



**ML**  
**STRATEGIES**

**David Leiter**  
**Sarah Litke**  
DJLeiter@mlstrategies.com  
SLitke@mlstrategies.com

**ML Strategies, LLC**  
701 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004 USA  
202 434 7300  
202 434 7400 fax  
www.mlstrategies.com

## **ENERGY AND ENVIRONMENT UPDATE**

### **May 1, 2011**

#### **Energy and Climate Debate**

Following a two week recess during which the price of gas continued to rise and congressional and Administration officials on both sides of the aisle expressed their concern, Congress will return for a month of debate on a number of issues, including gas prices, the debt limit, and the start of the fiscal year 2012 appropriations process.

With much of the GOP House energy plan focused on increased funding for nuclear loan guarantees and domestic oil and gas drilling the House will consider the Restarting American Offshore Leasing Now Act (H.R. 1230) on May 5. The legislation would require the federal government to quickly resume offshore lease sales in the Gulf of Mexico and off the coast of Virginia, many of which the Obama administration delayed or canceled following last April's Deepwater Horizon oil spill. The House may also debate the Putting the Gulf of Mexico Back to Work Act (H.R. 1229), which is designed to promote oil drilling in the Gulf of Mexico by setting firm time limits for the government to consider permits.

Meanwhile, Senate leadership may opt to bring the House-passed (235-193) fiscal year 2012 budget plan (H.Con.Res. 34) to the Senate floor when the upper chamber reconvenes this week. House Budget Committee Chairman Paul Ryan's (R-WI) measure would cut \$1.649 trillion from the projected budget deficit of \$6.737 trillion for fiscal years 2012-2021; the resolution contains about \$4 trillion in spending cuts over a 10-year period, primarily from non-defense discretionary spending. The proposal is not likely to garner the necessary 60 votes to overcome a Senate filibuster, but Majority Leader Reid wants to schedule a vote to demonstrate how many Senate Republicans are in opposition. Senate Budget Committee Chairman Kent Conrad (D-ND) is working on an alternative budget proposal that will be considered by the committee sometime this month.

The issue of Environmental Protection Agency greenhouse gas emissions regulations could be on the table as Congress takes up the debate over the federal debt ceiling, though it is more likely to be a more serious part of the conversation during debates over the fiscal year 2012 Interior Appropriations bill, which includes the EPA budget.

#### **Congress**

##### **Baucus Unveils Energy Plan**

Senate Finance Committee Chairman Max Baucus (D-MT) released a plan April 28 to end billions of dollars in tax breaks for large, multinational oil and gas companies and invest in cleaner and more cost effective domestic energy sources. Senator Baucus intends for his plan to serve as a blueprint for legislation that he will craft in the Finance Committee in the coming months. The "Clean Affordable Energy Production Plan,"

which will be made financially possible by repealing tax breaks for the five largest oil and gas companies, outlines three policy goals: promote demand for domestically-produced energy, encourage the use of fuel-efficient vehicles, and invest in clean energy infrastructure.

#### Reid Calls for Clean Energy Tech

Having returned from a bipartisan congressional trip to China last week, Senate Majority Leader Harry Reid (D-NV) called for increasing U.S. investment and leadership in clean energy technologies. Though Majority Leader Reid noted that he was unsure whether the Senate would be able to move to a broad energy bill this Congress, he said that the Senate's upcoming agenda would address rising domestic gasoline prices and called for ending subsidies for the five major oil companies.

#### Coal Plant Legislation Speculated

Senators Joe Manchin (D-WV) and Rob Portman (R-OH) are collaborating on legislation that would exempt older coal-fired power plants from pending Environmental Protection Agency regulations, provided that the plants commit to retiring within the next decade. Though industry sources say that they have been briefed on the measure, it is uncertain when, or whether, the bill will be introduced.

#### Upcoming Hearings

The Senate Energy and Natural Resources Committee will hold a hearing May 3 to receive testimony on the proposal for a Clean Energy Deployment Administration as contained in the American Clean Energy Leadership Act of 2009 (S. 1462, 111th Congress). Witnesses include Jonathan Silver, executive director of the Department of Energy's Loan Guarantee Program; Dan Reicher, executive director of the Steyer-Taylor Center for Energy Policy and Finance at Stanford University; Kassia Yanosek, founding principal of Tana Energy Capital LLC; and Christopher Guith, vice president for policy for the Institute for 21st Century Energy at the U.S. Chamber of Commerce.

The House Natural Resources Subcommittee on Water and Power will hold a May 4 hearing on protecting federal hydropower investments in the western United States.

The House Energy and Commerce Subcommittee on Energy and Power will hold a May 4 joint hearing with the Subcommittee on Environment and the Economy on the role of the Nuclear Regulatory Commission on America's energy future.

The Senate Energy and Natural Resources Committee will receive testimony May 5 on a joint staff discussion draft pertaining to cyber security on the bulk-power system and electric infrastructure.

The Senate Commerce Committee convenes May 5 for a business meeting to vote on pending legislation, including the Pipeline Transportation Safety Improvement Act of 2011 (S. 275), which is designed to enhance the safety and reliability of transporting energy products by pipeline while protecting the environment.

The House Energy and Commerce Subcommittee on Energy and Power will hold a May 5 hearing on the American energy initiative, focusing on the challenges and opportunities for alternative transportation fuels and vehicles.

The House Natural Resources Committee will hold a hearing May 11 called "American Energy Initiative: Identifying Roadblocks to Wind and Solar Energy on Public Lands and Waters." The hearing will consider policies and actions, including permitting delays that have blocked or hindered the development of renewable energy sources.

### **Administration**

#### Customer Service Standards Executive Order Issued

President Obama signed an executive order (12862, Setting Customer Service Standards) April 27 asking all federal departments and agencies to better serve the public by using information technology and best practices from the private sector to improve services and reduce costs. Within 180 days, agencies must

develop, in consultation with the Office of Management and Budget, a customer service plan that describes how it will achieve these goals.

#### CEQ Releases GHG Report

The White House Council on Environmental Quality released data April 28 that found that federal government operations subject to a 2009 executive order produced 66.4 MMT GHG emissions in fiscal year 2010. CEQ chair Nancy Sutley said that number amounts to a reduction of 2.5 MMT from a 2008 baseline, with the Department of Defense accounting for more than half of the emissions (34.3 MMT CO<sub>2</sub>e in FY2010).

#### **Department of Energy**

##### Energy Star Verification Extended

The Department of Energy released a guidance document April 26 that unveiled the agency's plans to extend and expand a pilot program requiring third-party verification of energy-use data for participation in the Energy Star labeling program. The DOE *Verification Testing in Support of Energy Star* document will extend a March 2010 pilot verification program, which was launched following the criticism of the effectiveness and integrity of the joint DOE-EPA Energy Star program.

##### EIA Releases Energy Outlook

The Energy Information Administration released the complete version of its 2011 annual energy outlook April 26. The projections, which include alternative scenarios through 2035 for energy markets and CO<sub>2</sub> emissions under a variety of assumptions, indicate strong growth in shale gas production, growing use of natural gas and renewables in electric power generation, declining reliance on imported liquid fuels, and projected slow growth in energy-related CO<sub>2</sub> emissions in the absence of new policies to reduce them.

##### Budget Cuts Reduce Analysis

Energy Information Administration Administrator Richard Newell said April 28 that budget cuts in the funding bill for the remainder of fiscal year 2011 will require significant reductions in the agency's energy data collection, analysis, and forecasting. The final budget provides \$95.4 million for the agency, a reduction of \$15.2 million, or 14 percent, from the fiscal 2010 level.

##### Lab Study Finds Chinese Emissions Plateau

Lawrence Berkeley National Laboratory released a study April 28 that found that while China's energy consumption and greenhouse gas emissions are growing dramatically, the rate of increase will slow between 2030 and 2035 and then flatten thereafter. The study attributes the plateau due to the country's clean energy plan and slowing population growth.

#### **Department of Interior**

##### Court Upholds Lease Decision

The U.S. Court of Appeals for the District of Columbia Circuit upheld April 29 an Interior Department decision to cancel four oil and gas leases of the California coast and rejected the arguments from Aera Energy LLC and Noble Energy that opposed the cancellation. The three-judge panel found that despite the political pressures surrounding the agency's decision, it had conducted a formal evidentiary hearing that established a reasonable basis for concluding the leases should no longer be extended.

##### Renewable Energy Protected from Mining Claims

The Department of Interior's Bureau of Land Management published an interim final rule April 26 that will protect pending and future solar or wind energy right-of-way applications on federal land from mining claims and claims for other land uses for up to two years. The rule is necessary to prevent conflicts involving mining claims, sales, and land exchanges, which can delay or halt solar and wind projects on rights-of-way on public lands.

##### Climate Impacts on Water Basins Projected

The Department of Interior released a report April 25 that found that climate change may contribute to a strain on water supplies in the western United States during the rest of this century and intensify the need for adaptation and mitigation measures. The report to Congress, the *SECURE Water Act Section 9503(c) – Reclamation Climate Change and Water 2011*, which was required by the SECURE Water Act of 2009, quantifies projections of water supply strains specific to eight large river basins.

## **Department of Justice**

### \$7.5 Billion for Environmental Efforts

According to the Justice Department's Environment and Natural Resources Division's *Summary of Litigation Accomplishments: Fiscal Year 2010*, the department secured \$7.5 billion in spending for environmental projects and remediation in fiscal year 2010, nearly three times the 2009 levels. Additionally, April 28 report found that environmental prosecutors secured \$1.3 billion in penalties, cost recoveries, and payments for cleanup actions from polluters in fiscal year 2010, nearly 19 times the amount collected in 2009.

## **Environmental Protection Agency**

### Circuit Court Dismisses CA Waiver Appeal

The U.S. Court of Appeals for the District of Columbia Circuit dismissed for lack of standing April 29 a lawsuit brought by the U.S. Chamber of Commerce and the National Automobile Dealers Association seeking reversal of a 2009 waiver from federal preemption under the Clean Air Act granted by the Environmental Protection Agency, which allowed California and other states to impose GHG limits on cars and light trucks. The waiver was part of an agreement reached between the Obama administration, California, and automobile manufacturers to put in place nationwide GHG emissions standards for cars and light trucks based on the California standards.

### Green Infrastructure for Discharges

Environmental Protection Agency acting assistant administrator for water Nancy Stoner and assistant administrator for enforcement and compliance assurance Cynthia Giles released a joint memorandum April 29 outlining the agency's green infrastructure strategy for permitting and enforcement. The memo, *Protecting Water Quality with Green Infrastructure in EPA Water Permitting and Enforcement Programs*, said that the agency strongly encourages and supports the use of permeable pavements, grassy swales, and urban wetlands to manage stormwater and sewer overflows under permitting and enforcement programs. The agency also released a list of 10 cities that have agreed to work with the EPA on implementing green infrastructure approaches to managing stormwater runoff and sewer overflows: Austin, Boston, Cleveland, Denver, Jacksonville, Kansas City, Los Angeles, Puyallup, Syracuse, and Washington, DC.

### Five-Year Review to Be Completed in 2014

According to a planning document released April 28, the Environmental Protection Agency will complete its current five-year review of the air quality standards for ozone by mid-2014. The *Integrated Review Plan for the Ozone National Ambient Air Quality Standards* unveils the agency's plans to propose any needed revisions to the national standards by September 2013 with a final rule expected by June 2014.

### Underground Well Storage Guidance Issued

The Environmental Protection Agency released recently four draft guidance documents to guide owners and operators through the permitting and construction of underground injection wells for geologic storage of CO<sub>2</sub>. The documents are the latest in a series designed to help well owners and operators implement EPA's geologic sequestration rule, which established a new class of injection wells, VI, for CO<sub>2</sub> storage. Comments will be accepted until May 26.

### Diesel in Fracking Guidance Forthcoming

Environmental Protection Agency Administrator Lisa Jackson said April 26 that the agency will soon issue guidance on the use of diesel fuel as a chemical additive in hydraulic fracturing fluids for oil and natural gas production. Fracking is exempt from regulation under the Safe Drinking Water Act and the law's Underground Injection Control Program, except when diesel fuel is used in the process.

### Boiler and Incinerator Rule Delay Sought

A coalition of 18 industry groups petitioned the Environmental Protection Agency on April 27 to delay implementation of a series of rules requiring boilers and incinerators to reduce emissions of several pollutants while the agency reconsiders sections of the rules. The groups asked the EPA to stay implementation of the hazardous air pollutant emissions standards for industrial boilers and performance standards for solid waste incinerators under its Section 307 Clean Air Act authority for the duration of the reconsideration process. Without a stay, the rules are slated to become effective next month.

### **Personnel**

The Senate Energy and Natural Resources Committee's ranking Republican, Senator Lisa Murkowski (AK), announced the hiring last week of Patrick McCormick III as special counsel. Mr. McCormick comes to the committee from the regulated markets and energy infrastructure practice at Hunton and Williams LLP, and had previously worked for the Federal Energy Regulatory Commission.

### **Miscellaneous**

#### Mileage Tax Technology to be Tested

The Minnesota Department of Transportation announced April 18 that it would test technology that would allow the state to levy a tax on mileage driven in place of the state's current motor fuels tax. The state's motor fuels tax is 27.5 cents per gallon of gasoline, generating about \$850 million per year in revenues, all dedicated to road maintenance and improvement.

#### End of Corn Ethanol Subsidies Sought

The Vermont Law School's Institute for Energy and the Environment released a report April 26 calling for an end of subsidies for corn ethanol over cellulosic and algae biofuels in the next couple of years. The report, *Crystal Eth: America's Crippling Addiction to Taxpayer-Finance Ethanol*, estimates the ethanol industry received at least \$22.8 billion in total government financial support between 1999 and 2008.

#### China's Five-Year Plans Released

Three of China's major municipal administrative regions, Tianjin, Shanghai, and Chongqing, have published their 12th Five-Year Plans (2011-2015) indicating that they will concentrate on low-carbon development, water quality, solid waste, and wastewater treatment, forest coverage, protection of major waterways, and the concept of livable cities. The goals are similar to those in China's 12th national Five-Year Plan, which was approved by the National People's Congress at its annual meeting March 5-14 in Beijing.

#### South Africa Imposes Fracking Moratorium

South Africa's Cabinet endorsed a moratorium April 20 on natural gas drilling in the country's Karoo desert region that stretches through the west and center of the country. The decision places an additional hurdle in the path of a Shell subsidiary that had expected to receive a verdict later this year on its application to conduct exploratory drilling in the area.

#### Imports Stabilize Developed Nations' Emissions

According to a study published in the *Proceedings of the National Academy of Sciences*, richer developed countries have been able to make some headway against rising GHG emissions in part because their emissions are increasingly being shouldered by manufacturers in developing nations. The shift in trade-related GHG emissions from developed to developing countries exceeds the total emissions reductions achieved by countries with obligations under the Kyoto Protocol.

#### Final CA Order Sought

Environmental justice advocates filed documents April 22 asking the California Superior Court to issue a final order that will determine whether all of the state's climate policies should be put on hold or just the cap and trade programs. The environmental justice groups are plaintiffs in a lawsuit who prevailed on their March claim that the California Air Resources Board had failed to adequately consider alternatives to a trading program when it adopted its plan to implement the Global Warming Solutions Act of 2006 (A.B. 32).

#### NM Amends Energy Deduction

New Mexico recently enacted legislation (H.B. 440) revising the advanced energy deduction available for certain costs associated with a generating facility to include lease payments in the definition of eligible generation plant costs. The bill was enacted April 7 and takes effect July 1.

#### NYC Approves Efficiency Legislation

New York City Mayor Michael Bloomberg (I) approved April 25 three City Council bills aimed at allowing energy efficiency improvements involving the rooftops of buildings. The three pieces of legislation, introduced in 2010 and passed unanimously by the Democratic council April 6, covered solar energy installations (Intro No. 341-A), combined heat and power systems (Intro. No. 358-A), and coating standards (Intro. No. 347-A).

#### Effects per Degree Calculated

The National Research Council presenting findings April 25 from a new report quantifying the impact each degree of global temperature increase would have on rainfall, crop yields, and wildfires. The report, *Climate Stabilization Targets: Emissions, Concentrations and Impacts over Decades of Millennia*, found, for example, that each degree of warming between 1 and 4 degrees could alter the amount of rainfall by 5 to 10 percent.

#### German CCS Programs Proposed

The German Cabinet approved legislation April 13 that would allow the federal states to begin pilot projects for storing carbon dioxide underground before an assessment of the technology is due in 2017. Following months of debate within the 16 federal states, the legislation would implement the EU directive on the geological storage of CO<sub>2</sub>, while also allowing states veto power over the locations of the storage sites.

#### Oceans Research Needed to Address Climate

The National Research Council released a report last week that concluded that U.S. policies during the next two decades should include a coordinated national research plan for oceans focusing on issues like climate change, energy, and sustainability. The report, *Critical Infrastructure for Ocean Research and Societal Needs in 2030*, found that policies will continue to address managing human activities such as fishing or energy extraction, mitigating the impacts of natural hazards, and using the ocean effectively for national security.

#### CA Wind Hits Record High

The California Independent System Operator announced on Earth Day that the state hit a record level of peak wind energy output of 2,432 MW, outpacing last year's record of 1,915 MW. The record comprised 5 percent of total demand, and is credited to California's Renewable Energy Portfolio Standard.

#### Ozone and Particle Pollution Improves

The American Lung Association reported April 27 continued improvement in ozone and particle pollution, but said that half of the country still lives with unhealthy levels of pollution. The association's *State of the Air 2011* report concluded that of the 25 cities with the highest levels of ozone pollution, 15 reported their lowest concentrations of the pollutant since the association began reporting the data in 2000. The association also called on the EPA to set more stringent national ambient air quality standards.

#### Natural Gas Supply Estimated

The Potential Gas Committee released an estimate April 27 of technically recoverable natural gas resources, finding that the United States possesses almost 2,000 trillion cubic feet, which at the current rate of domestic consumption, would provide a 100-year supply. The report, *Potential Supply of Natural Gas in the United States* focuses on what is recoverable rather than the price of the recovery, and this is the highest estimate in the committee's 46 year history.

#### Binding Climate Treaty Unexpected

At the conclusion of the two-day meeting of the Major Economies Forum on Energy and Climate April 27, U.S. and EU climate change officials said that it is unlikely that a new climate change treaty to replace the Kyoto Protocol will be agreed to be the end of the year. This year's U.N. climate change summit will take place November 28-December 9 in Durban, South Africa, and the Obama administration is hopeful that

officials will progress on commitments agreed to at the 2010 COP in Cancun, including a pledge for a Green Climate Fund.

#### Allowance Trading Methodology Outlined

The European Commission finalized benchmarks April 27 for 52 product groups covered by the European Union's Emissions Trading Scheme detailing the methodology for determining the level of free emissions allowances available for each sector under the next phase of the trading program. EU power production utilities will have to compete in an EU-wide auction to purchase emissions allowances above a percentage of their benchmark levels during the next phase of the trading scheme.

#### CARB Approves Particulate Reduction Plan

The California Air Resources Board approved April 28 an updated statewide clean air plan to bring the Los Angeles area and San Joaquin Valley into alignment with federal air quality standards for fine particulates by 2014. The revised state implementation plan includes rules to reduce diesel exhaust from trucks, buses, and off-road equipment that were not part of the original document the state submitted to the federal Environmental Protection Agency, as well as the new emissions inventory, updated modeling for the South Coast and San Joaquin Valley, transportation conformity budgets, control strategies, and a rate of progress report.

#### Russian Efficiency Audit Rules Outlined

The Russian government approved a decree (No. 318) to enforce compliance with the country's new energy efficiency law April 25. The decree will approve audit procedures to check compliance with Federal Law No. 261-FZ on energy saving and increasing energy efficiency, allowing federal and regional authorities to conduct two audits over a three year period and establishing procedures for compiling audit results.

#### Utility Merger Moves Forward

Exelon Corporation and Constellation Energy signed a definitive agreement April 28 that would create a large electric and natural gas utility serving millions of customers in the Midwest and mid-Atlantic. The companies will complete the merger in early 2012, depending upon how quickly it clears federal and state regulatory agencies.

#### Carbon Footprints Are Unique

The University of California, Berkeley's Renewable and Appropriate Energy Laboratory unveiled a study recently that finds that who you are and where you live makes a big difference in which activities have the largest impact on the climate. The study considers the carbon footprint of all household economic activity, including transportation, energy, food, goods, services, water, and waste, and determines that each person has a unique carbon footprint, results of which can be summarized in an online carbon calculator the lab has developed.

#### CO Haze Plan Approved

The Colorado Senate gave final approval April 27 to a bill (H.B. 1291) revising regional haze provisions of the state implementation plan. The plan is required by the federal Clean Air Act for areas that violate national ambient air quality controls, and includes strategies resulting from the General Assembly's Clean Air, Clean Jobs legislation (H.B. 1365). Governor John Hickenlooper (D) is expected to approve the measure.

#### China Issues Restructuring Plan

China's National Development and Reform Commission published a plan April 26 to transform the nation's industrial structure that will promote certain industries and phase out or ban others over the next few years. The new plan, which goes into effect June 1, replaces the previous Guiding Catalogue of Industrial Structure Development issued in 2005 and will put a major emphasis on the expansion of industries that promote environmental technologies, cleaner industrial production, emissions reduction, energy conservation, and recycling.