

David Leiter

Sarah Litke

DJLeiter@mlstrategies.com

SLitke@mlstrategies.com

ENERGY AND ENVIRONMENT UPDATE
May 9, 2010

Energy and Climate Legislation

With Majority Leader Harry Reid (D-NV) urging them to introduce their comprehensive climate bill and one-time ally Senator Lindsay Graham (R-SC) warning that the necessary 60 votes will elude them, Senators John Kerry (D-MA) and Joe Lieberman (I-CT) are planning to release a draft of their climate and energy legislation Wednesday, May 12, and they are expected to be joined by environmental groups and business leaders when they do.

Speaking at a conference sponsored by the Blue Green Alliance last week, Senator Kerry provided additional details of the bill. He said that two-thirds of the revenue that the bill generates by charging US industries for emitting greenhouse gases will be returned to American consumers on their energy bill. He also said that after an initial phase, about 96% of the revenue will be refunded to consumers with the rest used to reduce the deficit. The initial revenue will go to technological research and development, energy efficiency, job creation efforts, and cushioning the transition for energy intensive and trade impacted industries. Senator Kerry also said that manufacturing and energy intensive industries would have a 6 year delay before they are covered by a carbon pricing plan, and that when they are covered, they would receive a rebate as well. Regarding transportation, Senator Kerry said that the trio of Senators came to an agreement on a T. Boone Pickens-backed plan to convert light-duty and heavy-duty truck fleets from gasoline and diesel to natural gas. He also said that they will provide incentives for electric vehicle manufacturing. The Senators are reevaluating the offshore oil and gas section of their legislation, but otherwise, the details are pretty well nailed down.

Securing 60 votes will be difficult, if not impossible, for the duo, especially with Senator Graham increasingly skeptical of the measure and its possibility for success. Senator Graham backed out of negotiations a bit over two weeks ago when Majority Leader Reid announced that the Senate would move forward with an immigration as well as a climate bill this year.

The Gulf Coast oil spill that continues to leak hundreds of thousands of gallons per day obviously throws another wrench into the mix, with some Members, including Majority Leader Reid and Senators Kerry and Lieberman, contending that it makes a climate bill more necessary and possible, others, including Senators Frank Lautenberg (D-NJ), Ben Nelson (D-FL), and Bob Menendez (D-NJ), arguing that the oil and gas provisions in the initial trio compromise draft ought to be taken off the table completely, and still others suggesting that it further stalls the legislation as Congress works to address the pressing environmental and economic concerns caused by the disaster. Some, including Senator Byron Dorgan (D-ND) continue to call for a pivot to an energy-only approach.

In addition to movement on the climate front, the House plans to consider the final tax extenders measure (H.R. 4213) within the next two weeks, and Senate Finance Committee Chairman Max Baucus (D-MT) said last week that the \$30 billion tax package is close to being ready. Research and development and biodiesel tax credits are among those credits that expired at the end of 2009 that may be extended in the package. Congressman Chris Van Hollen (D-MD), said that prior to the August recess, the House will consider an energy package that includes tax measures such as an extension of the Advanced Energy

Manufacturing Tax Credit and the 1603 Grants in Lieu of Tax Credits program. The Senate will also be focusing this week on financial services reform legislation, and President Barack Obama is expected to announce his Supreme Court Nominee, who will need to be confirmed this summer.

Senate

Senators Oppose Onshore Drilling Reform

Senators John Barrasso (R-WY) and Bob Bennett (R-UT) said in a letter last week to Interior Secretary Ken Salazar that they plan to soon introduce legislation to block the Department of Interior from implementing new onshore oil and gas reforms until they consider the impacts upon jobs and revenue. The legislation is in response to new policies unveiled in January that would require a more detailed environmental review prior to leasing oil and natural gas on public lands.

Energy Committee Approves Amendments

The Senate Energy and Natural Resources Committee held a hearing last week during which they approved nine amendments on energy efficiency, carbon capture and storage, and research and development that will be added to the comprehensive energy bill (S. 1462) that passed out of the committee last June. The amendments would set efficiency standards for pole-mounted lighting and establish energy-saving targets for air conditioners, heat pumps, furnaces, and buildings. Several other amendments focus on research and development, including the manufacturing of LED lighting, efficiency and reliability of onshore and offshore wind energy, hydroelectric power efficiency, and the creation of a DOE technology price for CCS technology innovation. Two technical amendments would reduce the cost of the energy bill by \$3 billion by clarifying the treatment of interest for the \$10 billion funding for a clean energy technology development bank and would modify a provision boosting the Alaska natural gas pipeline loan guarantee program to \$30 billion. Two other amendments would fully incorporate Indian tribes into all energy programs in the bill and qualify Asian American and Native American Pacific Islander education programs as minority-serving institutions.

Legislation Introduced

Senator Frank Lautenberg introduced the Cleanfields Act of 2010 on May 6. The legislation would provide incentives to utilities to build renewable energy facilities on brownfields sites rather than building on undeveloped green and open spaces. The bill triples a utility's credits toward meeting the renewable electricity standard if developed on brownfields property as a renewable energy source under the Senate energy bill (S. 1462). Senators Sherrod Brown (D-OH) and Kirsten Gillibrand (D-NY) cosponsored the measure.

Also last Thursday, Senator Brown (D-OH) introduced the Security in Energy and Manufacturing Act (S. 3324), which would expand the advanced energy manufacturing tax credits and extend the 1603 grants in lieu of credits program. The bill would also provide an additional \$5 billion for the credit program, and the funds must be used within four years or face reallocation. Senators Chuck Schumer (D-NY), Bob Casey (D-PA), and Jeff Merkley (D-OR) cosponsored the bill.

Senator George Voinovich (R-OH) introduced legislation Thursday to create a public-private corporation to manage the nation's nuclear waste. The bill would create a government corporation funded by the Nuclear Waste Fund to run a technology neutral fuel management business to handle the nation's spent nuclear fuel. Senators Lisa Murkowski (R-AK) and Lamar Alexander (R-TN) are cosponsors of the bill.

Senator James Inhofe (R-OK) introduced legislation (S. 3286) May 4 to delay the implementation of certain final EPA rules until accreditation classes are held in States for at least one year.

Senators Menendez, Nelson, Lautenberg, Ben Cardin (D-MD), Schumer, Sheldon Whitehouse (D-RI), and Sanders introduced legislation (S. 3305) May 4 to amend the Oil Pollution Act of 1990 to require oil polluters to pay the full cost of oil spills. The same group also introduced legislation (S. 3306) to amend the Internal Revenue Code of 1986 to require polluters to pay the full cost of oil spills.

Senators Nelson, Sanders, Jack Reed (D-RI), Dianne Feinstein (D-CA), and Barbara Boxer (D-CA) introduced a further reaching measure (S. 3308) to suspend certain activities in the OCS until the date on which the joint investigation into the Gulf Coast incident has been completed.

Upcoming Hearings

The Senate Energy and Natural Resources Committee will hold a hearing May 11 on offshore oil and gas development issues. The hearing will focus on the recent Gulf Coast oil spill and the Department of Interior's recent five-year planning announcements.

The Senate Environment and Public Works Committee will hold a hearing May 11 on the environmental impacts of the recent oil spill.

The Senate Environment Subcommittee on Water and Wildlife will hold a joint hearing with the Subcommittee on Oversight on the role of the EPA in the protection of ocean health on May 11.

House

House Passes Home Star Legislation

The House passed (246-161) the \$6 billion Home Star Energy Retrofit Act of 2010 (H.R. 5019) Thursday, May 6. The bill, often called "Cash for Caulkers," would establish a two-tiered rebate program to hire contractors to purchase and install energy efficient products in homes. The legislation makes the rebates to consumers for energy-efficient home modifications exempt from income taxes, but specifies that homeowners can either take the rebate or existing energy-related tax incentives but not both.

Transit Committee Holds Hearing

The House Transportation and Infrastructure Subcommittee on Highways and Transit held a hearing May 5 to consider legislation that authorizes emissions controls at ports modeled on the Port of Los Angeles program. In February 2008, Los Angeles launched its Clean Truck Program, under which all trucks manufactured before 1989 are banned from the port and all those built before 2003 must be retrofitted with additional emissions controls. Congressman Jerry Nadler (D-NY) and 78 other House members wrote committee Chairman James Oberstar (D-MN) and Ranking Member John Mica (R-FL) on April 28 urging them to move forward with legislation that allows Los Angeles and other port cities to implement clean truck programs with economic requirements.

Legislation Introduced

Representatives introduced a number of energy related bills on May 4. Congressmen Jane Harman (D-CA) and Fred Upton (R-MI) introduced legislation (H.R. 5201) to improve the energy efficiency of outdoor lighting.

Congressman John Garamendi (D-CA) introduced legislation (H.R. 5213) to amend the Outer Continental Shelf Lands Act to prohibit OCS offshore drilling of the coast of California, Oregon, and Washington.

Congressman Rush Holt (D-NJ) introduced legislation (H.R. 5214) to require oil polluters to pay the full cost of oil spills.

Congressmen Kendrick Meek (D-FL) and Alcee Hastings (D-FL) introduced legislation (H.R. 5222) to suspend certain activities in the OCS until the date on which the joint investigation into the Deepwater Horizon incident has been completed.

Upcoming Hearings

The House Energy and Commerce Subcommittee on Energy and Environment will hold a hearing May 12 on the Gulf Coast oil spill.

Congressional Budget Office

CBO Underlines Cap and Trade Job Losses

The Congressional Budget Office issued an economic and budget issue brief last Wednesday in which they found that capping and reducing greenhouse gas emissions could cause job losses in fossil fuel industries, particularly coal mining. The report, *How Policies to Reduce Greenhouse Gas Emissions Could Affect Employment*, found that CCS technology development could mitigate the job losses.

Administration

CCS Faces Funding Hurdles

Panelists at a forum hosted by the Interagency Task Force on Carbon Capture and Storage said last Thursday that insufficient funding remains a significant impediment to advancing CCS technologies at coal-fired power plants. The panelists discussed technical issues, including how to fund and deploy the projects, the need for regulatory clarity, and steps necessary to create a CO2 market. The task force, announced by the President in early February, and comprised of representatives from 14 federal agencies, must report back in six months with a plan to overcome economic and technical barriers to widespread CCS technology use.

Department of Agriculture

The Department of Agriculture and the Environmental Protection Agency announced May 3 an interagency agreement to promote renewable energy generation, especially biogas-generated energy and reduce livestock-related greenhouse gas emissions. The agencies plan to expand their existing AgStar program by providing up to \$3.9 million over the next five years to help farmers overcome obstacles to biogas recovery and use. The same day, the USDA announced that it would conduct the first on-farm energy production survey this year.

Department of Energy

\$62 Million for Solar R&D

Last Friday, Energy Secretary Steven Chu announced up to \$62 million over five years for thirteen concentrating solar power research, development, and demonstration projects. The funding will support improvements in CSP systems, components, and thermal energy storage to accelerate the market-readiness of the technology.

EIA Releases Preview of Emissions Report

The Energy Information Administration released a preview of its annual Emissions of Greenhouse Gases in the US report last week. The early data show that CO2 emissions in the country's energy sector dropped 7 percent last year, the largest reduction since the federal government began collecting annual energy data in 1949. A down economy and fuel switching both contributed to the decline.

\$52.5 Million for ESPCs

The Department of Energy announced early last week four new agreements valued at \$52.5 million under its Energy Savings Performance Contracts, which are designed to help the government save energy and water. The new task orders will result in energy-saving upgrades at the Bureau of Land Management, National Wildlife Center, and two General Services Administration facilities.

New Energy Star Standard

A new energy efficiency level for Energy Star approved televisions went into effect May 1. In order to earn the Energy Star 4.0 label, televisions must be 40 percent more efficient than conventional models. An even stricter standard, which will require televisions to be 65 percent more efficient, is scheduled to go into effect May 1, 2012.

Department of Labor

The Department of Labor's Bureau of Labor Statistics released a preliminary definition of what constitutes a green job last week at the Blue Green Alliance's Good Jobs Green Jobs conference. They will begin collecting data on those jobs in the coming year. The definition centers on seven categories of economic activity that help to protect or restore the environment or conserve natural resources.

Environmental Protection Agency

Memo Outlines 2010 Water Funding Priorities

The Environmental Protection Agency sent a memo to regional directors in late April that said that at least 20 percent of fiscal year 2010 clean water and drinking water state revolving funds should be targeted for green projects and that existing infrastructure should have priority over new. The appropriations law provides roughly \$3.6 billion for drinking water and wastewater infrastructure projects.

Health Benefits in the Trillions

The EPA presented a cost-benefit analysis called the Benefits and Costs of the Clean Air Act: 1990 to 2020: Preliminary Draft Report to an advisory committee May 4. In the report, analysts found that Clean Air Act programs to reduce fine particle pollution would provide about \$1.25 trillion in health benefits in 2010. EPA plans to have a complete report by November in time for the 20th anniversary of the last Clean Air Act amendments.

EPA Announced Two Proposals to Regulate Coal Ash

The EPA announced last week plans to regulate coal ash disposal and management from power plants. Coal combustion residuals, or coal ash, are byproducts of the combustion of coal at power plants and are disposed of in liquid form at large surface impoundments and in solid form at landfills. They contain contaminants like lead, mercury, cadmium, and arsenic. The other regulation would classify the waste as nonhazardous, setting federal guidelines for state disposal that mandate the installation of liners on new wet storage ponds.

EPA Sends Reporting Requirement Rule to OMB

The EPA sent April 30 a draft final rule that would require facilities in four industrial sectors to report their greenhouse gas emissions to the White House Office of Management and Budget for interagency review. The draft rule would impose emissions reporting requirements on industrial landfills, wastewater treatment facilities, underground coal mines, and magnesium production that emit more than 25,000 MT of CO₂e per year.

Streamlined Approval Process for Fuel Conversions

The EPA issued a proposed rule May 7 streamlining the process for ensuring that aftermarket conversions for vehicles and engines to burn clean fuels comply with Clean Air Act emissions standards. The rule would update regulations that apply to systems manufacturers that convert light- and heavy-duty vehicles and their engines so that they can run on alternative fuels via a tiered compliance process based on vehicle age.

Federal Transit Administration

The Federal Transit Administration announced May 2 that it will make \$775 million available to transit agencies for upgrades to their aging bus fleets. The money, from unallocated FY 2010 funding, will be used to repair, replace, or upgrade bus fleets at public transportation agencies across the country, and grant winners will be announced late summer. The money can cover up to 80 percent of a project's cost.

Personnel

The Senate Energy and Natural Resources Committee approved the nomination of Cheryl LaFleur and the renomination of Philip Moeller to a second term as members of the Federal Energy Regulatory Commission. They also approved the nomination of Jeffrey Lane to be the Department of Energy's Assistant Secretary for Congressional and Intergovernmental Affairs.

Miscellaneous

Summer Clean Energy Technologies Meeting

Twenty two nations will attend the Major Economies Forum on Energy and Climate this July in the US. The group is expected to focus on practical ways to improve clean energy technologies, but not to adopt a formal agreement.

North America Proposes Stronger Montreal Protocol Protections

The US, Canada, and Mexico, as well as the Federated States of Micronesia, submitted proposals on April 30 to strengthen climate protection under the Montreal Protocol on Substances that Deplete the Ozone Layer. The proposals target the production and use of HFCs, and would prevent over 100 billion MT of CO₂e emissions, if accepted by the Montreal Protocol Parties.

No International Climate Change Agreement This Year

At last week's meetings in Bonn, Germany, Yvo de Boer, the Executive Secretary of the UNFCCC, said that he does not expect that nations will adopt a comprehensive pact to fight global warming this year at the annual conference in Cancun, Mexico. He said that he hopes the December meetings will provide a first answer on greenhouse gas emissions, but no treaty will immediately follow the talks.

New LEED Rating Launched

The U.S. Green Building Council, the Natural Resources Defense Council, and the Congress for the New Urbanism launched a green neighborhoods rating system on April 29. The program will be the USGBC's seventh Leadership in Energy and Environmental Design rating system and will consider a building's location when awarding certification. Projects must achieve points for smart location and linkage, neighborhood pattern and design, and green infrastructure and buildings.

BC Legislation Promotes Clean Energy Development

British Columbia's Clean Energy Act (Bill 17), proposed April 28, would significantly reduce the province's greenhouse gas emissions by providing large investments in renewable energy production and conservation targets. Passage of the bill, which is likely, would build on the province's commitment to zero net greenhouse gas emissions from electricity generation, and would increase the target for clean or renewable electricity production to 93 percent.

Asian Development Bank Launches Solar Investments

To meet growing energy needs, the Asian Development Bank launched a project last Monday to attract \$6.75 billion in private solar investments in the region over three years. The Philippines-based lender will also contribute \$2.25 billion to support enough infrastructure to generate 3,000 MW of power by 2012.

China Calls for Extreme Efficiency Efforts

Following an announcement that China's energy intensity increased 3.2 percent in the first quarter of 2010, the State Council formulated new plans last week to reduce the nation's energy intensity, including possibly closing smaller utilities. The increase jeopardizes the goals outlined in the 11th Five-Year Plan, in which the nation pledged to reduce its energy intensity 20 percent from 2005 levels by the end of 2010. The plan calls to spend an additional \$12.2 billion to implement 10 energy efficiency projects to improve the efficiency of lighting, heating, cooling, and other energy-wasting systems.

IA Creates Co-Gen Exemption

On April 23, Iowa enacted legislation (S.B. 2373) to create a credit equal to the replacement tax liability of a cogeneration facility put into service or first subject to the replacement tax on or after January 2009.

CT Legislature Passes Energy Bill

The Connecticut legislature passed an energy bill (S.B. 493) May 4 that would reduce electricity rates, promote renewable energy generation, consolidate state energy entities, and provide assistance to residents to make home energy efficiency improvements. Governor M. Jodi Rell (R) has not determined

May 9, 2010
Page 7

whether or not he will sign the measure. The legislation would reduce electricity rates by 15% by July 1, 2010 through an adjustment to current electricity buying practices and new electricity generation capacity.