



ML Strategies Update

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Energy & Environment Update

ENERGY AND CLIMATE DEBATE

The 114th Congress and the final two years of the Obama Administration include a full energy and environment agenda.

With some new energy and environment leadership on the relevant Congressional committees, chairs and ranking members are beginning to lay out their priorities for the next two years.

While the Keystone XL pipeline is the first energy issue out of the gate this Congress, Senate Energy and Natural Resources Committee Chair Lisa Murkowski (R-AK) said January 8 that the committee would hold a hearing on the LNG Permitting Certainty and Transparency Act (S. 33) later this month, and that she hopes to find common ground for comprehensive energy legislation this spring. She also hopes to address offshore oil and gas development, an issue she worked on with former Committee Chair Mary Landrieu (D-LA), but on which she disagrees with new Ranking Member Maria Cantwell (D-WA). Senator Murkowski envisions the broad energy package centering on four main areas: strengthening supply, modernizing infrastructure, supporting efficiency, and ensuring federal accountability.

Her other priorities for the committee include crude oil, nuclear waste, public lands, forest management issues, critical minerals and grid security and cybersecurity legislation. Senator Murkowski also hopes to return to the practice of inviting the Secretary of Energy to discuss issues beyond the department's annual budget.

New Senate Environment and Public Works Chair James Inhofe (R-OK) unveiled his priorities January 7 for the 2015 committee agenda, which will include a robust, multi-year highway bill; aggressive oversight of Environmental Protection Agency regulations; an examination of the Endangered Species Act; reform of the Toxic Substances Control Act; and reauthorization of the brownfields program. Senator Inhofe said that top oversight targets include the proposed CO₂ emission limits for new, modified, and existing power plants; a proposed Clean Water Act jurisdictional rulemaking; proposed revisions to the ozone standard; the Endangered Species Act; the Nuclear Regulatory Commission, including discussion over developing the Yucca Mountain nuclear repository; and potential forthcoming methane emission regulations for the oil and gas industries. He also plans to undertake oversight efforts focused on the science behind climate change.

House and Senate Republicans spent much of the first week in session introducing energy and environmental legislation, several of which criticize the Environmental Protection Agency's regulatory authority, and many of which will ultimately serve as messaging bills.

Former Senate Environment and Public Works Ranking Member David Vitter (R-LA) led the way, introducing numerous energy and climate bills, including altering the five-year Outer Continental Shelf lease plan (S. 59); forcing approval of the Keystone XL pipeline; prohibiting the United States from regulating CO₂ unless China, Russia, and India have similar regulations (S. 66); reorganizing the Nuclear Regulatory Commission; extending the offshore boundaries of several Mid-Atlantic and Southeastern states to three marine leagues from the coast line;

blocking the Environmental Protection Agency from vetoing Clean Water Act permits for dredge-and-fill operations if the Army Corps of Engineers has issued or plans to issue permits (S. 54); and expressing the sense of the Senate that a carbon tax is not in the interest of the United States (S. Con. Res. 1).

House Republicans introduced a broad variety of energy measures, including quite a few that were introduced last Congress as well, such as legislation to repeal the United States ban on crude oil exports (H.R. 156), expedite the natural gas approval process (H.R. 161), and overhaul regulatory procedures for federal rulemakings (H.R. 185).

The Obama Administration has a full energy agenda as well, from proposing and finalizing a long list of Environmental Protection Agency regulations to addressing fracking at the Department of Interior, moving forward with efficiency standards at the Department of Energy, and finalizing solar trade issues at the Department of Commerce, and making preparations for the international climate negotiations in Paris at the end of the year. If the Obama Administration hopes to achieve its recent goal of reducing greenhouse gas emissions by 28 percent from 2005 levels by 2025, it will need to act quickly to allocate sufficient time and resources to that end.

Environmental Protection Agency Regulations: The Environmental Protection Agency had a big year in 2014, releasing, among many other regulations, the Clean Power Plan in June. Administrator Gina McCarthy and other Administration officials continue to reiterate that they will finalize the rule this summer, despite the facts that there are millions of comments to sort through and an ugly legal battle is already underway. The Administration has also repeatedly asserted that the proposed rule is legally defensible, a statement that is certain to be tested as litigation piles up once the rule is final. In the meantime, the Republican Congress is planning efforts to attack the regulation, and other agency efforts as well, via oversight hearings and the appropriations process. The agency [announced](#) January 8 that it will issue its final greenhouse gas regulations for new, existing, and modified plants in a single package this summer, several weeks after the June 1 deadline for modified and existing plants (111(d)), and months past the January 2015 statutory deadline for new plants (111(b)). Following the receipt of nearly four million comments, the agency also announced that it will soon launch a rulemaking to develop a model federal greenhouse gas reduction plan for existing power plants, which states may use as a guideline when crafting their state implementation plans. The agency will implement the model rule in cases in which states fail to submit their own plans to the agency.

In addition to the Clean Power Plan, we expect that Congress is likely to target revisions to the National Ambient Air Quality Standards for ozone and a jurisdictional rule defining the scope of the Clean Water Act. The agency will issue final standards for ground-level ozone pollution in October, revising the current 75 parts per billion (ppb) threshold to a level between 65 ppb and 70 ppb, though they are currently also accepting comment on a 60 ppb standard. The agency will hold three public hearings on the proposed rule January 29 and February 2. The agency is scheduled to release a final rule in April working to define "Waters of the United States" under the Clean Air Act, covering streams and rivers that flow into larger bodies of water already protected under the act. Additionally, the agency will issue later this month methane standards for the oil and gas industry, and the Supreme Court will hear this spring arguments in a suit challenging the EPA's Mercury and Air Toxics Standards. The agency has a near impeccable success rate in recent high court history, but we expect this case to see a lot of focus in the coming weeks and months.

Energy Tax Reform: Just before the end of the year, President Obama and Senate Majority Leader McConnell identified trade, long term infrastructure financing, and the possibility of tax reform as areas of potential agreement. Senate Finance Committee Chair Orrin Hatch (R-UT) intends to pursue broad tax reform before considering another short-term extension, and Ranking Member Ron Wyden (D-OR) plans to work with him to find compromise over which incentives to keep, improve, and discard, while he also hopes to encourage new energy technology via comprehensive tax reform or a continuation of the production tax credit or other renewable energy and energy efficiency tax provisions. Before the negotiations closed last year, there was some discussion of a plan to reinstate the wind production tax credit and institute a plan to phase it out by 2017. The wind industry has previously floated more long-term phase-out plans, but credit opponents are concerned about the hefty price tag. Conservative groups are painting any revival of the PTC as support for President Obama's clean energy agenda, potentially swaying Republican swing votes.

Keystone XL: New Senate Majority Leader Mitch McConnell (R-KY) vowed late last year to make the Keystone XL pipeline the first order of business for the upper chamber, and his colleagues are already moving quickly on the issue. After the Senate Energy and Natural Resources Committee called off a January 7 hearing to consider legislation approving the Keystone XL pipeline, it approved similar legislation ([S. 1](#)) from Senators John Hoeven (R-ND) and Joe Manchin (D-WV) the following day, setting the stage for the upper chamber to take its first Keystone votes on January 12. Senate Democrats are expected to introduce several amendments to the bill, but only a few will ultimately vote for the measure – how many that few actually is remains a question, with many predicting that there are 63 votes for the bill. Debate on amendments alone could last several weeks, and may include, among other amendments, language from Senator Bernie Sanders (I-VT) stating a [sense of Congress](#) that climate change is real and caused by human activities; measures barring the export of oil and refined products from the pipeline; a provision that would tie the project to increased clean energy investment; and energy efficiency language. If the upper chamber does approve the legislation and the president vetoes it, both of which are almost certain to occur,

obtaining the necessary congressional votes to override the presidential veto will prove to be the truly difficult battle. The House, which has passed several pro-Keystone measures in the past couple of years, passed January 9 legislation (H.R. 3) to immediately approve the pipeline. President Obama last month expressed skepticism over the project's economic benefits, and the White House issued a formal [veto threat](#) of H.R. 3 January 7. The president also said just before the new year that he expects to veto legislation this year that would block or impede his climate and environmental policies. In the meantime, the Nebraska Supreme Court overturned January 9 a lower court ruling, upholding a state law that had allowed Governor Dave Heineman (R-NE) to approve the pipeline's route inside the state. Though the State Department has not confirmed a timeline for releasing a final rule, it will now resume its almost-complete review of the pipeline, which it halted in April amid uncertainty about the Nebraska case. It could take weeks or months for the Administration to determine whether building the pipeline would be in the best interest of the United States.

LNG Exports: Senators John Barrasso (R-WY) and Martin Heinrich (D-NM) introduced legislation ([S. 33](#)) January 6 to require the energy secretary to issue a final decision on LNG export applications within 45 days after an environmental review for the project is published. Senate Energy and Natural Resources Committee Chair Lisa Murkowski (R-AK) said January 8 that the committee would hold a hearing on the LNG Permitting Certainty and Transparency Act (S. 33) later this month, and that she hopes to find common ground for a broader energy bill this spring.

In the meantime, the Federal Energy Regulatory Commission announced December 30 that it would allow Cheniere Energy Inc. to build a liquefied natural gas export terminal and pipeline in Corpus Christi, Texas. The company was the first developer to receive a permit in decades, and is now authorized to build a second terminal. The Department of Energy will now consider if the project can ship LNG to countries with which the United States does not have a free trade agreement. The company's Sabine Pass terminal in Cameron Parish, Louisiana, is expected to begin operating as early as October 2015.

Representative Mike Pompeo (R-KS) reintroduced legislation to start the 114th Congress that would hasten natural gas pipeline permitting. The Natural Gas Pipeline Permitting Reform Act ([H.R. 161](#)) would give the Federal Energy Regulatory Commission twelve months to make a decision once an application is completed, with other involved agencies getting 90 days once the commission completes its environmental review. The House cleared similar legislation in 2013, but the earlier measure drew a White House veto threat.

International Climate Negotiations: The 20th Conference of Parties to the United Nations Framework Convention on Climate Change and the 10th Meeting of Parties to the Kyoto Protocol, also known as the December 2014 Lima climate negotiations, and the United States' and Chinese climate pledges just weeks prior, served as preparatory stages for the main event in Paris this December. Just before the close of 2014, the United Nations reached its \$10 billion goal for the Green Climate Fund, though the United States and others still must make good on their commitments. International climate negotiators will have serious work to do to hammer out a new global climate change accord before the end of 2015, as most of the contentious issues are still unsolved. Issues to watch most closely as negotiators work to kick off the final 12 months of talks toward a global climate accord that would enter into force in 2020 include whether parties can agree on a draft text that distills areas of agreement and disagreement into one document; more specifics on the \$100 billion/year industrialized countries are to provide beginning in 2020 to help developing nations; and a mechanism to strengthen the accord if after 2020 it is insufficient to halt the rise in global temperatures. Coming to an agreement in time for the Paris negotiations will still require significant effort.

Energy Efficiency Legislation and Regulatory Expectations: One area that may afford some amount of bipartisan support is energy efficiency legislation, and Senators Jeanne Shaheen (D-NH) and Rob Portman (R-OH) are planning to reintroduce their legislation early this session. Senator Portman announced plans January 8 to offer a House-passed energy efficiency bill as an amendment to the Senate Keystone XL legislation, following his introduction of the language as its own standalone measure (S. 128) with Senator Shaheen the same day. The language is not the broader Shaheen-Portman energy efficiency package, but four provisions from it. On the regulatory side, the Department of Energy announced ten energy efficiency standards last year, several of which are still under the comment period and likely to face some congressional opposition, and Secretary Ernest Moniz has indicated that the agency plans to ramp up more efficiency standard announcements in 2015.

Renewable Fuel Standard: The Environmental Protection Agency's decision late last year to delay the 2014 renewable fuel standard was met with criticism from both sides of the congressional aisle. Though calls for a full RFS repeal are unlikely to go far given bipartisan Midwest support, there may be 60 votes in the Senate for some sort of reform effort. House Energy and Commerce Chairman Fred Upton (R-MI) and now-retired Ranking Member Henry Waxman (D-CA) largely agreed on the need to revisit the corn ethanol mandate portion of the standard, and Senator Dianne Feinstein (D-CA) and Representative Peter Welch (D-VT) have previously supported such efforts. Policymakers may begin RFS efforts not long into the new year. In the meantime, the agency published December 31 a preliminary analysis in which it anticipated that biofuels from biomass sorghum could meet the necessary greenhouse gas reductions required to qualify as cellulosic fuel under the renewable fuel standard. The agency is requesting comment by January 30 on the methodology and results of its preliminary analysis.

Fracking: Following fracking debates in several states over the last year, Interior Secretary Sally Jewell said January 2 that she thinks that local and statewide initiatives to stop or prevent fracking create uncertainty for industry and are often in response to local residents' fears, which are sometimes based on incomplete information. The White House Office of Management and Budget began its review of the agency's final rule last August, and federal regulations on fracking on federal land are expected soon.

Other Issues: New House Energy and Commerce Committee Ranking Member Frank Pallone (D-NJ) said January 6 that while he will defend President Obama's environmental agenda, he sees room for compromise on some issues such as Toxic Substances Control Act reform and funding for brownfields and Superfund cleanup. Previous bipartisan TSCA reform legislation was derailed by now-retired Representative Waxman and Senator Barbara Boxer (D-CA), who, with Senator James Inhofe's (R-OK) move to the chairmanship, has now assumed the ranking member slot on the Senate Environment and Public Works Committee. Representative Pallone has previously worked well on reform efforts with lead House TSCA reform advocate Representative John Shimkus (R-IL), and Representative Shimkus chairs the House Energy and Commerce Subcommittee on Environment and the Economy, from which post he plans to move TSCA reform efforts in the 114th Congress. Additionally, there was bipartisan support for Representative Pallone's 2002 legislation that increased brownfields cleanup funding, the Small Business Liability Relief and Brownfields Revitalization Act, which passed both chambers and was signed by President George W. Bush.

The Supreme Court may take up the Federal Energy Regulatory Commission's Order No. 745, which appellate judges struck down last year. The Solicitor General is planning an appeal.

Representatives Jared Huffman (D-CA) and Mike Fitzpatrick (R-PA) introduced legislation ([H.R. 239](#)) the first week of the 114th Congress to designate 1.5 million acres in the Arctic National Wildlife Refuge a wilderness area, protecting it from oil and natural gas exploration. The Coastal Plain Area 1002 could hold between 4.3 billion and 11.8 billion barrels of recoverable oil, and including state and Native lands, the estimate increases to between 5.7 billion and 16 billion barrels.

With the recent low price of gas, some in Congress are considering a debate over the gas tax as well.

In other news, Senate and House Republicans head to Hershey, Pennsylvania, at the end of the week for a retreat.

CONGRESS

SD CPP Opposition

Senator John Thune (R-SD) sent a [letter](#) January 6 to Environmental Protection Agency Administrator Gina McCarthy requesting that the agency withdraw the proposed Clean Power Plan. He argued that the proposed state rate target for South Dakota is not achievable.

Wood Stove Standard Opposition

Senator Angus King (I-ME) sent a letter January 7 to the White House Office of Management and Budget asking the White House to conduct an additional cost benefit analysis of the Environmental Protection Agency's final revised new source performance standards for wood stoves and heaters that considers its impact on demand. Senator King contends that the standards are too stringent and would make new stoves too expensive, discouraging consumers from replacing older stoves that emit more particulate matter pollution. Under a consent decree, the agency must issue the final revised standards by February 3.

Inhofe on China

New Senate Environment and Public Works Chair James Inhofe (R-OK) said January 7 that he does not believe that China is serious about addressing climate change, despite a series of recent national actions. He also said that he does not believe that countries will be able to reach an agreement to act on climate change this December in Paris.

Boxer to Retire

Senator Barbara Boxer (D-CA) announced January 8 that she will retire after finishing her term in Congress. Her current term expires at the end of 2016.

Other Legislation Introduced

Representative Ted Poe (R-TX) introduced legislation (H.R. 28) January 6 to approve the Keystone XL pipeline project permit.

Representative Jim Bridenstine (R-OK) introduced legislation (H.R. 89) January 6 to expedite the approval of natural gas export permits to World Trade Organization countries.

Representative Scott Garrett (R-NJ) introduced legislation (H.R. 118) January 6 to reduce the Federal tax on fuels by the amount of any increase in the rate of tax on such fuel by the States.

Representative Earl Blumenauer (D-OR) introduced legislation (H.R. 214) to amend the Internal Revenue Code of 1986 to clarify that tar sands are crude oil for purposes of the Federal excise tax on petroleum.

ADMINISTRATION

US-Mexico Climate Collaboration

The White House released a [memo](#) January 6 announcing that the United States and Mexico have agreed to increase cooperation on energy and climate change issues at the annual U.S.-Mexico High Level Economic Dialogue. The dialogue work plan has three pillars: promoting competitiveness and connectivity; fostering economic growth, productivity, entrepreneurship, and innovation; and partnering for regional and global leadership. Additionally, the two nations will expand cross-border energy-related technology trade, and they promised to cooperate in implementing their climate change policies before and after 2020.

DEPARTMENT OF COMMERCE

NOAA Weather Data

The National Oceanic and Atmospheric Administration released January 8 [data](#) showing that 2014 was the 18th consecutive year of above-average temperatures for the United States, at 52.6 degrees Fahrenheit, with California registering the hottest year in more than a century. Eight severe weather disaster events caused at least \$1 billion in damages and resulted in 53 deaths. The agency and the National Aeronautics and Space Administration will release a global temperature report January 16.

ITA Meeting

The International Trade Administration will hold a meeting January 13 of the Renewable Energy and Energy Efficiency Advisory Committee to discuss priority issues from the Subcommittee for Organization and Priority Issues, focusing on programs and policies to enhance the international competitiveness of American renewable energy and energy efficiency industries.

DEPARTMENT OF ENERGY

Kemper CCS Lawsuit

The Energy and Environment Legal Institute and the Free Market Environmental Law Clinic filed a lawsuit in the U.S. District Court for the District of Columbia January 5 seeking documentation about the status of the Southern Company's Kemper County Energy Facility that the Environmental Protection Agency pointed to as an example of adequately demonstrated carbon capture and sequestration technology in its new source performance standards for new power plants. The groups charged that the Department of Energy failed to promptly respond to a Freedom of Information Act request seeking evidence of cooperative research and development between the agency and Southern Company, and asked the court to compel the records' release.

Zero-Energy Building Definitions

The Department of Energy published a [request for information](#) January 6 seeking consensus [definitions](#) for energy efficient buildings, campuses, portfolios, and communities. Comments are due February 20, and the agency plans to complete the definition effort this year. The definitions could help governments incentivize zero energy buildings.

2015 Agenda

Secretary of Energy Ernest Moniz told the Woodrow Wilson International Center for Scholars in Washington January 7 that the agency plans to release the first installment of its Quadrennial Energy Review in February, focusing on a series of recommendations for modernizing and improving the country's energy infrastructure. He also told the group that the agency will issue a dozen energy efficiency standards for household, industrial, and consumer products this year, and he promised that 2015 would be a "big year" for the Loan Guarantee Program. He [announced](#) the Advanced Research Projects Agency-Energy's third open solicitation for up to \$125 million for potentially transformative energy technologies and noted that the agency is studying the recent drop in oil and gas prices.

Refrigerator Efficiency Meeting

The Department of Energy Office of Energy Efficiency and Renewable Energy held a meeting January 9 to discuss and receive comments on the preliminary analysis it has conducted for the purpose of establishing energy efficiency standards for miscellaneous refrigeration products.

\$8 Million for MHK

The Department of Energy [announced](#) January 12 \$8 million to develop advanced components for wave, tidal, and current energy systems.

DEPARTMENT OF INTERIOR

Sarri Nominated

The White House announced January 8 that President Obama will nominate Kristen Sarri to become assistant interior secretary for policy, management, and budget. Ms. Sarri has led the office on an interim basis since October, when Rhea Suh assigned after her nomination to become assistant secretary for fish, wildlife, and parks stalled because of Republican opposition to her environmental record. Ms. Sarri's current title is principal deputy assistant secretary for policy, management, and budget, and if confirmed, she will be the top official overseeing financial, administrative, and programmatic policy for the Interior Department. She previously served as an adviser to the commerce secretary on oceans, fisheries, climate, energy, weather, and budget issues; in an administrative role at the White House Office of Management and Budget; as senior staffer for the Senate Commerce Subcommittee for Oceans, Atmosphere, Fisheries, and Coast Guard; and as policy adviser to Senator Jack Reed (D-RI).

DEPARTMENT OF STATE

India on Climate Change

Secretary of State John Kerry encouraged this week the Indian government to act on climate change in the name of economic opportunity. President Obama will visit India later this month.

ENVIRONMENTAL PROTECTION AGENCY

Flexible CPP

Environmental Protection Agency Acting Assistant Administrator for Air and Radiation Janet McCabe wrote in a January 6 [blog post](#) that the agency focused significantly on grid reliability when developing the proposed Clean Power Plan. That focus led the agency to include broad flexibility and time for states to comply with the proposed rule.

Climate Science

Environmental Protection Agency Administrator Gina McCarthy [called](#) on members of the American Meteorological Society January 7 to speak about climate change based on scientific findings, telling their Phoenix convention that Congressional opponents have waged an attack in Washington to undermine the scientific evidence of climate change.

STATES

Google UT Solar

Google announced last week that it has teamed up with Scatec and Prudential Capital Group to build Utah's largest solar power plant. The three are investing about \$188 million in the Utah Red Hills Renewable Energy Park. The plant, scheduled to run by the end of the year, will generate 210 million KWh of electricity a year, enough for about 18,500 homes. The project marks Google's 18th renewable energy investment, bringing company investment to over \$1.5 billion in solar and wind projects across three continents with a total planned capacity of more than 2.5 GW.

CA RE Plans

During his inaugural address and state of the state message January 5, California Governor Jerry Brown (D) proposed increasing the state's 33 percent renewable portfolio standard to 50 percent over the next 15 years and reducing vehicular petroleum use by half over the same period. He also called for cleaner heating fuels and doubling existing building efficiency.

Cape Wind Financing

NStar and National Grid announced January 7 that they were cancelling their contracts to purchase three quarters of Cape Wind's power because the wind farm had failed to meet a December 31 deadline to complete financing and begin construction. Cape Wind disputed the statements, saying that provisions in the contract extended the deadline for the \$2.6 billion 468 MW project, and promised to move forward. The issue is likely headed to court.

MD Fracking

Just before leaving office, Governor Martin O'Malley (D-MD) proposed January 9 stringent fracking [regulations](#) and

best management practices, but the fate of the proposed rule lies in the hands of his successor, Governor-elect Larry Hogan (R), who will be sworn in January 21. The proposed rule would require drillers to submit a five-year comprehensive development plan to address landscape-level issues and cumulative effects of planned fracking activities and would impose conditions on location and setback, construction and operation, sediment and erosion control, transportation, water withdrawal, chemical handling, air emissions, waste management and site closure. The proposed rule would implement recommendations from the Maryland Departments of the Environment and Natural Resources following a three-year study. Governor O'Malley had placed a hold on fracking pending completion of the review. Comments are due February 9.

MISCELLANEOUS

RE Investment Up

Bloomberg New Energy Finance released a report January 9 finding that clean energy investment rose for the first time in three years in 2014, overcoming an oil price slump. New funds for biofuels, wind, solar, and other clean energy technologies gained 16 percent to \$310 billion last year. Contributing factors include a 32 percent expansion in China's renewable energy commitment, a record \$19.4 billion committed to offshore wind projects years in the making, increased investment in electric vehicles, particularly for Tesla Motors, just before inexpensive gasoline prices reduced that market's forecast, and a surge in solar investment.

GM EVs

General Motors Company plans later this year to introduce a next-generation Chevrolet Volt with a new exterior design and room for five passengers. The redesigned 2016 Volt will go 50 miles on a full charge, 30 percent farther than the current model. The company will launch in 2017 a \$30,000 all-electric vehicle called the Chevrolet Bolt, which will be capable of driving 200 miles on a single charge, putting it in direct competition with Tesla's Model 3.

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