



## ML Strategies Update

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# Energy & Environment Update

## ENERGY AND CLIMATE DEBATE

Budget hearings continue this week, following a week during which budget reviews and tax extenders negotiations dominated much of the national energy and environment agenda.

The Senate Finance Committee approved April 3 an \$85.3 billion package extending through 2015 more than 50 tax provisions that expired at the end of last year. During the committee mark up, senators approved eight amendments to Chairman Ron Wyden's (D-OR) revised draft. While the package that passed out of committee generally did not make substantive changes, the committee did vote to make the tax credit for research and experimentation available to small, start-up businesses without income tax liability. The modification would tie the tax credit to employment taxes rather than income taxes for small companies with fewer than \$5 million in receipts and less than five years old.

The bill also tightened efficiency standards for the 179D efficiency commercial building deduction. The package included an extension of bonus depreciation, one of the few economic stimulus policies from 2008 to enjoy multiple extensions. The revised chairman's mark, which Chairman Wyden released just before the mark up, included a two-year extension of the renewable energy production tax credit (PTC) and the investment tax credit (ITC). The committee defeated two Republican amendments to strike the PTC and phase it out by 2018. Senator John Thune (R-SD) introduced an amendment that would extend the PTC with 100 percent of its current value in 2014 and then reduce its value by 10 percent every year until 2018, at which point it would permanently expire. While opposing Senator Thune's proposal at the mark up, Chairman Wyden implied he might eventually include a multi-year phase-out of the renewable energy PTC in his comprehensive tax reform package.

The committee declined to renew two of the fifty-plus expired provisions: partial expensing of refinery property and a credit for energy-efficient appliances. Senators Michael Bennet (D-CO) and Maria Cantwell (D-WA) offered an amendment to allow solar energy projects to qualify for an investment tax credit based on when construction of a facility begins, rather than when the facility is placed into service. Projects eligible for the PTC already benefit from this commence construction language. Because of the multi-year lead times to develop, permit, and construct utility scale solar projects, solar developers cannot practicably utilize the credits for large projects in early stages of development. While saying that this extenders bill was not the appropriate forum for such a policy change to a non-expired provision, Senator Wyden pledged to work with Senators Bennet and Cantwell on the modification. Chairman Wyden also committed to future discussions on several additional issues, such as a repeal of the medical

device tax; renewal of the Internet Tax Freedom Act, and tax relief for disaster victims.

Following committee passage, the bill can now move to the floor, perhaps as early as the next work period, which begins April 28. Once on the floor, debates would resurface about the future of the PTC, bonus depreciation, and other miscellaneous tax issues such as the MLP Parity Act and commence construction language for the solar ITC.

Revenue measures like this are intended to originate from the House, but that chamber is moving at a slower pace than the Senate. Ways and Means Committee Chairman Dave Camp (R-MI) recently announced he would hold hearings to review expired tax provisions. While Chairman Wyden sees extenders as a bridge to tax reform—he admitted this is the last extenders package he expects his committee to consider—Chairman Camp sees this extenders debate as an opportunity to accomplish “reform light” by making some provisions permanent and allowing others to permanently expire. The Ways and Means Committee will hold its first hearing on business-related extenders April 8. Chairman Camp’s effort to balance industry demands for a quick extension with his effort to broadly rewrite the tax code suggests that the House will not consider an extenders bill for some time, perhaps not until after the November elections. In advance of this week’s hearing, the Joint Committee on Taxation released a report detailing the seven expired tax provisions renewed or made permanent in Chairman Camp’s discussion draft of comprehensive tax reform.

On the budget debate, the House Appropriations Committee begins this week its push to move the annual spending bills quickly this year, with the first mark ups scheduled for April 9. Appropriations Chair Hal Rogers (R-KY) said April 3 that he hopes to have all twelve bills through the committee before the July 4 recess. Senate Appropriations Committee Chair Barbara Mikulski has made a similar commitment to approving a budget before fiscal year 2015 begins in the fall.

In addition to several budget hearings and committee debates over natural gas exports, the Senate resumes work this week on unemployment insurance legislation (H.R. 3979), and may consider equal pay (S. 2199) and minimum wage (S. 1737) bills. The House plans to focus much of the week on a fiscal year 2015 budget resolution (H. Con. Res. 96), as well as measures to change the budget process (H.R. 1871, H.R. 1872).

## CONGRESS

### RFS Challenges Insight Sought

Representatives Robert Goodlatte (R-VA), Jim Costa (D-CA), Steve Womack (R-AR), and Peter Welch (D-VT) sent a letter March 28 to Environmental Protection Agency Administrator Gina McCarthy asking her to describe statutory challenges that impair the agency’s ability to administer the renewable fuels standard.

### House Budget Targets Climate Spending

House Republicans released April 1 a fiscal year 2015 budget [blueprint](#) that would reduce funding for the federal government’s climate change programs, primarily through reduced spending on overseas climate activities as well as streamlining duplicative federal programs. The blueprint also recommends ending funding for several renewable energy programs and expanding oil and gas development on federal land.

### EPA Budget Hearing

Testifying before the House Energy and Commerce Subcommittees on Energy and Power and Environment and the Economy April 2, Environmental Protection Agency Administrator Gina McCarthy defended the agency’s upcoming new source performance standards for power plants, and promised a final renewable fuel standard by June and a final coal ash standard in December. She also reiterated that the administration wants to promote natural gas exploration using fracking as long as it is safe for human health and the environment.

### DOE to Manage USEC Uranium Enrichment

Testifying before the House Appropriations Subcommittee on Water and Energy Development April 2, Energy Secretary Ernest Moniz said that Oak Ridge National Laboratory will assume management of U.S. Enrichment Corp.’s American Centrifuge uranium enrichment project later this month. After the hearing, Secretary Moniz said that the agency would likely unveil a new loan guarantee solicitation for renewable energy projects soon, potentially this quarter.

### EPA Opposition Amendments Fail

Senator Roy Blunt (R-MO) unsuccessfully attempted April 2 to attach amendments to long-term unemployment insurance legislation that would have blocked the Environmental Protection Agency's GHG standards for power plants; created a procedural obstacle to any future chamber consideration of measures that could impose a carbon fee or tax; approved the Keystone XL pipeline; and expedited Department of Energy applications to export more liquefied natural gas. Senate Democrats also blocked amendments from Senator John Thune (R-SD) to require congressional approval of an Environmental Protection Agency rules that would cost \$50 million or more a year; from Senator Mitch McConnell (R-KY) to bar the Environmental Protection Agency from regulating CO2 emissions from coal-fired power plants; from Senators Lisa Murkowski (R-AK), John Hoeven (R-ND), and John Barrasso (R-WY) to call on the administration to approve the Keystone pipeline and expedite LNG export applications; and from Senator James Inhofe (R-OK) to bar the Environmental Protection Agency from finalizing regulations under the Clean Air Act until it analyzes how those rules might impact employment.

### **Interior Budget Hearing**

Testifying before the House Natural Resources Committee April 3, Interior Secretary Sally Jewell defended administration policies and the fiscal year 2015 budget request for oil and gas on federal lands. Committee members questioned the secretary about the need for fracking regulations, which have not been updated in about 30 years, and the prospects for leasing more onshore and offshore federal lands for energy production.

### **EPA Regs and WV Senate Race**

Representative Shelley Moore Capito (R-WV) said April 3 that she expects that the Environmental Protection Agency's CO2 standards for existing power plants will cause a significant number of coalmine closures, and she anticipates that the regulations will be a focus of her 2014 Senate campaign. Representative Capito is running for the open Senate seat against likely Democratic nominee, and Senator Jay Rockefeller (D-WV) endorsee, West Virginia Secretary of State Natalie Tennant.

### **BLM, BOEM, BSEE Budget Hearings**

Appearing before the House Appropriations Subcommittee on Interior, Environment and Related Agencies April 4, Bureau of Land Management Deputy Director Neil Kornze said that the agency is developing a draft rule for potential regulation on oil and gas flaring. He also said that the agency plans to release a rule to govern fracking on federal and tribal lands later this year. At a separate hearing before the subcommittee the same day, Bureau of Ocean Energy Management Director Tommy Beaudreau said that the agency plans to increase the oil spill liability cap and could allow seismic testing in the Atlantic Ocean by the end of the year.

### **Legislation Introduced**

Senators Ben Cardin (D-MD), Dianne Feinstein (D-CA) and Brian Schatz (D-HI) introduced legislation (S. 2189) April 1 to amend the Internal Revenue Code of 1986 to improve and extend the deduction for new and existing energy efficient commercial buildings.

Representative Michael McCaul (R-TX) introduced legislation (H.R. 4349) April 1 to repeal the crude oil export ban under the Energy Policy and Conservation Act.

Representative Blaine Luetkemeyer (R-MO) introduced legislation (H.R. 4407) April 4 to require the Environmental Protection Agency to set reasonable limits on the stringency and timing of proposed regulations for new residential wood heaters, hydronic heaters, forced-air furnaces, and residential masonry heaters.

### **Upcoming Hearings**

The House Appropriations Subcommittee on Energy, Water Development, and Related Agencies will hold a hearing April 7 on fiscal year 2015 appropriations for environmental programs at the Department of Energy.

The Senate Environment and Public Works Committee will hold a hearing April 8 to consider the nomination of Janet McCabe to head the Environmental Protection Agency's Office of Air and Radiation. Ms. McCabe has served as acting air chief since Environmental Protection Agency Administrator Gina McCarthy was confirmed as administrator. The committee will also consider the nomination of Anne Dunkin to serve as assistant administrator for environmental radiation and Manuel Ehrlich to serve on the Chemical Safety and Hazard Investigation Board.

The Senate Agriculture Committee will vote April 8 on three nominees for the Commodity Futures Trading Commission, chairman-nominee Timothy Massad, Sharon Bowen, and J. Christopher Giancarlo.

The same day, the Senate Agriculture Committee will hold a hearing on advanced biofuels.

The Senate Appropriations Subcommittee on Energy and Water Development will hold a hearing April 9 to consider

the fiscal year 2015 budget request for the Department of Energy. Energy Secretary Ernest Moniz will testify.

The same day, the Senate Appropriations Subcommittee on the Interior, Environment and Related Agencies will hold a hearing on the fiscal year 2015 budget request for the Environmental Protection Agency. Environmental Protection Agency Administrator Gina McCarthy will testify.

The Joint Economic Committee will hold a hearing April 9 to discuss the economic impact of increased natural gas production.

The House Energy and Commerce Subcommittee on Energy and Power will mark up April 9 Representative Cory Gardner's (R-CO) bill (H.R. 6) to approve liquefied natural gas export terminal permits pending at the Department of Energy.

The House Ways and Means Trade Subcommittee will hold a hearing the same day to focus on trade implications of U.S. energy policy and liquefied natural gas exports.

The Energy and Natural Resources Committee will hold a hearing April 10 to consider electric grid reliability and security.

The House Science, Space, and Technology Committee will hold a hearing April 10 to consider the Department of Energy's science and technology priorities. Energy Secretary Ernest Moniz will testify.

## DEPARTMENT OF AGRICULTURE

### **\$28 Million for REAP**

The Department of Agriculture will announce later this month \$28 million in grants and loans for renewable energy under its Rural Energy for America Program. Applications will be due 60 days after the announcement. A final rule will be announced in June or July, triggering a second funding announcement of about \$50 million.

## DEPARTMENT OF ENERGY

### **Most Plants Prepared for MATS**

The Energy Information Administration released a [report](#) March 28 finding that 70 percent of coal-fired power plants have the necessary emissions control equipment to comply with Environmental Protection Agency mercury and air toxics standards. Another six percent are planning to install the necessary controls, and eight percent are planning to close rather than invest in the equipment. The remaining 16 percent are uncontrolled, and owners have not indicated whether the plants will be retrofitted or retired.

### **Auto Loan Program Amended**

The Department of Energy announced April 2 a series of changes to its Advanced Technology Vehicles Manufacturing loan program in an effort to entice more participants from the automobile supply chain. The program has already offered about \$8.4 billion in financing projects, but has largely been dormant for the last three years.

## DEPARTMENT OF TREASURY

### **Advanced Energy Credit Claims Need Improvement**

The Treasury Inspector General for Tax Administration released a [report](#) April 2 finding that the Internal Revenue Service has a program to identify business taxpayers that are not entitled to claim the Qualifying Advanced Energy Project Credit, but that there is no process for identifying individuals who should not receive the credit.

## ENVIRONMENTAL PROTECTION AGENCY

### **NSPS for Existing Plants to OMB**

The Environmental Protection Agency sent to the Office of Management and Budget March 31 for review a proposed rule to limit CO2 emissions from the country's existing fleet of power plants. President Obama ordered the agency to release a proposed rule by June 1. Environmental Protection Agency Administrator Gina McCarthy told a Bipartisan Policy Center and National Association of Regulatory Utility Commissioners panel April 7 that the rule would provide state flexibility, but that it would be federally enforceable rather than voluntary. She said that her outreach to states on the rule has been more productive than she could have hoped, focusing on policy issues instead of climate science disagreements. She also said that the proposed rule could change substantially by the

time the agency finalizes it, and reassured that the standard would not threaten electric grid reliability.

### **Renewable Fuel Pathways and Biofuel Concerns**

The Biotechnology Industry Organization sent a letter March 31 to the Environmental Protection Agency saying that agency efforts to overhaul the process for approving new renewable fuel pathways could intensify uncertainty and delays for advanced biofuels producers seeking approval of their products. There are 36 applications still pending review, and applications have been waiting for an average of 19 months.

### **FutureGen Hearings**

The Environmental Protection Agency announced March 31 that it is accepting public comments through May 15 on a draft permit that would allow FutureGen to inject CO<sub>2</sub> at an underground storage facility in Illinois. The agency is conducting a public hearing process that could grant the first Class VI permits for carbon sequestration in the country to FutureGen.

### **Emergency Backup Generator Rule**

Trade groups, electrical associations, and energy services companies filed a brief April 1 in the U.S. Court of Appeals for the District of Columbia Circuit asking the court to affirm a 2013 Environmental Protection Agency rule that allows backup emergency generators to operate up to 100 hours a year without using pollution controls, an increase from 15 hours. Delaware, the Conservation Law Foundation, and several electricity generators are challenging the rule, arguing that it would overly burden states and that electricity reliability issues should be left to the Federal Energy Regulatory Commission.

### **RCRA Carbon Injection Exclusion Challenged**

The Carbon Sequestration Council and Southern Co. filed a lawsuit April 2 in the U.S. Court of Appeals for the District of Columbia Circuit and the American Petroleum Institute filed a separate suit April 3 challenging an Environmental Protection Agency final rule that excludes carbon dioxide that is captured from industrial and utility sources and sequestered underground from federal hazardous waste regulations but not from solid waste rules.

### **Burning Biomass Pollutes More than Coal**

The Partnership for Policy Integrity released a [report](#) April 2 finding that facilities that burn biomass emit significantly more greenhouse gas emissions and other air pollutants per MWh than those that burn coal. The report calls for the Environmental Protection Agency to set more stringent standards for burning biomass to generate electricity.

### **Truck Standards Challenged**

Trucking groups filed a brief April 3 in the U.S. Court of Appeals for the District of Columbia Circuit charging that an Environmental Protection Agency and National Highway Traffic Safety Administration rule establishing joint greenhouse gas emissions limits and fuel economy standards for medium- and heavy-duty trucks should be vacated because it failed to seek a peer review from the Environmental Protection Agency's Science Advisory Board.

### **Separate Standards for Natural Gas Vehicles Sought**

The National Research Council [recommended](#) April 3 that the Environmental Protection Agency and National Highway Traffic Safety Administration establish a separate standard for natural gas vehicles as it develops its second round of greenhouse gas emissions and fuel economy standards for medium- and heavy-duty vehicles. The report also recommended that the agencies conduct additional studies to determine the lifecycle emissions associated with natural gas vehicles.

### **State Implementation Plan Backlog**

Speaking April 3 at a Clean Air Act Advisory Committee meeting, Acting Environmental Protection Agency Assistant Administrator for Air and Radiation Janet McCabe said that the agency has committed to address over the next four years the backlog of state implementation plans. The agency will work cooperatively with states to attend to the backlog.

## **INTERNATIONAL**

### **Climate Summit Agenda Released**

The United Nations announced March 31 the agenda for its 2014 Climate Summit on September 23. The summit will feature "action platforms" to promote national commitments on climate action, as well as sessions in which to compare national experiences in addressing climate change.

### **UN Officials Call for Strong Climate Treaty**

United Nations Secretary General Ban Ki-Moon and United Nations Framework Convention on Climate Change Executive Secretary Christiana Figueres called April 3 for governments and the private sector to reconsider their uses of fossil fuel and finalize an ambitious global climate treaty in Paris in 2015.

### **Indian Solar Trade Dispute**

India's government met with Indian solar power developers and their suppliers last week in an attempt to resolve a price dispute that risks handing ammunition to United States exporters complaining that they face unfair trade practices. The United States has filed a complaint with the World Trade Organization.

### **IPCC Report May Overstate Climate Costs**

The United States is concerned that an Intergovernmental Panel on Climate Change report may overstate the cost of addressing climate change, potentially reducing the incentive for global greenhouse gas emissions reductions. Hundreds of scientists and government officials will complete the report at a United Nations meeting in Berlin this week.

## **STATES**

### **NM Imposes Graduated Alt Fuel Tax**

New Mexico enacted a [policy](#) March 7 that will impose a graduated per-gallon tax on alternative fuels effective July 1, replacing an annual permit option. The legislation (H.B. 30) also imposes a per-gallon tax on liquefied natural gas and compressed natural gas.

### **VA Solar Tax Exemption**

The Virginia Legislature enacted [legislation](#) (S.B. 418) March 17 to provide an exemption from local property taxes for solar energy equipment, facilities, and devices owned or operated by businesses that collect, generate, transfer, or store thermal or electric energy by expanding the definition of certified equipment and facilities. The exemption also covers photovoltaic systems that have generation capacities of no more than 20 MW.

### **Adding Transportation Fuels and Natural Gas to CA ETS**

Thomas Reuters Point Carbon analyst Ashley Lawson told the Climate Action Reserve's Navigating the American Carbon World conference March 28 that integrating transportation fuels and natural gas suppliers into California's emissions cap and trade program next year may change the market's dynamics.

### **CA Governor Seeks State Climate Collaboration**

Speaking March 31 at the Environmental Council of States spring meeting, California Governor Jerry Brown (D) urged state environmental officials across the country to join him in addressing climate change. California is already collaborating with Western states and China, and hopes to sign an agreement soon to work with Mexico.

### **CA Climate Credit**

Customers of Pacific Gas and Electric Co., Southern California Edison, and other investor-owned utilities in California began receiving a [climate credit](#) on their electricity bills April 1. Customers who receive the credit, given to eligible residential and small businesses through 2020, are encouraged to invest it in energy efficiency measures. The credit, which averages \$70 per household for the first year, comes from the state's cap and trade program. Eligible small businesses will also receive a monthly credit that is based on the amount of electricity they use.

### **VT Net Metering**

Vermont Governor Peter Shumlin (D) signed a measure into law April 1 that makes it easier for more small power generators in the state to get paid for the excess electricity they produce by sending the power back to the grid. The net metering law increases the amount of power small electricity sources can send to the grid from four percent of a utility's peak load to 15 percent.

### **NY Court Declines to Hear RGGI Challenge**

The New York Court of Appeals [denied](#) April 3 a motion by the Competitive Enterprise Institute to appeal the state Supreme Court Appellate Division, Third Department's dismissal of their challenge to the state's participation in the Regional Greenhouse Gas Initiative. The group charged that the state's decision to enter RGGI was unconstitutional without legislative approval and constitutes a tax.

## **SUSTAINABILITY**

### **SASB Standards for Tech Companies**

The Sustainability Accounting Standards Board released April 2 voluntary [guidelines](#) for helping companies in the technology and communication sectors to report on sustainability in annual filings with the Securities and Exchange Commission.

### **Greenpeace Internet Co Report**

Greenpeace released an annual [report](#) on internet companies and their energy consumption April 4, applauding Apple, Facebook, and Google for their efficiency efforts, and criticizing Amazon.

## **MISCELLANEOUS**

### **Energy Economy Transformation Necessary**

Natural Resources Defense Council Executive Director Peter Lehner told the Climate Action Reserve's Navigating the American Carbon World conference March 28 that reducing GHG emissions to levels scientists say are necessary by 2050 to avoid potential catastrophic climate change impacts requires transforming the energy economy.

### **World Bank Inadequately Addressing Climate**

The World Resources Institute released a [report](#) April 3 finding that the World Bank is not adequately considering climate change's potential impacts on its projects in its process and project design scheme. Seventy-five percent of the 60 projects WRI reviewed do not consider or address climate change risks, and only 12 percent consider the projects' impacts on GHG emissions.

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