



ML Strategies Update

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Energy & Environment Update

SPOTLIGHT: ADVANCED BIOFUELS

From time to time, the Energy and Environment Update will focus on the legislative and regulatory developments facing a particular energy sector. This week, we will explore advanced biofuels, generally those liquid and gaseous fuels produced from renewable biomass other than corn kernel starch.

With most of the energy sector's attention focused this month on what the Environmental Protection Agency is doing with its proposed 111(d) rule regulating carbon emissions, less was said about what the agency did not do: release the long-awaited 2014 volume obligations for the Renewable Fuels Standard (RFS). Legislative efforts to repeal or reform the RFS have subsided since the agency released a draft rule substantially reducing the amount of biofuels required to be blended into the nation's gasoline. The agency has not sent the final rule to the Office of Management and Budget for review, and it seems unlikely that the agency will finalize a rule before the 2013 obligations expire at the end of the month. As a result, the agency announced June 6 that it would extend the compliance demonstration deadline and the associated deadline for submission of attest engagement reports for the 2013 RFS. The new deadlines are September 30, 2014, and January 30, 2015, respectively. The agency understood that at the very least, because the RFS allows obligated parties to carry forward up to 20 percent of their credits, it had to inform obligated parties of their obligations for 2014 before requiring them to demonstrate compliance with the 2013 RFS requirements.

The delay of 2014 numbers will only further frustrate obligated parties, who already call for the full scale repeal of the RFS, and heighten the uncertainty for advanced biofuel producers, who saw the required volumes of their fuels drop below what was statutorily required when the agency released a draft rule last November. In its draft rule, the agency proposed a 2.2 billion gallon advanced biofuel target for 2014, a 20 percent reduction from 2013's advanced biofuel requirement of 2.75 billion gallons, and more than a 40 percent reduction from the 3.75 billion gallons enumerated in the RFS statute. The delay and likelihood for reduced targets is sowing uncertainty in the advanced biofuel industry and suppressing new investment.

One of the underlying tensions pulling the volume obligation down might be a policy to reduce the amount of imported sugar cane ethanol that could meet the advanced biofuel target. This preference for domestic production is seen even in a bill (H.R. 4849) Representative James Lankford (R-OK) introduced last week that would repeal the corn ethanol requirement in the RFS but preserve volume obligations for domestically-produce advanced biofuel, biomass-based diesel, and cellulosic biofuel.

The sector is also eagerly awaiting a final rule approving new technology and feedstock pathways under the RFS. This would allow new fuels to generate advanced and cellulosic biofuel credits. Given the scarcity of cellulosic biofuel production, approving certain pathways—such as a new cellulosic pathway for landfill gas to CNG/LNG—would increase cellulosic biofuel production overnight.

The U.S. Department of Agriculture (USDA) continues to provide incentives for advanced biofuel production through various Farm Bill energy title programs, although they are funded at lower levels than in past years. USDA accepted applications until January for \$180 million in biorefinery loan guarantees. On June 9, Agriculture Secretary Tom Vilsack announced that the Commodity Credit Corporation and Farm Service Agency within the USDA would soon begin accepting applications for \$12.5 million in matching payments under the Biomass Crop Assistance Program. The program aims to help offset feedstock collection and delivery costs to biomass conversion facilities, which then use these residues to generate clean energy.

USDA soon will announce \$15 million for the Sec. 9005 Advanced Biofuel Producer Payment Program. The program, reauthorized in the recent Farm Bill, supplies support payments to domestic advanced biofuels producers. In past years, these payments have averaged about 10 cents per gallon. The programs support biorefineries that have already been constructed and are producing biofuels, rather than those projects in development and seeking financing. These incentives, while useful, will do little to resolve the uncertainty created by the delay in the RFS volumes.

ENERGY AND CLIMATE DEBATE

Analyses continue to fly in over the Environmental Protection Agency's proposed CO2 standards for existing power plants. In advance of the formal comment period, the agency received more than 40,000 public comments within a week of the proposal's release. Environmental groups and energy analysts such as Friends of the Earth, Greenpeace, the American Council on Renewable Energy, and ClearView Energy Partners project that the requirements are likely to spur only modest increases in non-hydro renewable energy. While they believe that the proposed rule could further incentivize the switch from coal to natural gas, they contend that it is unlikely to replace federal tax incentives and state renewable energy requirements as the main drivers behind the transition to alternative energy sources. Furthermore, the 2005 baseline year is likely to mute the rule's impact on renewable energy development, since CO2 emissions from power plants have already declined by nearly 16 percent since 2005, according to the Environmental Protection Agency's Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2012. The American Wind Energy Association and the Solar Energy Industries Association said last week that renewable energy's rapidly declining cost will make it an attractive option for compliance, and that non-traditional energy sources will do better than the agency's modeling estimates. Many states are likely to turn to their renewable portfolio standards as a useful tool, though Ohio and Indiana paint an opposing picture as they pause, or consider pausing, their standards. The Union of Concerned Scientists believes that the proposal offers an opportunity for renewable energy advocates to demonstrate to states the advantages of renewable energy as they develop their compliance plans.

The American Council for an Energy Efficient Economy said last week that energy efficiency, too, is likely to prove an attractive means of compliance given its low cost. The organization released a report in April concluding that energy efficiency measures alone could reduce power sector emissions by 26 percent by 2030 at a lower cost than natural gas, renewables, and other means of compliance with the rule. The agency has projected a 1.5 percent annual increase in energy efficiency due to the rule between 2020 and 2030. The Center for Climate and Energy Solutions said last week that states could use energy efficiency to comply with the standards by requiring plant-level efficiency improvements, efficiency resource standards that require utilities to reduce demand by a set amount, or increased appliance and building efficiencies. The Alliance to Save Energy has said that the proposal is likely also to lead to the expansion of states' existing energy efficiency resource programs, and the National Association of State Energy Officials agrees.

Environmental Protection Agency Administrator Gina McCarthy told the Energy Efficiency Forum 2014 last week that implementing energy efficiency measures would be the least expensive way for states to realize the CO2 targets under the proposed rule. The agency believes that the proposed regulations offer extensive opportunities for private sector investment, and the agency is working to expand access to energy efficiency opportunities for lower income populations. Administrator McCarthy spoke at the Goldman Sachs North American Energy Summit in New York June 11 about the proposal's role in not only fostering domestic innovation, but also providing leverage in international climate negotiations, and she met with energy executives at the Edison Electric Institute annual meeting June 9 about the rule. She also addressed the 2014 annual meeting of the Western Governors' Association in Colorado last week, saying that the proposal is an example of "cooperative federalism" that puts

states in the driver's seat of addressing power plant emissions.

Meanwhile, Congressional Republicans continue their efforts to block the rule. Representative Mike Simpson (R-ID), head of the House's Energy-Water Appropriations subcommittee, and former chair of the Interior and Environment appropriations panel, said last week that he would try to block the proposed rule by denying the funding to implement it. The funding ban would be included in the appropriations package for the Interior Department and the Environmental Protection Agency. Representative Ken Calvert (R-CA), chair of the Interior-Environment subcommittee, confirmed the plan, citing significant member interest.

In an effort to build greater public support for the proposed rule, the Obama administration continues to highlight the proposal's health benefits. The Environmental Protection Agency estimates that the rule would save thousands of lives, dramatically reduce asthma attacks, and result in up to \$93 billion in health benefits. Communications analyses, including [one](#) from the Yale Project on Climate Change Communications and George Mason University's Center for Climate Change Communication, conclude that framing climate change as an environmental concern reinforces the problem that many people think of climate change as a distant problem. Talking about climate change as a health issue instead of an environmental one, as a human concern instead of a cold scientific experiment or political debate, engages more people. The American Lung Association, the American Medical Association, the American Public Health Association, the American Thoracic Society, and Physicians for Social Responsibility have stepped up since the rule's release to educate the public on climate change's health impacts.

In other developments this week, House Republicans have scheduled an election June 19 for the next House majority leader following Representative Eric Cantor's (R-VA) loss in the Virginia Republican primary last week. Representative Cantor will step down from the leadership post July 31. Fiscal year 2015 appropriations negotiations continue in both chambers this week. The Senate will consider a mini-omnibus this week that rolls together the bills for Commerce-Justice-Science (S. 2437), Agriculture-FDA (S. 2389), and Transportation-HUD (S. 2438) using the House-passed Commerce-Justice-Science spending bill (H.R. 4660) as a vehicle. The House will take up the military appropriations bill (H.R. 4870). Several committees will continue to consider other appropriation measures this week as well.

CONGRESS

Senate Climate Debate

Senate Democrats held an evening session June 9 to debate the need for congressional action to address climate change. They had invited their Republican colleagues, but only Senator James Inhofe (R-OK) joined Senators Barbara Boxer (D-CA), Ed Markey (D-MA), Sheldon Whitehouse (D-RI), Martin Heinrich (D-NM), and Bernie Sanders (I-VT) for the debate.

EPA CO2 Regs Delay Proposed

Representatives Nick Rahall (D-WV) and David McKinley (R-WV) were joined by 74 of their colleagues June 10 in introducing legislation (H.R. 4813) to block the Environmental Protection Agency's proposed CO2 standards for existing power plants. The measure would prohibit the agency from issuing similar standards for five years, unless Congress approves such an action. The bill comes a week after Senate Minority Leader Mitch McConnell (R-KY) introduced the Coal Country Protection Act (S. 2414) to block CO2 standards for existing power plants until the administration certifies that they will not harm job growth or raise energy prices. Representative Mike Kelly (R-PA) introduced companion legislation (H.R. 4808) June 5.

House Energy and Water Approps Approved

The House Appropriations Subcommittee on Energy and Water Development and Related Agencies approved June 10 a \$34 billion energy and water spending bill that would provide funding for the Department of Energy, the U.S. Army Corps of Engineers, the Department of Interior's Bureau of Reclamation, and several independent agencies. The measure would continue funding for the Yucca Mountain nuclear waste repository.

Former Republican EPA Administrators to Testify on Climate

Senator Sheldon Whitehouse (D-RI) announced June 12 that the Senate Environment and Public Works Subcommittee on Clean Air and Nuclear Safety will hold a hearing June 18 featuring testimony from former Reagan Environmental Protection Agency heads William Ruckelshaus and Lee Thomas, George H.W. Bush EPA Administrator William Reilly, and George W. Bush EPA Administrator Christine Todd Whitman. All four former administrators have encouraged fellow Republicans to recognize the dangers of climate change and act to address them.

ENR Schedule

Senate Energy and Natural Resources Committee Chair Mary Landrieu (D-LA) announced July 12 a busy committee agenda for this week. The panel will vote June 18 on a bill approving the Keystone XL pipeline, on two nominees to the Federal Energy Regulatory Commission: Cheryl LaFleur and Norman Bay, on Monica Regalbuto for assistant secretary for environmental management at the Department of Energy, on Estevan Lopez as commissioner of Reclamation, and on Suzette Kimball for director of the United States Geological Survey. The committee will hold a hearing June 19 on Senator Mark Udall's (D-CO) legislation (S. 2083) to expedite natural gas exports. Senator Landrieu said last week that there are enough votes on the committee to approve her Keystone language, which will be similar to Senator John Hoeven's (R-ND) earlier measure (S. 2280). Senate Majority Leader Harry Reid (D-NV) will then determine whether to allow the full chamber to vote on the measure.

PTC Letter

Americans for Prosperity and 116 other Tea Party-aligned groups sent a letter last week to Congress asking the chamber to allow the production tax credit to remain expired. The Joint Committee on Taxation estimates that a one-year extension of the credit would cost \$6.2 billion over ten years.

Legislation Introduced

Representative James Lankford (R-OK) introduced June 12 legislation (H.R. 4849) to amend the Clean Air Act to allow advanced biofuel, biomass-based diesel, and cellulosic biofuel to satisfy the mandates of the renewable fuel standard only if domestically produced, and to eliminate the corn mandate under the program.

Representative Steve Daines (R-MT) introduced legislation (H.R. 4850) the same day to amend the Clean Air Act to prohibit the regulation of emissions of carbon dioxide from new or existing power plants.

Upcoming Hearings

The Senate Appropriations Subcommittee on Energy and Water Development will mark up its fiscal year 2015 energy and water spending bill June 17. The full committee will mark up the measure June 19.

The Senate Agriculture Committee will hold a hearing June 17 on domestic bio-based manufacturing jobs.

The House Appropriations Committee will mark up its fiscal year 2015 energy and water spending bill June 18.

The House Natural Resources Subcommittee on Energy and Mineral Resources will hold a hearing June 18 on energy job opportunities for states and localities.

The Senate Armed Services Committee will hold a hearing June 19 on several nominations, including Monica Regalbuto to be assistant secretary of Energy for environment management and Miranda Ballentine to be assistant secretary of the Air Force for installations, environment, and energy.

The House Energy and Commerce Subcommittee on Energy and Power will hold a hearing June 19 to consider the Environmental Protection Agency's proposed greenhouse gas standards for existing power plants. Environmental Protection Agency Office of Air and Radiation Assistant Administrator Janet McCabe will testify.

ADMINISTRATION

President Calls for Price on Carbon

President Obama said during a June 9 interview on "Years of Living Dangerously" that he would like to implement a price on carbon as a way to address climate change but recognizes that it faces strong political opposition from Republicans and some Democrats. He expressed frustration with members of Congress who continue to deny the science of climate change, saying that the science is sound and hopes to use his remaining time in office to change public opinion about the need to address climate change.

Climate Talk with Australian PM

President Obama and Australian Prime Minister Tony Abbott discussed climate change during a White House meeting June 12. President Obama emphasized the need for ambitious domestic policies as the basis of a strong international plan.

DEPARTMENT OF COMMERCE

Weather Data Sharing

The National Oceanic and Atmospheric Administration and the Western Governors' Association signed a memorandum of understanding June 6 to enhance the development, coordination, and dissemination of drought and extreme weather information and analysis to support resource management decisions in western states.

DEPARTMENT OF ENERGY

Efficiency Standard Updates Forthcoming

The Department of Energy released June 12 its semiannual regulatory agenda, outlining plans to update appliance efficiency standards, from in-home dishwashers to low-pressure boilers that provide hot water and heat, by 2015.

DEPARTMENT OF STATE

Ocean Conference

During the State Department's Our Ocean Conference 2014 on June 16, the National Oceanic and Atmospheric Administration will showcase its Science On a Sphere room-sized globe to present data and images that reflect the conference themes of ocean acidification, sustainable fishing, and marine pollution.

Pascual to Depart

State Department Special Envoy and Coordinator for International Energy Affairs Carlos Pascual will leave the agency in August. Ambassador Pascual will join the Center on Global Energy Policy at Columbia University's School of International and Public Affairs.

DEPARTMENT OF TREASURY

1603/PTC Clarification

The Internal Revenue Service clarified June 10 that a taxpayer may not partition the basis of a property used for a Section 1603 grant affected by budget sequestration and claim renewable energy tax credits – a production tax credit or investment tax credit – on the remainder. The clarification follows a February 27 Treasury Inspector General for Tax Administration report finding that some energy companies may have double-dipped on federal incentives to build renewable energy projects.

CO2 Sequestration Credit Adjusted

The Internal Revenue Service issued June 11 a new inflation adjustment factor for the carbon dioxide sequestration credit under Section 45Q. The inflation adjustment factor for 2013 was 1.0626, and calendar year 2014 will be 1.0754, so that the credit is \$21.51/MT CO₂ under Section 45Q(a)(1) and \$10.75 under Section 45Q(a)(2).

ENVIRONMENTAL PROTECTION AGENCY

FutureGen Lawsuit Dismissed

The U.S. District Court for the Central District of Illinois issued an [opinion](#) June 9 dismissing a Sierra Club lawsuit, and found that Illinois provides an appropriate forum for challenging a decision to permit a FutureGen project. The decision clarifies that a state has the ability to hear appeals to permitting decisions.

FEDERAL ENERGY REGULATORY COMMISSION

Demand Response Rehearing Sought

The Federal Energy Regulatory Commission said June 11 that it intends to challenge the D.C. Circuit Court of Appeals' decision to vacate the agency's demand response rule, Order No. 745, which sought to require competitive payments to power users who reduced their consumption under certain circumstances.

FEDERAL TRADE COMMISSION

Energy Labeling Updates

The Federal Trade Commission released [text](#) June 11 as it considers several proposed changes to its Energy Labeling Rule and invited public comments. The proposed changes would impact labels for light bulbs, appliances, room air conditioners, ceiling fans, refrigerators, and furnaces, and would require manufacturers to attach EnergyGuide labels to certain products.

GOVERNMENT ACCOUNTABILITY OFFICE

Ozone Standard Revision Forthcoming

The Government Accountability Office released June 9 a critical [report](#) on the Department of Energy's uranium enrichment program. The agency's procedures for uranium transactions with USEC Corp. raise troubling questions over their legality and whether there has been adequate taxpayer consumption. Senator Ed Markey (D-MA) and Representative Michael Burgess (R-TX) requested the investigation. The office will conduct a follow-up report.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

CO2 Satellite to Launch

The National Aeronautics and Space Administration plans to launch July 1 its first [satellite](#) dedicated to measuring CO2 levels in the Earth's atmosphere. The Orbiting Carbon Observatory-2 mission could help scientists reduce uncertainties on how the planet reacts to rising CO2 emissions.

INTERNATIONAL

Mexican Domestic Content Requirements

Mexico's Senate subcommittee on energy urged Congress June 6 to increase the national content requirement from its currently proposed 25 percent to 35 percent for international energy projects.

Complications to Indian Solar Plans

The Solar Power Developers' Association said June 9 that the Indian government may inhibit Prime Minister Narendra Modi's efforts to reap more solar electricity should it impose duties on solar panel imports proposed by the country's previous administration. Only a quarter of the 1.6 GW of solar capacity in the works now will be finished if the levels are enacted, as the duties would double the cost of solar power. Finance Minister Arun Jaitley has until August 22 to implement the duties.

CCES Report

The Center for Climate and Energy Solutions released a [report](#) June 10 urging countries to seek a hybrid international climate agreement in Paris next year that combines top-down and bottom-up approaches, melding national flexibility with strong GHG reduction commitments.

Indonesia-EU Biodiesel Trade Conflict

The World Trade Organization said June 11 that Indonesia has become the second nation, after Argentina, to challenge European Union anti-dumping duties on imports of biodiesel fuel. Indonesia has requested consultations with the European Union on the issue. If the consultations fail to resolve the dispute within 60 days, the country may request that the Dispute Settlement Body establish a panel to study the dispute.

Mexican Energy Reforms to Assist Business

Mexico's Assistant Secretary for Hydrocarbons at the Energy Ministry Maria de Lourdes Melgar Palacios told Congress June 12 that success for the nation's energy reform will be measured in its ability to propel the country's small and medium-sized businesses into becoming the chief suppliers for the sector.

EU 2030 Climate Target Forthcoming

European Union Climate Action Commissioner Connie Hedegaard told reporters at an EU Environmental Council meeting June 12 that the bloc is on track to agree to a 2030 climate goal in October. The block could agree to 40 percent emissions reductions by 2030, relative to 1990; the EU has an existing binding target of 20 percent by 2020 relative to 1990. Negotiators are also considering renewable energy and energy savings targets. European Union leaders will discuss the targets at a June 26 summit in Brussels.

Chinese SO2 Infractions

China's Ministry of Environmental Protection said June 12 that the nation is taking action against 19 large state-owned coal fired power and chemical refining facilities for failing to control sulfur dioxide emissions, falsifying SO2 monitoring data, or improperly operating desulfurization technology. The companies must draft plans to address improper technology operation and submit those plans to local environmental protection bureaus and the ministry. Upgrades must be completed by the end of the year.

EU Biofuel Limit

European Union member states agreed June 13 that ethanol and biodiesel can only account for seven percent of an overall ten percent by 2020 renewable energy transportation target. Member states agreed also on incentives to promote second-generation biofuels that include a 0.5 percent target. Talks will soon begin with the European

Parliament, which called for a six percent cap.

Bonn Climate Talks

Delegates at United Nations climate change negotiations in Bonn the past two weeks continued laying the groundwork for an international agreement next year in Paris. Negotiators focused on efforts to increase national agreements to mitigate and adapt to climate change in the pre-2020 period and the issue of whether financial goals should be included in the final agreement. Participants made progress also on key elements of the treaty, including input related to transparency in reporting and verification after 2020.

STATES

OH Pauses RES

Ohio Governor John Kasich (R) signed into law June 13 legislation (S.B. 310) that freezes the state's renewable energy standard until 2017, when the annually increasing mandates will be automatically restored.

MA Net Metering

The Massachusetts House and Senate are considering legislation that would remove a cap on net metering. The bill still needs the approval of the full legislative branch, but also creates a floor in utility costs and initiates a transition from Solar Renewable Energy Credits toward a performance based incentive.

SUSTAINABILITY

Climate Threats to Corn Industry

Ceres released a [report](#) June 11 finding that the \$67 billion annual domestic corn industry faces growing threats from groundwater depletion, water pollution, and extreme weather events linked to climate change. 87 percent of irrigated corn is grown in regions with high or extremely high water stress, and many of those regions are expected to see increased water shortages due to climate change. Corn production is threatened also by increasingly common extreme weather events such as severe droughts, floods, and heat waves, which can lead to dramatic impacts in corn yields and prices. Furthermore, corn uses the most fertilizer of all major domestic crops, and fertilizer runoff from cornfields poses water pollution concerns. Some companies that source domestic corn are beginning to encourage more sustainable production practices.

MISCELLANEOUS

Largest Wind Farm Purchased

Berkshire Hathaway Chair Warren Buffett said June 9 that the company, which has negotiated deals to expand its utility business in Nevada and Western Canada, plans to invest more in the industry, focusing heavily on renewable energy. The business has committed \$15 billion to renewable energy projects, and could invest an additional \$15 billion in similar projects.

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