

David Leiter

Sarah Litke

DJLeiter@mlstrategies.com

SLitke@mlstrategies.com

ENERGY AND ENVIRONMENT UPDATE **February 27, 2011**

Energy and Climate Debate

Congress will return from the Presidents' Day recess February 28 to work out a compromise agreement to help keep the federal government from shutting down after the March 4 end to the current continuing resolution. Representatives and Senators will try to bring compromise fiscal 2011 funding to the floor by week's end, but if the two parties, or the two chambers, are unable to reach an agreement, the government would be forced to shut down for the first time since 1996.

After passing a continuing resolution (H.R. 1) February 19 that cut \$61 billion from current spending levels (roughly \$100 billion from the President's fiscal year 2011 budget request) and funded the government through the end of the fiscal year, the House Appropriations Committee released a short-term spending measure February 25 that, unlike the February 19 version, contains no restrictions on the Environmental Protection Agency's greenhouse gas regulations or other programs but would eliminate nearly \$300 million in spending in the Department of Energy's efficiency and renewable energy programs. Though House Republicans had previously opposed the use of another CR, with just a week to come to a compromise suitable in both the House and Senate, and Senate Democrats heavily opposed to the previous House-passed measure, House Republicans have now endorsed this new short-term spending measure that would reduce government spending \$4 billion below currently enacted levels and give Congress until March 18 to reach a compromise on a longer-term solution.

The short-term spending measure would cut \$292 million in earmarked projects from the Department of Energy's Office of Energy Efficiency and Renewable Energy and leave the program's spending at \$1.95 billion. It would also cut \$13 million in earmarks from the agency's electricity delivery and energy reliability program, \$3 million in earmarks for the department's nuclear energy research and development program, and \$77 million in earmarked funds from DOE's Office of Science. The House is expected to consider the short-term measure March 1.

On the other side of Capitol Hill, Senate Democrats are considering a seven-month bill that would reduce spending by perhaps even more than the roughly \$41 billion from the President's requested FY 2012 budget suggested week before last, taking a page from President Obama's fiscal year 2012 budget, which identified more than 200 programs for terminations and cuts. The \$41 billion reduction essentially amounts to a freeze of the current spending levels. Senate Appropriations Chairman Daniel Inouye (D-HI) is expected to unveil the draft legislation at the weekly Senate Democratic caucus March 1. As far as a shorter-term CR is concerned, Senate Democrats have discussed the possibility of a plan that extends current funding levels through the end of March.

The two chambers will have until Friday to come to an agreement.

Congress

Climate Science Hearing Sought

Congressman Henry Waxman (D-CA), Ranking Member of the Energy and Commerce Committee, and Representative Bobby Rush (D-IL), Ranking Member of the Energy and Power Subcommittee sent a letter to Chairman Fred Upton and Ed Whitfield requesting a committee hearing to discuss the two major studies linking severe weather events to man-made global warming.

Legislation Introduced

Senator Mike Enzi (R-WY) introduced the Better Use of Light Bulbs Act (S. 395) February 17 with 27 cosponsors. The legislation would repeal a de facto ban on incandescent light bulbs that was enacted in 2007. Congressman Joe Barton (R-TX) has introduced companion legislation (H.R. 91) in the House. The legislation may be addressed during a committee hearing on the Implementation of National Consensus Appliance Agreements act of 2011 on March 10.

On the same day, Senators Jeff Bingaman (D-NM) and Lisa Murkowski (R-AK) introduced legislation (S. 398) that would set new or improved energy efficiency standards for more than a dozen consumer appliances as well as certain outdoor lighting, including a ban on mercury vapor bulbs.

Also on the 17th, Senator Mark Udall (D-CO) introduced legislation (S. 383) to bolster the domestic production of rare minerals. The bill would direct the Department of Interior to inventory the nation's mineral supplies and direct the Department of Energy to take steps to train the next generation of high-tech miners.

Congressmen Adrian Smith (R-NE) and Jim Costa (D-CA) introduced legislation (H.R. 795) February 24 to expand small-scale hydropower.

Congressman John Carter (R-TX) was joined by 45 of his colleagues in introducing a resolution (H.J. Res. 42) February 24 disapproving a rule submitted by the Environmental Protection Agency relating to the National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry and Standards of Performance for Portland Cement Plants.

Upcoming Hearings

The House Energy and Commerce Subcommittee on Energy and Power will hold a hearing March 1 on Environmental Protection Agency GHG regulations, focusing on the regulation's impact on American jobs.

The Senate Budget Committee will hold a hearing March 2 on the proposed fiscal year 2012 budget for the Department of Energy. Energy Secretary Steven Chu will appear as a witness.

The Senate Environment and Public Works Committee will hold a hearing March 2 on the FY2012 budget proposal for the Environmental Protection Agency. EPA Administrator Lisa Jackson will testify.

The House Science Committee will hold a hearing March 3 on the president's budget proposal, examining the FY2012 budget request for research and development at the Department of Energy. Energy Secretary Steven Chu will appear as a witness.

Administration

Economic Report Sent to Congress

The White House released the *Economic Report of the President* February 23. The report is a broad overview of the state of the economy in which the administration also emphasizes the importance of developing clean energy sources, including via an 80 percent clean energy standard by 2035.

Jobs Council Meets

The President's Council on Jobs and Competitiveness met for the first time February 24. Two days previously, during the Winning the Future Forum on Small Business, President Obama announced that Steve Case, co-founder of AOL and chairman of the Case Foundation, would join the council. The president signed an executive order establishing the Council on January 31. The White House will hold a series of eight "Startup America: Reducing Barriers" roundtables across the country to hear from

entrepreneurs on ideas and suggestions for reducing barriers and creating a more supportive environment for growth and innovation.

Department of Agriculture

USDA Solicits Crop Insurance Studies

Agriculture Secretary Tom Vilsack announced February 25 that the agency will solicit proposals to study the feasibility of providing crop insurance to producers of feedstocks used for biofuels. The studies will examine growers of corn stover, straw, and woody biomass and follow similar efforts by the Risk Management Agency to study energy cane, switchgrass, and camelina. Secretary Vilsack also announced that he would sign a memorandum of understanding with the Governors' Biofuels Coalition to encourage development of bio-based products for energy consumption, animal feed, and chemicals.

Department of Energy

Cellulosic Falls Behind

The Department of Energy's Biomass Program manager Paul Bryan told the 2011 Agriculture Outlook Forum February 25 that the amount of cellulosic ethanol in the market is increasingly falling behind Congressional mandates. Cellulosic ethanol is likely to comprise less than 5 percent of the federal mandate for U.S. transportation fuels in 2011

DOE to Expand National Parks Partnership

The Department of Energy's Clean Cities initiative announced February 25 the expansion of the ongoing collaboration with the National Parks Service's Climate Friendly Parks program. The new partnership will aim to reduce air pollution and preserve the environment and the National Parks' natural resources. Pilot projects for the new initiative are underway in Yellowstone National Park, Grand Teton National Park, and Mammoth Cave National Park.

\$96.8 Million Loan Guarantee Awarded

Energy Secretary Steven Chu announced February 24 that the agency had finalized a \$96.8 million Recovery Act supported loan guarantee to a project sponsored by U.S. Geothermal, Inc. to construct a 23 MW geothermal power project in southeastern Oregon.

Luminaires Winners Announced

The Department of Energy announced winners February 23 in the third annual Next Generation Luminaires design competition. The competition, sponsored by the Department of Energy, the Illuminating Engineering Society of North America, and the International Association of Lighting Designers, was launched in 2008 to promote excellence in the design of energy efficient LE luminaires for general illumination in commercial lighting applications. The Lighting Quotient Inc., Philips Color Kinetics, Konzept Technologies, and USAI were awarded best in class awards.

Contaminated Site Task Force Established

The Department of Energy established recently a task force to facilitate the discussion among interested parties on the reuse of contaminated sites after they are cleaned up, including use for clean energy projects. The department sites were contaminated during decades of nuclear weapons and fuel production during World War II and the Cold War era. The task force will make recommendations within the year to the undersecretaries for energy, science, and nuclear security on the formation of an asset revitalization initiative and will submit by June 24 a report for Congress.

DOE Departures Announced

Cathy Zoi, acting Undersecretary of Energy and assistant secretary for energy efficiency and renewable energy, will depart the Department of Energy March 10 for a private-sector post in California. Rod O'Connor, Energy Secretary Steven Chu's chief of staff, will leave the agency March 18 for a London-based sports and entertainment company. Scott Harris, general counsel, will also soon leave the Department of Energy. Arun Majumdar, director of DOE's Advanced Research Projects Agency-Energy,

will assume Ms. Zoi's undersecretary duties while maintaining his current role, and Henry Kelly, principal deputy assistant secretary for EERE, will take over as acting assistant secretary.

Solar Webinar Held

The Department of Energy's Technical Assistance Program for state and local officials presented a webinar February 23 about solar energy system development and installation. The presentation was a joint venture between the agency's Office of Energy Efficiency and Renewable Energy and Renewable Energy and Solar America Communities.

Clean Cities Webinar Hosted

The Department of Energy's Clean Cities Initiative hosted a webinar February 24 focused on reducing vehicle miles traveled in vehicle fleets and for individual consumers.

Department of Transportation

Vehicle Mass Research Presented

At a day-long vehicle mass-size safety symposium sponsored by the National Highway Traffic Safety Administration February 25, manufacturers and automotive engineers relayed their latest research on the feasibility of reduced vehicle mass and its effect on fuel consumption, passenger safety, and GHG emissions. The agency welcomed the input in advance of an upcoming Corporate Average Fuel Economy rulemaking, a joint effort of NHTSA and the Environmental Protection Agency, that will propose fuel economy and GHG standards for light duty vehicles beginning with the 2017 model year.

Environmental Protection Agency

Court Grants Transfer

The U.S. Court of Appeals for the Fifth Circuit ended its consideration February 24 of a challenge by Texas to an Environmental Protection Agency final rule, the Sip Call, requiring states to adopt laws and regulations allowing them to issue permits to new and modified stationary sources for GHG emissions. The Fifth Circuit transferred the case to the U.S. Court of Appeals for the District of Columbia Circuit, agreeing with a December 17 EPAP motion that the D.C. Circuit is responsible for hearing challenges to EPA Clean Air act rules with national applications.

EPA Sends Biomass Deferral to OMB

The Environmental Protection Agency sent February 23 to the White House Office of Management and Budget for review a proposed rule to defer GHG permitting requirements for new and modified industrial facilities that use wood, crop residues, grass, and other biomass for energy. The agency will issue a final rule by July 1 to defer GHG emissions permitting requirements for biomass energy projects for three years while it considers additional scientific issues.

Boiler MACT Finalized

The Environmental Protection Agency finalized emissions standards February 23 for industrial boilers and incinerators but also released a notice of reconsideration under which it will reconsider additional subcategories. The final standards, which revise the new source performance standards for commercial and industrial solid waste, will achieve the same level of health protection at half the compliance costs originally proposed in 2010 by requiring the largest boilers and process heaters to continuously monitor emissions of particulate matter as a surrogate for toxic metals as well as monitor oxygen to ensure clean combustion.

Air Pollutant Rule to OMB

The Environmental Protection Agency sent a proposed air pollutant rule for power plants to the White House for review February 19. The rule, which would replace the Bush administration's Clean Air Mercury Rule, would set maximum achievable control technology standards for power plants, requiring coal- and oil-fired power plants to control emissions of toxic pollutants, including mercury. The EPA has also proposed an interstate transport rule for emissions of SO₂ and N₂O from power plants.

Solar-Powered Groundwater Treatment System Unveiled

Federal and state officials unveiled a solar-powered groundwater treatment system February 23 that will accelerate cleanup of the Frontier Fertilizer superfund site in California by more than 100 years. In 2010, the Environmental Protection Agency installed a nearly half-acre of solar panels to power the innovative electrical resistance heating system to collect contaminants. Over \$2.5 million in Recovery Act funds helped to make possible the new treatment system.

CO Standard Hearing Upcoming

The Environmental Protection Agency will hold a public hearing February 28 on the agency's proposal to retain the nation's air quality standards for carbon monoxide and to take steps to gather additional data through more focused monitoring.

Miscellaneous

CDM Board Adopts Plan

The executive board of the Kyoto Protocol's Clean Development Mechanism adopted February 18 a two-year business plan designed to make the methodology approval process more efficient and to increase the number of CDM projects in parts of the world where they are sparse. The board also vowed to focus on the environmental integrity of the projects and methodologies.

HI DOT Allows Multiple Credits

The Hawaii Department of Taxation advised in late January that a taxpayer who planned to install multiple solar PV systems at the same site would be eligible for a renewable energy technologies income tax credit for each system because there was a legitimate, nontax reason for the multiple systems. Under the program, a taxpayer may claim credit for the costs of installing a system up to a cap amount determined by the type of property that will be serviced by the system.

Green Economy Promoted

The United Nations Environment Program released its "Towards a Green Economy: Pathways to Sustainable Development and Poverty Eradication" report February 21. The report found that conversion to a green economy could be achieved at a cost of around \$1.3 trillion a year, roughly 2 percent of global GDP. UNEP found also that if governments adopted a green investment scenario, higher annual economic growth rates could be achieved within 5-10 years than under a business as usual scenario, and energy efficiency advances would reduce energy demand by roughly 40 percent.

NH to Exit RGGI

The New Hampshire House approved (264-104) legislation (H.B. 519) February 23 to end the state's participation in the Regional Greenhouse Gas Initiative. The vote to repeal the state plan is more than enough to override a veto by Governor John Lynch (D), a proponent of RGGI who strongly opposes the bill. The House Finance Committee will further consider the legislation before a vote in the Senate, which is likely to also pass the bill.

CA Senate Passes RPS

The California Senate passed (26-11) legislation (S.B. 2X) February 24 to establish a 33 percent renewable standard for utilities. The bill would require both public and private energy providers to obtain one-third of the electricity they sell in California from renewable sources by 2020.

EU to Fund UNEP Sustainability Effort

The United Nations Environment Program and the European Union announced a strategic partnership February 23 that will use EU funds through 2013 to help UNEP projects that enhance sustainable development. Under the agreement, the two bodies announced support for a green economy in Kenya, including a project to help restore the northwestern part of the Mau forest complex.

LA Clean Truck Program Wanted Upheld

On February 17, California Attorney General Kamala Harris (D) asked the U.S. Court of Appeals for the Ninth Circuit to affirm a district court ruling that upheld key elements of the Port of Los Angeles clean

truck program. The brief was filed on behalf of the port and the city of Los Angeles in the trucking industry's long-standing lawsuit alleging port officials overstepped their authority in adopting the program, which in 2008 imposed a phased-in ban on old, high-emitting diesel trucks.

Black Carbon Reductions Could Impact Climate Change Pace

The United Nations Environment Program recently unveiled the results of a multiyear study of black carbon and other short-lived pollutants in which it found that reducing emissions of the pollutants and concentrations of ozone in the troposphere would have significant impacts on climate change and health. The report, *Integrated Assessment of Black Carbon and Tropospheric Ozone: Summary for Decision Makers*, was released in conjunction with the 26th session of the UNEP Governing Council in Nairobi February 21-24.

Organic Pollutant Reductions Undermined

The Secretariat of the Stockholm Convention on Persistent Organic Pollutants and the Arctic Monitoring and Assessment Program issued a report February 23 that concluded that international efforts to reduce emissions of persistent organic pollutants are being undermined by global warming with growing risks to the environment. The report found that rising temperatures will result increased emissions from both primary and secondary sources of POPs.

SAFE Calls for Energy Legislation

In light of the Middle East turmoil, the Securing America's Future Energy coalition called on Congress February 24 to pass legislation this year that would reduce the nation's dependence on foreign oil. Business executives, former military officers, and former Senator Byron Dorgan (D-ND) said last week that unrest in the Middle East highlights the need for Congress to pass energy legislation as the nation needs to address its dependence on petroleum in order to increase national security.

Competition Fosters Innovation

The COMPETE Coalition released a study February 24 that found that competition has fostered innovative technologies and services in electricity markets in ways that benefit consumers and the environment.

Australia Proposes Cap and Trade

The Australian government proposed a cap and trade scheme for GHG emissions February 24 that would begin in mid-2012 and would operate with a fixed price for the first three to five years. The scheme would cover the stationary energy sector, transportation, industrial processes, fugitive emissions, and most landfill emissions, though the sectors may be incorporated in stages; it would exclude agricultural emissions.