



ML Strategies Update

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Energy & Environment Update

ENERGY AND CLIMATE DEBATE

The 113th Congress adjourned sine die last week, and efforts are underway to prepare for an eventful 114th Congress and final two years of the Obama Administration.

Before the Senate departed, they finalized the one-year tax extenders package (H.R. 5771), which the House had approved over a week earlier, and completed a series of nominations. Among other things, the tax extenders package extends the wind energy production tax credit through the end of the month. The short extension sets the stage for a broader debate on tax reform next year, and parties on both sides of the aisle are gearing up for a fight over the PTC, among many other provisions. President Obama signed the \$41.6 billion short-term extenders bill into law December 19. He announced the same day that he will release a detailed plan in the near future to overhaul the tax code. Congressional Republicans have urged the Obama Administration to add more details to a 2012 framework for business tax changes.

The Senate approved December 16 Colette Honorable for a spot on the Federal Energy Regulatory Commission, as well as Christopher Smith to serve as assistant Energy Secretary for fossil energy, Estevan Lopez as commissioner of the Interior Department's Bureau of Reclamation, John Cruden to head the Justice Department's Environment and Natural Resources Division; and Richard Engler and Manuel Ehrlich for seats on the Chemical Safety Board. The Senate did not act upon three Department of Energy nominees, and President Obama will have to renominate them in 2015: Marc Kastner for director of the Office of Science, Jonathan Elkind for assistant secretary of international affairs, and Monica Regalbuto for assistant secretary for environmental management.

Senators Jeanne Shaheen (D-NH) and Rob Portman (R-OH) attempted to move a pared down version of their energy efficiency bill early last week; the legislation contained provisions the House had approved by a wide margin earlier in the year (H.R. 2126). Senators Tom Coburn (R-OK) and Pat Toomey (R-PA) blocked the measure, and Senator Lisa Murkowski (R-AK) recommitted December 16 to working with her colleagues to move an energy efficiency package in the 114th Congress. Senators Shaheen and Portman plan to reintroduce their broader efficiency bill in January.

Congress returns for the 114th session January 6, and we look forward to bringing you our next energy and environment update in the new year. Until then, we wish you and yours a happy holiday season; please feel free to contact us if we can be of service to you in the coming weeks and months.

CONGRESS

Oversight Subcommittee Created

Incoming House Oversight and Government Reform Committee Chair Jason Chaffetz (R-UT) announced last week

that he will create a new subcommittee focused on energy and environment policy and oversight of the Departments of Agriculture, Energy, and Interior and the Environmental Protection Agency. Representative Cynthia Lummis (R-WY) will chair the subcommittee.

CPP Flaws Report

The House Energy and Commerce Committee released a [report](#) December 16 outlining “fundamental flaws” in the Environmental Protection Agency’s proposed Clean Power Plan. Those “flaws” include legal questions about whether the agency may use Clean Air Act Section 111(d) to regulate emissions; unrealistic assumptions about how state would meet emissions targets; workability issues for state due to implementation challenges; potential transformation of the federal and state decision-making model for the industry; and questions about the agency’s ability to respond adequately to public comment given the short time frame and millions of received comments.

Keystone Up First

Incoming Senate Majority Leader Mitch McConnell (R-KY) said December 16 that legislation to approve the Keystone XL pipeline would be the “first item up” for consideration in the 114th Congress. Senator John Hoeven (R-ND) is expected to reintroduce legislation (S. 2280) that would give Congress the authority to approve the project under the Commerce Clause. The bill will go through the Senate Energy and Natural Resources Committee, and Senators Lisa Murkowski (R-AK) and McConnell anticipate that they will consider several amendments before the measure moves to the Senate floor.

Ozone Hearing

The Senate Environment and Public Works Subcommittee on Clean Air and Nuclear Safety held a hearing December 17 at which Environmental Protection Agency Acting Assistant Administrator for Air and Radiation Janet McCabe said that the costs of establishing a more stringent national ambient air quality standard for ozone will depend on the actions states undertake to implement the standard. The agency is considering revising the ozone standard to between 65 parts per billion and 70 ppb, down from the current 75 ppb standard. Subcommittee Chair Sheldon Whitehouse (D-RI) and Senator Kirsten Gillibrand (D-NY) were the only senators to attend the hearing, and Ranking Member David Vitter (D-LA) had previously excused half of the panel, saying that since Congress was adjourned, no Republican committee members would attend the hearing. As a result, the second panel consisted of witnesses representing the American Thoracic Society, the Environmental Defense Fund, and the Brown University Center for Environmental Health and Technology who favor a more stringent standard of 60 ppb, on which the agency is also taking comment.

CPP Withdrawal Urged

Ninety-nine representatives sent a letter December 19 to President Obama asking him to withdraw the Environmental Protection Agency’s proposed Clean Power Plan. Signatories charge that the rule would increase consumers’ energy prices says that the rule improperly places the agency in a position to regulate state energy programs.

SOTU Scheduled

Speaker of the House John Boehner (R-OH) announced December 19 that President Obama’s annual state of the union address would take place January 20 at 9pm.

ADMINISTRATION

President Signs Legislation

Along with nearly 50 other measures, President Obama signed several energy related bills into law December 18. H.R. 4007 authorizes the Department of Homeland Security’s Chemical Facility Anti-Terrorism Standards program for four years. S. 2444 includes a provision extending a small vessel Clean Water Act permitting moratorium for three years. H.R. 5057 exempts certain power adapters from federal energy efficiency standards the Department of Energy issued in February for four more years. S. 1000 requires an annual audit of Chesapeake Bay restoration effort spending.

NEPA Guidance Updated

The Council on Environmental Quality released updated draft [guidance](#) December 18 recommending that federal agencies evaluate during National Environmental Policy Act reviews the climate impact of any action that increases greenhouse gas emissions by 25,000 metric tons of CO₂ a year. The council will accept [comments](#) for 60 days.

DEPARTMENT OF COMMERCE

AD/CVD Determination

The Department of Commerce’s International Trade Administration made a [final determination](#) December 16 to place additional duties on Chinese and Taiwanese solar products and outlined the more expansive scope of

products on which it considered raising tariffs. The duties range from 26.71 percent to 165.04 percent to counteract Chinese dumping and from 27.64 percent to 49.79 percent to counteract Chinese subsidization. Taiwanese panels face dumping duties from 11.45 percent to 27.55 percent. The taxes close a loophole in current antidumping and antisubsidy duties on the imports. The International Trade Commission will make its injury determination around January 29.

DEPARTMENT OF ENERGY

BPC Remarks

During remarks at the Bipartisan Policy Center December 18, Energy Secretary Ernest Moniz said that China's plan to peak its carbon emissions by 2030 is ambitious. He also applauded China's goal of generating about a fifth of its energy supply from non-fossil fuel sources by 2030 and expressed his hope that nations can negotiate a global climate agreement in Paris at the end of next year.

DEPARTMENT OF INTERIOR

BOEM Leadership

Interior Secretary Sally Jewell named December 18 Abigail Ross Hopper as the head of the Bureau of Ocean Energy Management. Ms. Harper currently directs the Maryland Energy Administration and will assume her new position January 5. The bureau will release in 2015 a draft of its next five-year plan for offshore oil and natural gas leasing, which will run 2017-2022. The current leasing program ends in 2017 and authorizes 15 lease sales in the Gulf of Mexico and off Alaska's coast. Walter Cruickshank has served as acting director since former director Tommy Beaudreau became Secretary Jewell's chief of staff in May. Mr. Cruickshank will continue to serve as deputy director, a position he has held since October 2011.

ENVIRONMENTAL PROTECTION AGENCY

CPP Litigation

Murray Energy filed December 15 a [brief](#) in the U.S. Court of Appeals for the District of Columbia Circuit charging that the Environmental Protection Agency's proposed Clean Power Plan violates the text of the Clean Air Act and should be overturned before it is finalized because power plants are already regulated under the Act. Intervenors on behalf of the company will file their briefs by December 30.

RFS Recommendations

The Bipartisan Policy Center recommended December 16 a [list](#) of potential legislative and regulatory options to strengthen the Renewable Fuel Standard program. The Environmental Protection Agency announced last month that it will not release a final rule this year mandating the volumes of ethanol that must be blended into the country's gasoline supply, but instead will release final rules for 2014, 2015, and 2016 next year.

Tardy NC Particulate Challenge

The Environmental Protection Agency filed a [brief](#) December 16 in the U.S. Court of Appeals for the District of Columbia Circuit arguing that the court should dismiss a direct challenge by North Carolina of the 2010 increments rule for fine particulate matter because the state is belatedly attempting to challenge the rule.

Redesignation Approved

The U.S. Court of Appeals for the Seventh Circuit ruled December 16 that the Environmental Protection Agency did not act arbitrarily and capriciously when it determined that Milwaukee-Racine, St. Louis, and Greater Chicago now comply with the Clean Air Act's 1997 national ambient air quality standards for ozone. The Sierra Club asked the court to review the agency's decision to redesignate the areas from nonattainment to attainment.

NAAQS Comments Open

The Environmental Protection Agency formally opened December 17 the 90-day public comment period on its proposal to revise the national ambient air quality standard for ozone to within the range of 65 parts per billion to 70 ppb, down from the current 75 ppb level. The agency is also accepting comments on retaining the current standard and on a standard as low as 60 ppb. The comment period will end March 17, giving the agency almost six months to review comments and finalize a decision by the court-ordered October 1 deadline. The agency will hold three public hearings on the proposal in January.

Methane Strategy Forthcoming

The Environmental Protection Agency announced December 17 that it will wait to issue its methane strategy for the oil and natural gas industry until January. The White House had instructed the agency to address methane emissions from oil and gas wells and from landfills by this fall as part of President Obama's March 2014 methane

strategy. The agency proposed in July revisions to its new source performance standards for municipal solid waste landfills and an advance notice of proposed rulemaking that outlines potential approaches to limiting methane emissions from existing landfills.

Coal Ash Finalized

The Environmental Protection Agency posted December 19 its [final rule](#) for coal ash. The [rule](#), which regulates coal ash under the nonhazardous waste provisions of the Resource Conservation and Recovery Act Subtitle D, requires the closure of impoundments or landfills that pollute groundwater, limits where structures may be built, mandates engineering and structural standards and inspections, requires the use of fugitive dust controls to limit windblown coal ash dust, mandates liner barriers for new impoundments, calls for the proper closure of structures no longer receiving coal ash, and requires significant public information disclosures. The [regulation](#) is estimated to cost between \$509 million and \$735 million per year using a seven percent discount rate, and will have average annual monetized benefits between \$232 million and \$289 million. The regulation will go into effect six months after publication in the Federal Register. Environmental groups welcomed the first minimum standards for coal ash management, but said that they are not sufficient to protect human health and the environment. Utility industry representatives expressed relief that the agency did not regulate coal ash as a hazardous waste, but voiced concern that the final rule does not provide permanent assurances that the material would never be regulated that way. Congress will pursue related legislation in 2015, starting with language from Senator John Hoeven (R-ND) and Representative David McKinley (R-WV).

GOVERNMENT ACCOUNTABILITY OFFICE

Nuclear Safety CBA Needed

The Government Accountability Office released a [report](#) December 15 finding that the Nuclear Regulatory Commission needs to improve its cost benefit analysis for imposing post-Fukushima changes. Industry representatives have claimed that the regulations will be more costly than commission staff has estimated. Senator David Vitter (R-LA) and Representative Fred Upton (R-MI) plan more oversight of the effort.

INTERNATIONAL

Canadian Minister on Keystone

Canadian Minister of Natural Resources Greg Rickford said during a December 15 meeting with his United States and Mexican counterparts, United States Energy Secretary Ernest Moniz and Mexican Energy Secretary Pedro Joaquín Coldwell, that the Obama Administration should approve the Keystone XL pipeline. The energy ministers signed an agreement to increase cooperation and better integrate the North American energy market. The agreement covers responsible and sustainable best practices for developing unconventional oil and gas resources; a more resilient energy infrastructure; and increased transparency and collaboration on energy data, mapping, and statistics. The three will issue a progress report next year.

IEA on Coal

International Energy Agency Chief Maria van der Hoeven said December 15 that countries' recent pledges to address climate change by reducing their CO2 emissions are unlikely to impact global coal demand growth over the next five years. A new agency [report](#) finds that global coal demand will increase 2.1 percent a year, or 772 million tons of coal equivalent, to top nine billion tons per year by 2019, led by China. At the same time, the report projects coal use across OECD countries to decline to 2019, despite growth in Japan, Korea, and Turkey. Chief van der Hoeven called for the rapid acceleration of carbon capture and sequestration technology deployment and increased investment in high efficiency coal fired power plants.

EU Air, Waste Proposal Revisions

The European Commission said December 16 that it will withdraw draft European Union legislation on air quality and waste currently under discussion by the European Parliament and European Union Council and replace it with revised proposals.

EU GHG Methodology

The European Parliament narrowly failed December 17 to block a European Commission [proposal](#) for a calculation methodology for the greenhouse gas intensity of transportation fuels, the October implementation measure of the 2009 EU Fuel Quality Directive. Many opposed the methodology as too lenient on fuels derived from oil sands, but the 337-325 vote fell short of the 376 required to activate a veto; 48 members abstained.

New Brunswick Fracking Ban

The New Brunswick government introduced [legislation](#) December 18 to impose a fracking moratorium in the

Canadian province until the oil and gas industry meets certain conditions. The legislation is expected to become law early next year.

STATES

WA Cap and Trade

Washington Governor Jay Inslee (D) proposed December 17 a cap and trade [program](#) that would reduce industrial CO2 emissions while generating \$1 billion a year for schools, transportation projects, and other projects. The Carbon Pollution Accountability Act would impact the top 130 CO2-emitting facilities and fuel distributors in the state, those that produce more than 25,000 metric tons of greenhouse gas emissions each year. The proposal will face a difficult path in the Republican state Senate, and Democrats have a small majority in the House.

NY Fracking Banned

New York Governor Andrew Cuomo (D) blocked December 17 fracking in the state.

Stewardship Credit Auction

The Electric Power Research Institute announced December 17 plans to hold the first public [auction](#) in March 2015 of stewardship credits from farming practices that reduce a pound of nitrogen or phosphorus and yield ancillary benefits. The upcoming auction will sell about 90,000 credits generated by farmers in Indiana, Kentucky, and Ohio who are participating in the interstate Ohio River Basin Water Quality Trading Project. Buyers will indicate interest by February 1.

Duke Coal Ash Management

Duke Energy [announced](#) December 18 that it will excavate nearly 3.2 million tons coal ash from basins and fill areas at its W.S. Lee Steam Station in Belton, South Carolina, and dispose of it in lined landfills. The plant began operating as a coal-fired facility in 1951 and was retired November 6. A natural gas plant will be built on the site, with construction planned to begin next summer. Under a September law, Duke Energy must drain and close all of its 32 coal ash ponds in North Carolina by 2030. The company owns 26 coal plants in Florida, Indiana, Kentucky, North Carolina, Ohio, and South Carolina. Ten of those facilities no longer operate their coal-fired units.

MISCELLANEOUS

PTC Extension's Minimal Impact

The American Wind Energy Association stated December 17 that the one-year extension of the wind energy production tax credit in H.R. 5771 would not spur many new wind projects. The \$6.4 billion extension of the 2.3-cent per kilowatt-hour tax credit will expire at the end of the year, resulting in layoffs and reduced investment in the sector, as wind projects take longer than two weeks to commence construction.

Sustainable Aluminum

PE International and the Aluminum Association released a sustainability [report](#) December 17 finding that the energy needed to make aluminum cans has decreased 14 percent since 2010, and cap production has reduced its carbon footprint by 20 percent over that period.

Energy Storage Market Growth

GTM Research released a [report](#) December 18 predicting that the energy storage market is on the verge of exploding. The report projects that by 2018, energy storage systems paired with behind the meter distributed solar projects will be a 169 MW, \$1 billion market, up from 2014's \$42 million market. A recent California law requiring 1.3 GW of energy storage and Tesla's plans for a Gigafactory will support the sector's growth.

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