plants Years Away

During a November 13 meeting of the National Association of Regulatory Utility Commissioners, Gina McCarthy, Environmental Protection Agency assistant administrator for air and radiation, said that any rule regulating greenhouse gas emissions from existing power plants is several years away. The agency proposed a new source performance standard for new fossil fuel-fired power plants in April, for the first time setting a source-specific emissions limit for greenhouse gases, and is considering about 2 million comments it received on the proposed rule.

Recycling Progress

Celebrating America Recycles Day November 15, waste industry associations and governmental officials praised national progress in recycling and waste-recovery efforts, but said that there are additional opportunities for economic growth and environmental progress in the field. The Environmental Protection

Administration estimates that 34.1 percent of municipal solid waste is now recycled, and 65 million tons of resources are recycled annually.

Personnel

Speaker of the House John Boehner (R-OH) named Energy and Commerce Committee aide Maryam Brown as his top energy adviser last week. Ms. Brown has served as chief counsel for energy and power on the committee since January 2011, and previously served as energy and environment policy counsel for the Senate Republican Policy Committee and a manager of public policy for ConocoPhillips.

International

APEC Green Tariff Initiative

Australia and Russia outlined the Asia-Pacific Economic Cooperation forum's recent agreement on reducing tariffs on green products November 12 at a meeting of the World Trade Organization's committee on trade and environment. The agreement covers more than 50 core environmental products, and many believe that the deal could be a good example for governments to consider in the WTO context.

Growing Global RE

The International Energy Agency released its *World Energy Outlook for 2012* November 12, predicting that renewable energy will grow into the world's second largest source of electricity generation by 2015, and will near coal as the primary source by 2035. At the same time, the agency's forecast depends upon more and larger government subsidies, which totaled \$88 billion in 2011 and will need to grow to \$4.8 trillion by 2035.

EU ETS Allowance Auctions

The European Commission published a draft regulation November 12 to defer until after 2018 auctions of 900 million emission allowances in an attempt to boost the European Union's carbon price. The regulation would amend an EU law on the auctioning of carbon allowances so that 400 million currently scheduled to be auctioned next year, 300 million from 2014, and 200 million from 2015 would be back loaded. Instead, the allowances would be auctioned in 2019 and 2020 to participants in the Emissions Trading System.

China, India Reject HFC Reduction Proposal

Major developing countries, including China and India, rejected a proposal to steadily reduce the consumption and production of hydrofluorocarbons last week during the 24th Meeting of Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer. The proposal, which was advanced by the United States, Mexico, and Canada, called for an 85 percent reduction in production and consumption of 21 types HFCs over the next 20 years. India and China argued that the Montreal Protocol is not the appropriate vehicle for dealing with the HFC issue and that it should instead be addressed during U.N. climate change negotiations.

WTO Finds Canadian Green Energy Program Discriminatory

A World Trade Organization dispute panel ruled in favor of Japan and the European Union in their claim that the Canadian Province of Ontario's green energy program discriminates against foreign suppliers of equipment and components for renewable energy generation facilities. The dispute focused on a provision of the program requiring wind and solar projects to purchase a minimum amount of goods and services that originate in Ontario. China announced November 5 that it will launch complaints against particular EU member states for measures believed to be similarly discriminatory.

States

NW Climate Policies Urged

The governors of California, Oregon, and Washington, as well as British Columbia's Premier, called November 14 for climate policies and programs that consider the cost of carbon. The group released a joint written statement during the GreenBuild 2012 Conference in San Francisco, pointing to California's

economy-wide GHG cap and trade program and British Columbia's carbon tax as tools that help to price energy resources accurately and move governments toward a clean energy infrastructure. The four governments formed the Pacific Coast Collaborative in 2008 to share ideas and work together to address issues impacting the region.

Miscellaneous

Shifting Away from LEED

Turner Construction Company released a report November 8 concluding that companies are less likely to use the U.S. Green Building Council's Leadership in Energy and Environmental Design rating system now than in recent years. The report, *Green Building Market Barometer 2012*, surveyed 718 executives from architecture and engineering firms, construction companies, real estate consultant groups, developers, and others and found that the move may be as a result of companies becoming more knowledgeable about green buildings over the past four years, and thus using their own rating systems.

Coal-Fired Plant Closures

The Union of Concerned Scientists released a report November 13 finding that as many as 353 additional coal-fired power plants in 31 states should be considered for closure as they become costlier to operate under new pollution control requirements. The study, *Ripe for Retirement: The Case for Closing America's Costliest Coal Plants*, concludes that the potential retirements would be in addition to 288 coal-fired plants that are already slated for closure.

Electric Grid Vulnerable to Terrorism

The National Academy of Sciences released a study November 14 finding that the U.S. electric grid is vulnerable to terrorist attacks that could cause more damage to the system than horrific natural disasters, blacking out large regions of the country for weeks or months at a time and costing billions of dollars. The Department of Homeland Security, which sponsored the report, classified the 2007 report, and the National Research Council was finally able to clear the report for public release after making a formal request for an updated security clearance.

\$4.5 Billion BP Criminal Settlement

In a November 15 plea agreement with the Justice Department and the Securities and Exchange Commission, BP will pay \$4 billion in penalties, including \$1.256 billion in criminal fines, over five years, plus \$525 million in claims to the commission over three years. The company announced that it will plead guilty to 11 felony counts related to the deaths of 11 workers on the Deepwater Horizon that exploded in the Gulf of Mexico April 20, 2010, spilling nearly 5 million barrels of oil. The company will also plead guilty to a felony charge of obstruction of Congress, a misdemeanor charge of violating the Migratory Bird Treaty Act, and a misdemeanor charge of violating the Clean Water Act.