



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 **JULY 10, 2011**

Energy and Climate Debate

The budget and deficit talks continue, with more delays announced Sunday as House Speaker John Boehner (R-OH) voiced his unwillingness to go forward with the latest iteration of a deal. Republicans are still outwardly opposing any tax increases and Democrats are trying to avoid cuts to their favorite programs. This impasse has actually allowed time for some energy and environmental legislation to move forward in the shadow of the debt and spending negotiations.

This week, the Senate will meet to consider a measure related to ongoing debt-limit negotiations, while the House will consider additional fiscal year 2012 funding measures. On Monday, the House will resume work on the FY2012 energy and water development appropriations bill (H.R. 2354). The version of the bill approved on June 15 by the House Appropriations Committee includes \$30.6 billion in funding – a full \$1 billion less than last year's funding level and \$5.9 billion less than President Obama's FY2012 budget request. That committee is scheduled to meet again on July 12 to mark up legislation making FY2012 appropriations for the Department of the Interior, the environment, and related agencies, with significant cuts expected. In the Natural Resources Committee, there will be a mark up of three bills, one of which is a bill to streamline the permitting process for renewable energy projects. The House is also scheduled to vote Monday on legislation that would repeal light bulb efficiency standards.

The Senate Energy Committee plans to hold a July 12 hearing on pending energy legislation, including S. 1108 to provide local communities with tools to make the permitting of solar projects more efficient. The committee also will hold hearings on the bills, S. 1160 and S.1142, to improve the administration of the Department of Energy and to promote the development of U.S. geothermal resources, respectively.

Congress

Barton Introduces Bill Targeting Efficiency Mandates

H.R. 2417, sponsored by Rep. Joe Barton (R-TX), would repeal a provision in the 2007 Energy Independence and Security Act of 2007 that contains efficiency standards for incandescent light bulbs set to begin in 2012. Beyond the federal repeal, the bill also would prevent state or local governments from passing any similar legislation. The leadership scheduled the bill to be considered on the House floor on Monday. The debate would operate under a suspension of the rules, and would limit debate to 40 minutes, prohibit amendments, and require a two-thirds vote for passage. Rep. Barton and the bill's proponents argue that the energy-efficiency standards contained in the Energy Independence Act would lead to a de facto ban on incandescent light bulbs and is one of the more egregious example excessive

government interference. On July 8, the Natural Resources Defense Council released a report arguing that the new standards would save a household an average of \$85 per year on electricity bills and prevent the need for about 30 new power plants via reduced energy usage. The Appliance Standards Awareness Project and the American Council for an Energy-Efficient Economy conducted the study.

Sensenbrenner Fears 15 Percent Ethanol Blend Effects on Engines

In a July 5 letter to the EPA, Rep. Jim Sensenbrenner (R-WI), vice chairman of the House Committee on Science, Space, and Technology, noted that automobile manufacturers fear ethanol blends in gasoline greater than 10 percent will damage the engines of newer vehicles, reduce fuel efficiency, and void warranties. Sensenbrenner argued that the decision to approve E15 for model year 2001 and newer vehicles should be voided owing to the fact that the agency was overly reliant on "narrow" testing by DoE that did not consider the effects on vehicle engines. The letter sought to find out whether EPA initially considered the effects of E15 on engines before granting two partial waivers allowing its use and whether vehicle performance will be impaired with the use of E15.

House Bill Seeks One-Year Hold On EPA Power Plant Emissions Rules

The \$27.5 billion FY2012 Interior, Environment and Related Agencies spending bill released by the House Appropriations Committee on July 6, would bar the EPA from promulgating rules to regulate GHG emitted from power plants, refineries, and other large stationary sources and could not enforce existing GHG permits it has issued for those sites for one year. The bill, which includes a broad array of riders that seek to strip authority and blocks funding for particular rules from the EPA and other environmental regulations, is scheduled for subcommittee markup July 7. The bill itself, and the riders in particular, are likely to face strong opposition from the Democratic-controlled Senate and the White House, and are thus likely to see significant adjustments before FY2012 begins Oct. 1. Congressional Republicans argue that recent climate-related regulations and a host of other environmental rules issued under the Obama administration are legally dubious and ultimately inimical to the economic recovery. Under the bill, the Obama administration would also have to submit a comprehensive report to both Appropriations Committees "describing in detail all federal agency funding, domestic and international, for climate change programs, projects and activities" for FY2011 and FY2012.

House Appropriators Seek to Cut Funding For EPA by 18 Percent in FY2012

On July 6, the House Appropriations Committee released the FY2012 Interior, Environment, and Related Agencies appropriations bill, including numerous policy riders, that would reduce the EPA's funding 18 percent to \$7.1 billion, 21% below Obama's request of \$8.97 billion and nearly half-a-billion dollars below the FY2006 EPA budget.

Senators Introduce Bill To End Ethanol Credit Immediately

On July 7, Senators Dianne Feinstein (D-CA), Amy Klobuchar (D-MN), and John Thune (R-SD) proposed a bill, amid much media fanfare, to divert \$1.3 billion of the money remaining for this year's ethanol tax break towards deficit reduction. The ethanol tax subsidies are currently scheduled to expire at the end of 2011, but it has been reported that they could be ended as early as July 31.

House Begins Debate on \$30.6 Billion Bill For Energy, Water Spending in Fiscal 2012

On July 8, the House began debate on a \$30.6 billion the 2012 Energy and Water Development Appropriations Act (H.R. 2354), and amendments to be offered to the legislation beginning July 11. The bill would fund the DoE with \$24.7 billion, 19 percent below President Obama's request of \$30.68 billion and 3 percent below the current fiscal year level of nearly \$25.6 billion. Reps. Paul Tonko (D-NY) and Charles Bass (R-NH) are expected to offer an amendment that would restore funding for the Energy Department's Weatherization Assistance Program, State Energy Program, and Building Technologies Program, to FY2011 levels. The amendment would increase weatherization funding from to \$174.3 million from \$33 million, State Energy Program funding to \$50 million from \$25 million, and Building Technologies Program funding to \$210.5 million from \$150 million. The bill would fund DoE's EERE at \$1.3 billion, a reduction from the current fiscal year spending of \$1.79 billion and nearly 60% below Obama's request of \$3.2 billion, but some amendments filed by Republicans, like that of Rep. Tom McClintock (R-CA), would reduce funding further. On July 7, McClintock filed several amendments,

one that would zero out funding for DoE's EERE office, Innovative Technology Loan Guarantee Program, Advanced Technology Vehicles Manufacturing Loan Program, and the Office of Science.

Cantor Cancels Recess Set for Week of July 18

On July 8, House Majority Leader Eric Cantor (R-VA) announced the cancellation of a planned week-long House recess slated for the week of July 18 in light of needed work on a potential debt-ceiling deal and to vote on a constitutional amendment requiring a balanced budget and certain tax limitations.

Carbon Capture Bill Costs 'Negligible,' Totaling \$329 Million by 2021, CBO Says

In a July 7 report, the CBO said that the Department of Energy Carbon Capture and Sequestration Program Amendments Act of 2011 (S. 699) to support large-scale carbon dioxide capture and storage projects would have a negligible impact on the federal budget, increasing net discretionary spending by \$68 million by 2016 and by \$329 million by 2021. The bill, approved by Senate Energy and Natural Resources Committee on May 26, sought to spur deployment of 10 commercial-scale projects at power plants and industrial facilities to capture and store carbon dioxide. CBO estimated that the bill would require the relatively minimal outlays of \$8 million in 2012; \$12 million in 2013; \$12 million in 2014; \$8 million in 2015; and \$28 million in 2016.

House DoD Authorization Removes Renewable Fuel Commitments

On July 8, The House passed the DoD authorization bill on a 336-87 vote, with provisions that blocked the implementation of Section 526 from the Energy Independence and Security Act of 2007. Section 526 mandated the DoD purchase a certain amount of renewable energy.

Upcoming Hearings

On Tuesday, the Senate Energy and Natural Resources committee will consider three bills: S. 1160, the Department of Energy Administrative Improvement Act of 2011; S. 1108, the 10 Million Solar Roofs Act of 2011; and S. 1142, the Geothermal Exploration and Technology Act of 2011.

On July 15 the House Natural Resources Committee will hold a hearing on offshore energy, which will focus on the Department of Interior's plans for offshore energy, revenue, and safety reorganization.

On Thursday, the Senate Energy and Natural Resources committee will hold a business meeting to consider pending legislation, and will distribute the short list of that legislation when it becomes available.

Administration

White House Praises Ethanol Subsidy Elimination

The White House had a generally positive response to the legislation introduced by Senators Dianne Feinstein (D-CA), Amy Klobuchar (D-MN), and John Thune (R-SD) aimed at eliminating ethanol subsidies. A White House press release stated, "We are encouraged by the bipartisan efforts in the Senate to find a responsible middle ground. ... [T]his deal provides a roadmap for the American biofuels industry to navigate their own future expansion — addressing infrastructure needs while supporting innovation for the next generations of biofuels."

Department of Energy

FERC, DOE Call for National Forum To Implement Demand-Response Programs

On July 5, FERC and DoE released a joint staff report, *Implementation Proposal for the National Action Plan on Demand Response*, calling for a national forum to jump start the development of demand-response programs intended to significantly reduce electricity usage during periods of high demand. Congress will receive the report as required by Section 529 of the Energy Independence and Security Act of 2007. The 24-page report outlines steps for the implementation of a national action plan promoting demand-response programs, involving federal and state regulators and the private sector. FERC estimated that demand response programs could reduce electricity consumption by 20% during peak periods.

Environmental Protection Agency

EPA Issues Final Guidance for Compatibility of Tanks and Ethanol, Biodiesel Blends

On July 5, EPA announced that a nationally recognized, independent testing laboratory is able to certify compliance by underground storage tank owners and operators with rules for storing ethanol and biodiesel blends. This new guidance applies to tanks and UST system components containing gasoline with more than 10% ethanol or diesel containing more than 20% biodiesel. The final guidance came the same day Rep. F. James Sensenbrenner (R-WI) told the EPA in a letter that automakers are afraid that ethanol blends of greater than 10 percent will damage the engines of newer vehicles, reduce fuel efficiency, and possibly void warranties.

Court Says EPA Endangerment Finding For Aircraft 'Compulsory Step' in Process

On July 5, the U.S. District Court for the District of Columbia won't dismiss a lawsuit seeking to compel the EPA to make an endangerment finding for GHG emissions from aircraft, saying the finding is a "compulsory step" in determining whether the emissions pose a threat to the environment. Judge Henry H. Kennedy Jr. said EPA's motion to dismiss could not be granted on the grounds that an endangerment finding for aircraft emissions is a "mandatory" step under Section 231 of the Clean Air Act for determining whether those emissions pose a threat. The environmental groups sued EPA in 2010, alleging the agency had failed to respond to petitions asking it to make an endangerment finding for aircraft, marine vessels, and other non-road engine GHG emissions within the 90 days required by the Clean Air Act.

EPA Sued on Agency Takeover Of GHG Permitting in Texas

On July 5, the Utility Air Regulatory Group filed a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit challenging the EPA's takeover of the Texas GHG permitting authority for industrial facilities. The lawsuit challenges a May 3 final rule that revises EPA's approval of Texas's implementation plan for the prevention of significant deterioration.

EPA Proposed Rule Would Set Standards For Nitrogen Oxides From Aircraft Engines

On July 6, EPA released a proposed rule setting nitrogen oxides emissions standards for gas turbine engines in aircraft. EPA claims the rule would reduce by 100,000 tons, between 2014 and 2030, the amount of nitrogen oxides emissions released during landing and take-off. These proposed standards apply to gas turbine engines with thrusts greater than 26.7 kilonewton – primarily commercial passenger and freight aircraft. EPA will accept comments on the proposed rule for the next 60 days.

Skepticism WH Will Issue New National Ozone Pollution Standards

After delaying its final decision three times, The White House is still yet to release ozone pollution standards. EPA officials are still publicly insisting a final decision will be announced this month. However, the agency has not yet sent a final rule to the OMB for interagency review, a process that can take months, particularly with such a major rule.

EPA Announces Pollution Crackdown

The EPA's announced the release of a new Cross-State Air Pollution Rule targeting smokestacks that carry soot and smog all over the country. Coal-burning power plants in 27 states will have to install new scrubbers to cut emissions. The agency claims this could prevent as many as 34,000 deaths and 15,000 nonfatal heart attacks every year.

Federal Energy Regulatory Commission

Entergy's Plan To Join Midwest Transmission Grid System Moves Ahead with FERC Order

On July 1, FERC issued an order affirming the claim by the Midwest Independent System Operator (MISO) that the terms of a joint operating agreement regarding the sharing of available transmission capacity with the neighboring Southwest Power Pool (SPP) must remain in effect even if Entergy Arkansas, an Entergy subsidiary, is successful in its plan to join MISO. Entergy, is now one step closer to integrating with a Midwest regional grid operator over the objections of the neighboring entity responsible

for grid management in the Southwest. The two regional grid operators have been competing for some time to persuade Entergy and its subsidiaries to become members of their respective grid operations.

FERC Approves Northeast Utilities Takeover Of NSTAR, as Utility Merger Trend Continues

On July 6, FERC approved the Connecticut-based Northeast Utilities', the largest electric utility in New England, proposed acquisition of NSTAR. Since the merger plan was announced in October, many state and local regulators have approved the plan, but approvals are still required from the Nuclear Regulatory Commission and the Massachusetts Department of Public Utilities. Northeast Utilities' takeover of NSTAR would create one of the largest electric utilities in the country, and the companies hope to conclude the transaction in the second half of 2011.

GAO

GAO: Higher Ethanol Blends Will Require Billions For Transportation Infrastructure

On July 8, the GAO released the report, *Biofuels: Challenges to the Transportation, Sale, and Use of Intermediate Ethanol Blends*, which highlights barriers to expanded use of E15 gasoline, up from E10 or gasoline with 10% ethanol, including infrastructure requirements to transport the fuel and pending safety regulations. The Energy Independence and Security Act of 2007 currently requires at least 36 billion gallons of ethanol or other renewable fuel in the nation's motor fuel supply by 2022. EPA has granted two partial Clean Air Act waivers approving E15 for model year 2001 and newer cars and light trucks.

Miscellaneous

WTO Panel to Review FIT Program in Ontario per Japanese Request

Japan is set to secure the establishment of a WTO dispute panel to rule whether Ontario's Feed-In Tariff (FIT) program aimed at encouraging the development of alternative energies violates global trade rules. The program, which was established under the 2009 Green Energy and Green Economy Act with the goal of helping Ontario phase out coal-fired electricity generation by 2014, boost the development of renewable energy technologies, and create new green jobs. A minimum amount of goods and services in solar and wind projects must originate in Ontario under the rules of the FIT. Wind projects, for example, that entered into commercial operation from 2009-2011 require at least 25 percent Ontario content, while projects entering into commercial operation in 2012 and later will require at least half of all the content comes from Ontario.

Germany's Upper House Approves Energy Package with 2022 Nuclear Phaseout

On July 8, Germany's upper house of Parliament approved a package of energy legislation, to be amended in August, that would phase out all the country's nuclear reactors by 2022. The legislation was overwhelmingly approved June 30 by the lower house of Parliament, and also authorizes subsidies for wind energy and power grid expansion. The legislation would keep the country's eight oldest reactors offline, shut an additional six by 2021, keep three in reserve until 2022, and reverse a law that took effect January 1 designed to extend nuclear power to 2036.

CA Proposes Changes to Emissions Trading Program. Compliance Period Delay

On July 7, the California Air Resources Board released proposed changes to the state's planned emissions trading program aimed at clarifying issues involving allowances, market oversight, enforcement, and offsets. CARB is also recommending that certain elements of the trading program begin in January 2012 as planned, but that compliance obligations begin one year later than originally proposed. CARB sought to bring its mandatory GHG emissions reporting into alignment with the Environmental Protection Agency's greenhouse gas reporting regulation as well as the proposed changes to the state's trading program rules. CARB has scheduled a July 15 workshop in Sacramento to discuss the proposed revisions, and a formal public comment and review period will follow later this summer.

EU Judges Hear U.S. Airlines' Worries About Inclusion in Emissions Trading

On July 5, lawyers for EU member states and the bloc's institutions told the Court of Justice of the European Union that the inclusion of U.S. airlines in the European Union's Emissions Trading System (ETS) is legal. The Transport Association of America, American Airlines, Continental Airlines, and United

Airlines brought the suit arguing that they should be exempted from an EU law requiring all aviation operators arriving in, or departing from, the EU to participate in the ETS starting in January 2012. By October 6, the court will publish a preliminary opinion on the case, with the final judgment likely coming in spring or summer 2012. This is a significant test for the ETS and the European Union's ability to extend climate change laws beyond its borders, treating non-EU competitors the same as EU companies.

EU Parliament Rejects Call for Deeper GHG Emissions Cut

On July 5, the EU Parliament rejected, by a vote of 347 to 258, a resolution calling for tougher GHG emissions reduction targets for the EU. The resolution proposed the EU cut its GHG emissions 25% from 1990 levels by 2020 through internal reductions, with an overall reduction target of 30% through purchases of offsets from projects in developing countries. The current EU emissions reduction target is a 20% cut from 1990 levels by 2020.

CRS Finds VEETC Unlikely to See Extension

On July 5, a Congressional Research Service report summarized the federal programs and policies in place for ethanol, biodiesel, and other biofuels, and ultimately said the extension of several key tax incentives through last December's Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (Pub. L. No. 111-312) was likely the last instance of tax-based support for these programs. The CRS report claimed that, "support for extending some or all of these tax incentives beyond 2011 may be limited." The CRS report's findings are a stark departure from their February 2010 assessment, which noted that congressional interest then existed for extending tax credits for biofuels.

October 1-7 Climate Talks to be Held in Panama; Focus on Post-2012 Efforts

Panama City, Panama, will host a series of U.N. climate change negotiations from October 1-7, which will mark the final official meetings before the year-end Conference of the Parties summit in Durban, South Africa. The Panama City summit will focus on language in the two main tracks that calling for a final Durban agreement. The areas for the easiest agreement include forestry incentives, technology transfer, oversight of the Green Fund to help poorer countries, and the possibility of adding new financial mechanisms to help with adaptation and mitigation.

Environmentalists Appeal Dismissal Of Their Challenge to Sunrise Transmission Project

On July 6, a coalition of organizations appealed the July 1st U.S. District Court for the Southern District of California's dismissal of their challenge to the Sunrise Powerlink Transmission Project permitting process. The groups, community and environmental organizations, took issue with the environmental permitting process as overseen by the Bureau of Land Management (BLM) and U.S. Fish and Wildlife Service (FWS) and cited violations of the National Environmental Policy Act, Federal Land Policy Management Act, and National Historic Preservation Act, among others.

EU Commission Seeks Guidance on Future of Air Quality Legislation

As the first step in a general review expected to result in legislative proposals in 2013, the EU Commission is seeking comments on the European Union's air quality laws through Sept. 30. Comments are sought on several different areas, including public and professional awareness of EU air quality legislation, the strengths and weaknesses of current laws, and implementation by national governments of laws agreed to at the EU level.

EU's New Passenger Car Fleet Achieves Drop in Average Carbon Emissions in 2010

In a June 29 report, the European Environment Agency declared that passenger cars sold in the European Union are emitting on average 3.7% less carbon dioxide per kilometer in 2010 than they were in 2009. The report cited fuel efficiency improvements and the increasing share of the EU car market being taken by diesel vehicles (which have lower emissions than traditionally powered vehicles) as the primary drivers of this success.