



## ML Strategies Update

David Leiter, [DJLeiter@mlstrategies.com](mailto:DJLeiter@mlstrategies.com)  
Sarah Litke, [SLitke@mlstrategies.com](mailto:SLitke@mlstrategies.com)  
Bryan Stockton, [BStockton@mlstrategies.com](mailto:BStockton@mlstrategies.com)  
Jordan Collins, [JMCollins@mlstrategies.com](mailto:JMCollins@mlstrategies.com)  
Neal Martin, [RNMartin@mlstrategies.com](mailto:RNMartin@mlstrategies.com)

FOLLOW US ON TWITTER: [@MLStrategies](https://twitter.com/MLStrategies)

ML Strategies, LLC  
701 Pennsylvania Avenue, N.W.  
Washington, DC 20004 USA  
202 434 7300  
202 434 7400 fax  
[www.mlstrategies.com](http://www.mlstrategies.com)

JUNE 9, 2014

## Energy & Environment Update

### ENERGY AND CLIMATE DEBATE

We shared with you last week details of the Environmental Protection Agency's June 2 proposed CO2 standards for existing power plants, as well as a broad set of initial reactions. Over the next few weeks, we will dive into some of the particulars of the complex rule. In the wake of the proposal's release, members of Congress, the electric utility industry, environmental and public health organizations, state and federal government agencies, and others have begun to prepare more lengthy analyses of the rule and its impacts. While they work on technical comments, we will look this week at some of the first studies. In subsequent weeks, we will address specific aspects of the rule. As always, should you have questions, or if we can be of assistance to you on the agency's 111(d) proposed rule or another matter, please feel free to contact us.

Forty-one Republican senators, led by Senate Majority Leader Mitch McConnell (R-KY) and Senate Environment and Public Works Committee Ranking Member David Vitter (R-LA), [urged](#) President Obama June 3 to withdraw the proposed rule, while senior White House officials strategized with Senate Democrats over how to defend the rule. White House Chief of Staff Denis McDonough and senior counselor John Podesta briefed Senate Democrats June 3 on the proposed regulations, and made themselves available to senators for more detailed meetings as well. As promised, Senator McConnell wasted no time in introducing legislation (S. 2414) to effectively block the agency's ability to issue CO2 regulations without first certifying that so doing would not harm the economy or raise energy prices. He called for Senate Majority Leader Harry Reid (D-NV) to immediately schedule a vote on the Coal Country Protection Act, and began the day June 4 with a failed procedural move aimed at forcing the chamber to take up his bill. Senator Joe Manchin (D-WV) said last week that he would prefer to have a vote on his legislation (S. 1905), which would prohibit regulations on existing power plants until Congress authorizes them and carbon capture and storage technologies have been successfully demonstrated at six sites for a year. The House cleared a companion bill March 6. Senator James Inhofe (R-OK) vowed to force a vote to overturn the limits, but opponents of the rule will have to wait until it is finalized next year before voting to disapprove the rule using fast-track procedures provided by the 1996 Congressional Review Act. Senator McConnell filed a similar resolution targeting an agency proposal that would limit CO2 emissions from future power plants, but the Government Accountability Office said May 29 that that the law's expedited procedures only apply to regulations in their final form.

Senate Democrats, including Senators Barbara Boxer (D-CA), Ed Markey (D-MA), and Tom Carper (D-DE), said June 3 that the proposal is likely to spur China and other developing countries to sign onto a global emissions reduction accord in 2015. The group hopes that the proposed rule will demonstrate United States' leadership on the

issue enough to hasten global action and investment. Senate Democrats set aside several hours of floor time this evening, calling on their Republican colleagues to engage in a second Senate floor debate on climate. A similar overnight session three months ago failed to attract a single Republican senator.

Environmental Protection Agency Administrator Gina McCarthy said June 3 that interstate emissions trading programs, such as the Regional Greenhouse Gas Initiative, will likely provide the most cost-effective CO<sub>2</sub> reductions under the proposed standards. Administrator McCarthy said that the agency considered whether to mandate improvements to power plants themselves, but determined that such an approach would be too costly for the modest emissions reductions achieved. She also clarified that the agency is proposing to set an emissions rate target for each state, rather than specifying the amount by which emissions should be reduced. Such an approach would keep the existing-plant proposal consistent with rules the agency has proposed to regulate CO<sub>2</sub> from new, modified, and reconstructed plants. Administrator McCarthy said, too, that although its outreach effort on the proposed rule has been unprecedented, she would not be surprised if the agency revises the rule before it is finalized in response to public comments.

Researchers from Cornell University, Stanford University, and the U.S. National Oceanic and Atmospheric Administration cautioned last week that the proposed rule discounts methane gas leaks. They agree with the administration that natural gas emits about half as much CO<sub>2</sub> as coal when burned to produce electricity, but they are concerned about methane leaks from the extraction, processing, and transportation processes, and methane has a significantly higher global warming potential than CO<sub>2</sub>.

Two Brookings Institution economists [questioned](#) June 4 whether the administration's climate policies are giving too much weight to global, rather than domestic, benefits of reducing GHG emissions. They argue that standard cost-benefit analyses for domestic policy proposals, where the costs are borne domestically, should only consider domestic benefits, but analyses in recent climate policies, including the agency's June 2 proposal, have taken a global approach. The agency estimated global climate benefits from the proposed standards of approximately \$30 billion in 2030 using a three percent discount rate, but Brookings concludes that domestic benefits would be between \$2 billion and \$7 billion, which is less than the estimated \$7.3 billion compliance cost. Even so, the agency's analysis demonstrates that the rule's cost could be outweighed by projected health benefits associated with ozone and particulate matter reductions.

Standard & Poor's Rating Services [said](#) June 4 that the proposed rule could negatively impact the future credit ratings of utilities with more carbon-intensive power supplies. The ratings agency expects the proposal to spur development of a system of tradable allowances and credits between power producers, as with California's cap and trade system and the Regional Greenhouse Gas Initiative.

The American Lung Association released June 4 a 30-second television and digital [ad](#) supporting the agency's proposed rule.

The Washington Post and ABC News released a [poll](#) today finding that 70 percent of Americans want the federal government to limit greenhouse gas emissions from existing power plants, with the same number concluding that states should limit emissions within their boundaries. 79 percent of Democrats, 76 percent of independents, and 57 percent of Republicans favor the limit, and 63 percent said that the government should move forward with such limits if they significantly reduced GHGs but increased monthly energy expenses by 20 dollars a month.

In other energy and environment news, the House Appropriations Committee released June 9 its draft \$34 billion energy and water spending bill for fiscal year 2015. The measure provides \$50 million less than the fiscal 2014 enacted level, but \$327 million above President Obama's fiscal year 2015 request. Funding for energy programs within the Department of Energy stands at \$10.3 billion in the new bill, more than \$110 million above the 2014 enacted levels. Overall, fossil and nuclear energy programs would receive a funding increase, while renewable energy funding would be cut. The agency's science budget is flat, and the Advanced Research Projects Agency—Energy would receive \$280 million. The bill contains \$150 million for nuclear waste disposal, and another \$55 million for the Nuclear Regulatory Commission to continue its Yucca Mountain license application work. The energy and water subcommittee will mark up the bill June 10. In order to offset Army Corps of Engineers funding of about \$1 billion, the House allocates just \$1.8 billion for renewable energy programs, a 22 percent reduction from President Obama's requested \$2.3 billion. Senate Democrats are likely to unveil their own energy and water budget next week.

The House will devote the majority of its week to fiscal 2015 appropriations, including floor consideration of the Transportation-HUD (H.R. 4745) and Agriculture-FDA (H.R. 4800) spending measures. The House Appropriations

Committee will consider the Defense appropriation bill. Additionally, the House will take up three Ways and Means Committee-approved bills (H.R. 4453, H.R. 4454, H.R. 4457) to make expired or expiring tax provisions permanent. Majority Leader Reid said last week that tax extender provisions may have to wait until after the November elections to advance in the Senate.

The Senate Appropriations subcommittees will mark up their draft Labor-HHS-Education and Legislative Branch appropriation measures. The upper chamber may also act on veterans' health care benefits and will vote on several Obama Administration nominations.

## CONGRESS

### Biofuel Pathways Information Sought

Senators Joe Donnelly (D-IN) and Mike Johanns (R-NE) sent a letter June 4 to Environmental Protection Agency Administrator Gina McCarthy requesting additional information on the agency's plans to modify the lengthy approval process for new biofuels. The senators argue that the delay in approvals of new pathways hinders the commercialization of new biofuel technologies.

### San Onofre Documents

Senate Environment and Public Works Chair Barbara Boxer (D-CA) released a [legal analysis](#) June 4 criticizing Nuclear Regulatory Commission Chief Allison Macfarlane for refusing to turn over some documents related to the closed San Onofre nuclear plant. The commission has used separation of power arguments to deny some of the senators' requests.

### Nuclear Safety Progress Criticized

During a Senate Environment and Public Works hearing June 4, Chair Barbara Boxer (D-CA) criticized the Nuclear Regulatory Commission for its lack of progress in implementing additional safety measures following the Fukushima nuclear explosion. The Commission faces two possible vacancies this summer. Commissioner George Apostolakis' term ends June 30, and though he is willing to continue serving in that position, the White House has not yet reappointed him. Commissioner William Magwood will depart the commission in late summer to take a position as director general of nuclear programs at the Organization for Economic Cooperation.

### LNG Export Legislation to Floor Soon

Representative Tim Murphy (R-PA) told the Wroclaw Global Forum in Poland June 6 that the House is preparing to bring legislation to the floor that would streamline the process for exporting liquefied natural gas. The American Job Creation and Strategic Alliances LNG Act (H.R. 4139) would amend the Natural Gas Act to deem consistent with the public interest an expedited application and approval process for importing or exporting natural gas to a World Trade Organization country.

### Legislation Introduced

Senator Mitch McConnell (R-KY) introduced legislation (S. 2414) June 3 to amend the Clean Air Act to prohibit the regulation of CO2 emissions from new or existing power plants under certain conditions.

### Upcoming Hearings

The House Energy and Commerce Subcommittee on Energy and Power will hold a hearing the week of June 16 to consider the Environmental Protection Agency's proposed greenhouse gas standards for existing power plants.

## ADMINISTRATION

### Climate-Health Links

The White House issued a report June 6 connecting climate change impacts to public health. The report considers the National Climate Assessment and Intergovernmental Panel on Climate Change findings to demonstrate how climate effects will have an impact on ground-level ozone, will increase plant-based allergens in the upper Midwest, will enhance the urban heat island effect, and will exacerbate childhood asthma.

### G-7 Promises Climate Leadership

The Group of Seven [pledged](#) at the conclusion of their June 4-5 summit in Brussels to lead by example to produce an ambitious international climate agreement by making public by March 2015 their pledges to reduce GHG emissions. The group acknowledged increasing energy security challenges in Europe following Russia's annexation of Crimea. The statement also reaffirmed a commitment to phase down hydrofluorocarbons under the Montreal Protocol, and the United States will propose a rule this summer to promote the use of climate friendly alternatives to

HFCs and a rule to prohibit the use of certain HFCs in some applications. The group restated an earlier commitment to provide \$100 billion a year to help developing nations adapt to climate impacts and reduce their emissions.

## DEPARTMENT OF AGRICULTURE

### Biomass Crop Assistance

The Department of Agriculture will announce June 9 \$12.5 million in matching payments under the Biomass Crop Assistance Program. The program provides matching payments of up to \$20/dry ton for two-year periods to help offset feedstock collection and delivery costs to biomass conversion facilities. Those facilities can then convert the biomass feedstocks into heat, power, biobased products, research, or advanced biofuels. The funding prioritizes woody materials and agriculture or crop residues.

## DEPARTMENT OF COMMERCE

### China Solar Trade Case

The Department of Commerce's International Trade Administration [found](#) June 3 that China is subsidizing certain crystalline silicon photovoltaic products. The products could be assigned countervailing duties ranging from 18.56 to 35.21 percent. The agency will announce its final determination around August 18. The International Trade Commission will rule 45 days after that. China's Commerce Ministry expressed dissatisfaction with the determination the following day.

## DEPARTMENT OF ENERGY

### Space-Based Emissions Verification

Los Alamos National Laboratory released a [study](#) last month finding that space-based techniques can successfully verify international regulations on fossil energy emissions. The study concluded that scientists were able to distinguish emissions from one coal-fired power plant as less polluting than those from a nearby plant.

## DEPARTMENT OF INTERIOR

### BLM Lease Sale Fracking Concerns

Lander County, Nevada and the Center for Biological Diversity lodged administrative protests against the Bureau of Land Management June 3 over concerns about a planned oil and gas lease sale in the state that could open 270 square miles of public land to fracking in a habitat for rare species. The bureau is scheduled to lease 102 parcels July 17.

## ENVIRONMENTAL PROTECTION AGENCY

### Ozone Standard Revision Forthcoming

The Clean Air Scientific Advisory Committee voted June 4 to recommend that the Environmental Protection Agency reduce its public healthy air quality standard for ozone from 75 parts per billion to a range of 60-70 ppb. The Bush administration revised the standard to 75 ppb in 2008, despite the committee's recommendation then that it be set between 60 and 70 ppb. The agency is under a court-ordered deadline to issue a proposed rule to either retain or revise the standards by December 1.

### Monitoring Equipment Motivation

Environmental Protection Agency Assistant Administrator for Enforcement and Compliance Assurance Cynthia Giles told an American Law Institute event June 5 that citizens that monitor industrial facility emissions are driving companies toward purchasing their own advanced monitoring equipment. This, in turn may lead to more complete and accurate emissions calculations, helping facilities to address existing and future problems.

### Teen GHG Action Appeal Rejected

The U.S. Court of Appeals for the District of Columbia Circuit rejected June 5 an appeal by a group of California teenagers and two environmental groups in a lawsuit that sought to compel the federal government to cap GHG emissions.

### Aggregate Emissions Data

The Environmental Protection Agency [announced](#) June 6 the criteria it will use to aggregate GHG emissions data to protect confidential business information. The agency will not publish the aggregated data if it could be used to

calculate individual facility or supplier information. The agency will use the data to develop its annual Inventory of U.S. Greenhouse Gas Emissions and Sinks, as part of its Facility Level Information on GreenHouse gases Tool, and other downloadable data files. The agency will accept comments through July 9.

### **2013 RFS Deadline Extended**

Due to delays in the 2014 rule, the Environmental Protection Agency released the [final](#) 2013 Renewable Fuel Standard June 6, extending the compliance deadline for petroleum refiners and importers to demonstrate compliance with the standard to September 30. The agency anticipates finalizing the 2014 rule soon.

### **Trading Systems Permitted**

The Environmental Protection Agency [proposed](#) June 6 allowing states to continue to use regional cap and trade program reductions to meet pollution control requirements under the 1997 national ambient air quality standards for ozone and fine particulate matter. States would be permitted to rely on those programs if they can demonstrate equivalent emissions to installation of reasonably available control technology. The agency will accept comments on the proposed rule until July 9.

## **INTERNATIONAL**

### **Chinese Infrastructure Investment**

China's National Development and Reform Commission published a document in mid-May detailing 80 infrastructure projects in which the government is encouraging private investment. More than half are energy-related, and 35 of those have some renewable generation.

### **Japanese Fuel Cell Vehicle Promotion**

Japan's Ministry of Economy, Trade and Industry amended May 30 container labeling and inspection regulations under the High Pressure Gas Safety Act to make Japanese regulations compatible with global regulations in an effort to expedite the development and export of hydrogen-powered fuel cell motor vehicles. The country hopes to promote the commercial viability of the vehicles as early as next year.

### **EU GHG Inventory Released**

The European Environment Agency compiled [data](#) June 3 finding that the European Union's greenhouse gas emissions fell in 2012 to their lowest level since the Kyoto Protocol. EU emissions in 2012 were 19.2 percent, more than a billion metric tons, below their 1990 level, and declined 1.3 percent compared to 2011. The reductions stem from cuts in electricity and heat generation, household use, and energy-consumption related emissions in heavy manufacturing. Emissions increased in road transportation.

### **IEA's Outlook Released**

The International Energy Agency released its World Energy Investment [Outlook](#) June 3, finding that \$53 trillion in global investments is necessary over the next two decades, primarily in energy efficiency, renewable energy, and carbon capture and storage, to reduce CO2 emissions enough to potentially hold climate change to manageable levels this century. In order to motivate the investment, stronger policy initiatives are needed, particularly in the form of an international climate agreement, as planned for in Paris next year.

### **\$15 Billion Green Climate Fund Goal**

United Nations Green Climate Fund Executive Director Hela Cheikhrouhou said June 3 that she is seeking to raise as much as \$15 billion by the end of the year in order to start financing projects in developing nations.

### **Low Attendance at Bonn Talks**

Some major countries will skip the next round of United Nations climate talks June 4-15 as delegations work to increase commitments for the pre-2020 period and help lay the groundwork for the post-2020 treaty scheduled to become final in Paris next December. Only 43 of the 196 governments expected to send delegations to Bonn this June will send minister-level delegates to the high-level segments of the talks.

### **Developing Countries Release Negotiation Draft**

The Like-Minded Developing Countries, which includes China and India, released June 6 the first draft of its negotiating text for the 2015 Paris global climate agreement. The draft focuses on party equity, meaning countries with a larger historical responsibility for emissions should take on a proportionate responsibility in the 2015 agreement. There is little chance the document will gain traction.

### **Brazil Submits Forest Data Under REDD**

Brazil submitted to the United Nations June 6 [data](#) on emissions reductions achieved by forest protection. The country is the first to submit such data under deforestation rules, the Reducing Emissions from Deforestation and Forest Degradation, agreed upon in November.

### **Canadian Pollutant Standards**

Environment Canada published June 7 [draft](#) national air emissions standards for regulated industries, with the first phase addressing emissions from stationary spark-ignitions, gas-fired engines, non-utility heaters and boilers, and the cement manufacturing sector. The regulations would require reduced emissions of nitrogen oxides, sulfur dioxide, volatile organic compounds, and particulate matter, and would reduce the nation's GHG emissions by 3.4 MMT between 2013 and 2035.

### **\$2.5 Trillion Annually Needed for Global Energy**

The International Energy Agency said last week that up to \$2.5 trillion per year through 2035 is necessary to supply the world's energy needs. \$40 trillion would go to developing and maintaining energy supplies, with \$8 trillion more spent on energy efficiency, and energy security concerns will continue to rise.

### **China Rare Earth Changes**

China, which controls 90 percent of the rare earth market, is studying the introduction of new taxes and regulations for rare earths. The measures will add to pressures loosening China's stranglehold on the production of rare earths, and will boost the prospects for some of the \$12 billion of projects being developed outside the country.

### **Tepco Considering US LNG Exports**

Tokyo Electric Power Co., Japan's largest liquefied natural gas purchaser, is considering purchases of the fuel from United States natural gas export projects. Tepco is considering West Coast projects because LNG supplies would not need to pass through the Panama Canal, thus reducing toll fees and shipping times.

### **Chinese Carbon Cap Potentially Forthcoming**

China is studying a timeline for an absolute cap on CO2 emissions as it prepares climate change policies in its next five-year plan, which runs 2016-2020. Heavy industry in areas with coal consumption caps and emission trading pilot programs will experience the strongest impact of the country's low-carbon development policies.

## **STATES**

### **MD Conditionally Approves LNG Power Station**

The Maryland Public Service Commission issued May 30 [conditional approval](#) for an electric generating station to power Dominion's Cove Point LNG export terminal. The state included special conditions, including a \$48 million contribution to state programs for clean energy, renewable energy, and low-income energy assistance.

### **NY Fracking Challenged**

The New York State Court of Appeals heard oral arguments June 3 in two fracking cases. Some 200 local governments have already enacted anti-fracking ordinances. The court will soon determine whether state law preempts local fracking bans, and if it does not, fracking could effectively be banned or opened in most parts of the state. The case is expected to have a national impact.

### **VA Energy Council**

Virginia Governor Terry McAuliffe (D) established June 4 the Virginia Energy Council to develop an energy strategy for the state by October.

### **NC Fracking Authorized**

North Carolina Governor Pat McCrory (R) signed into law June 4 a measure (S.B. 786) that would allow fracking permits to be issued in the first half of next year.

### **RGGI Allowances Hit Record High**

Regional Greenhouse Gas Initiative carbon allowance prices hit a record high of \$5.02 June 4 in its first auction since the Environmental Protection Agency proposed CO2 standards for existing power plants. The sale, of 18 million allowances, raised \$90.6 million. RGGI will hold its next auction September 3.

### **Diesel and Hybrid Vehicle Sales Up**

The Diesel Technology Forum released data June 4 on the top states for diesel and hybrid vehicle sales. California

has the largest combined fleet, followed by Texas and Florida. Wyoming had the highest percentage of the vehicles, with Montana following closely behind.

### **NY Fracking Challenged**

New Mexico's PNM utility announced last week plans to meet state renewable energy standards by 2015 by building more solar projects.

## **MISCELLANEOUS**

### **Largest Wind Farm Purchased**

NRG Yield purchased June 4 the country's largest wind farm for \$870 million. The NRG Energy affiliate also will assume \$1.6 billion in debt from Terra-Gen Power LLC in exchange for Terra-Gen's Alta Wind Facility in Tehachapi, California. The facility has 947 MW of operating wind capacity.

### **Natural Gas Cost Savings**

The American Petroleum Institute released a [study](#) June 5 finding that state and local government operations are reaping the benefits of unconventional energy, such as shale. The HIS study found that public schools across the country would have spent \$740.9 million more for electricity last year and \$466.9 million more for natural gas if they had not been able to enjoy the benefits of lower costs due to increase natural gas production. Similarly, state and local governments saved \$467.2 million on electricity and \$252.9 million on natural gas.

\* \* \*

---

**View ML Strategies professionals.**

---

Boston · Washington [www.mlstrategies.com](http://www.mlstrategies.com)