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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 22, 2012**

Energy and Climate Debate

As the House and Senate fill their legislative schedules between now and the August congressional recess, energy issues continue to play a major role in political debates both in and outside of the beltway.

Senate Energy and Natural Resources Committee Chairman Jeff Bingaman (D-NM) said during a July 17 committee hearing that he plans to offer his legislation (S. 1342) to strengthen the country's electric grid from cybersecurity threats as an amendment to broader cybersecurity legislation that may come to the Senate floor before the August recess. The Grid Cyber Security Act would authorize the Federal Energy Regulatory Commission to establish deadlines for issuing new standards, grant the secretary of Energy emergency authority to deal with imminent cybersecurity threats to the grid; and give the North American Electric Reliability Corporation a more significant role in enforcing standards. The Senate is also expected to consider legislation to extend Bush-era tax cuts before the August recess. Fiscal year 2013 appropriations bills are likely to be on hold until senators return from recess in early September.

This week specifically, the Senate will begin deliberations on Republican and Democratic tax cut provisions. The Republican bill (S. 3414), from Senate Minority Leader Mitch McConnell (R-KY), would extend the Bush era tax cuts, while Senate Majority Leader Harry Reid's (D-NV) version (S. 3412), would extend cuts only to households making less than \$250,000.

House Majority Leader Eric Cantor (R-VA) released a list July 18 of legislation it will take up in the two weeks before the August recess, which runs from August 4 through September 9. During that two-week period, the House will take up tax-related legislation and a moratorium on new regulations, but the majority leader made no mention of the 2012 farm bill (H.R. 6083). Should the House not soon pass their version of the farm bill, House and Senate negotiators will have little time to craft a compromise before the current law expires September 30.

House Republican leaders have packaged together seven bills (H.R. 373, 1840, 2308, 3862, 4078, 4377, and 4607) that could either halt regulations or otherwise revamp the regulatory process for consideration on the House floor this week. The package, the Red Tape Reduction and Small Business Job Creation Act, includes a moratorium targeting all pending rules that could impact the economy and a proposal to prevent presidents from issuing midnight regulations.

The House will also begin evaluating an offshore drilling bill (H.R. 6082) that cleared the House Natural Resources Committee July 18 on a vote of 24-17. An alternative to President Obama's 2012-2017 oil and natural gas lease sale plan, the measure would allow 29 oil and gas offshore lease sales over the next

five years; 15 of the draft's authorized lease sales are included in the Administration's five-year plan. The other 14 would be combined into a multisale environmental impact statement.

On the Administration front, though a series of Environmental Protection Agency developments occurred last week, as outlined below, the agency completed most of its controversial rules months ago, and is now delaying and killing others until November or later, while preparing to release relatively popular regulations before the elections.

Congress

Alternative Offshore Drilling Proposal

The House Natural Resources Committee approved July 18 legislation, 24-17, replacing the Interior Department's proposed five-year offshore drilling strategy with one that opens up more of the Gulf of Mexico and waters off Alaska and allows leasing along the East and West Coasts.

Coal Ash Rule Cooperation

Representative Ed Markey (D-MA) sent a letter to Interior Secretary Ken Salazar July 18 asking him to push the department to work closely with the Environmental Protection Agency to develop a rule on the disposal of coal ash. Representative Markey asked for copies of a significant number of documents and analytical explanations from the department concerning work on the proposed rule, records of coal ash disposal in mines, and other policies and data.

Abound Solar Bankruptcy

Officials from Abound Solar Manufacturing told the House Oversight and Government Reform Subcommittee on Regulatory Affairs, Stimulus Oversight, and Government Spending July 18 that inexpensive solar panel imports from China led the manufacturer to file for bankruptcy July 2 after receiving a Department of Energy loan guarantee. The company had drawn down \$70 million of the \$400 million loan guarantee.

Cape Wind Safety Determination Questioned

Representatives Darrell Issa (R-CA) and John Mica (R-FL) sent a letter July 17 to the Federal Aviation Administration finding that its determination that a proposed wind farm off the Massachusetts coast would not interfere with air travel may have been based on political considerations rather than safety. The administration is currently conducting an aeronautical study on the Cape Wind project and plans to make a determination soon.

Energy and Commerce Schedule

House Energy and Commerce Committee Chairman Fred Upton (R-MI) said in a July 16 progress report prepared for committee Republicans that the committee will work to further streamline energy project permitting during the remaining weeks of the 112th Congress. The committee will also continue to push for what Representative Upton called less burdensome Environmental Protection Agency regulations, a permanent solution for nuclear waste storage, hazardous waste shipment electronic data reporting, and approval of the northern segment of the Keystone XL pipeline.

Ozone-Depleting Substance Legislation

The House Energy and Commerce Subcommittee on Energy and Power voted July 19 in favor of legislation that would increase the use of methyl bromide, a fumigant found to deplete the stratospheric ozone layer, and that would allow the sale of existing inventories of Primatene® Mist, an over-the-counter epinephrine inhaler that has been unavailable since January as part of a phase out of products containing ozone-depleting chlorofluorocarbons. The draft bills will be formally introduced this week.

Sufficient Cellulosic Biofuel Unavailable

Representative Jim Sensenbrenner (R-WI) sent a letter July 19 to the Environmental Protection Agency saying that the agency is required to reduce requirements for petroleum refiners and importers to blend cellulosic biofuels into gasoline if a sufficient amount of the biofuel is unavailable. Petroleum refiners and importers are being penalized for their failure to purchase a fuel that is not available in the quantities

required by the agency under the Energy Independence and Security Act of 2007. Congressmen Sensenbrenner asked the agency to respond by August 17.

DOD Appropriations Bill

The House passed the fiscal year 2013 Department of Defense appropriations bill (H.R. 5956) by a 326-90 vote on July 19. The bill offers \$518.1 billion in non-war defense spending; \$12 billion less than the amount originally approved last year, but the same amount stipulated in the FY 2012 omnibus spending bill signed by President Obama last December. In the unlikely event that the bill passes the Senate in its current form, President Obama is likely to veto it because it surpasses the base budget amount established in the Budget Control Act by about \$2 billion.

House Adopts Military High-Carbon Fuel Legislation

The House passed an amendment to the 2013 Defense Appropriations bill (H.R. 5856) that would nullify a section of the Energy Independence and Security Act of 2007 that bars federal agencies from buying transportation fuels with greater life-cycle greenhouse gas emissions than traditional fuels. The Senate Appropriations Committee intends to mark up its yet-to-be-released version of the bill before the August congressional recess.

Legislation Introduced

Senators Dan Coats (R-IN) and David Vitter (R-LA) introduced legislation (S. 3404) July 19 to establish within the Department of Energy an Office of Federal Energy Production.

The same day, Senator Mike Johanns (R-NE) introduced legislation (S. 3408) to prohibit the Secretary of Energy from enforcing regulations pertaining to certain battery chargers.

Representative Paul Gosar (R-AZ) introduced legislation (H.R. 6154) to promote the development of renewable energy on public lands.

Upcoming Hearings

The Senate Energy and Natural Resources Committee will meet July 24 to consider the opportunities for, current level of investment in, and barriers to the expanded use of natural gas as a transportation fuel. Witnesses include the Honorable Dave McCurdy, president and CEO, American Gas Association; Dr. Michael Gallagher, senior advisor, Westport Innovations; Reg Modlin, director of regulatory affairs, Chrysler Group; Dr. David Greene, corporate fellow, Oak Ridge National Laboratory; and Paul Cicio, president, Industrial Energy Consumers of America.

The House Energy and Commerce Subcommittee on Environment and the Economy and Subcommittee on Energy and Power will convene for a July 24 joint hearing on the Nuclear Regulatory Commission's policy and governance oversight.

The House Energy and Commerce Subcommittee on Energy and Power plans to mark up the No More Solyndras Act, legislation designed to phase out the Department of Energy's loan guarantee program, on July 24-25.

The Senate Energy and Natural Resources Subcommittee on Water and Power will hold a hearing July 25 to examine the role of water use efficiency and its impact on energy use. Witnesses include Henry Green, president, National Institute of Building Sciences; Daniel Bena, senior director of global sustainable development, PepsiCo; GP Russ Chaney, CEO, The IAPMO Group; and Mary Ann Dickinson, president and CEO, Alliance for Water Efficiency.

The House Natural Resources Committee will hold a hearing July 25 to consider an Interior Department report that was used to justify a moratorium on offshore drilling permits. Steve Black, counselor to Interior Secretary Ken Salazar; Neal Kemkar, White House Council on Environmental Quality deailee; Mary Katherine Ishee, senior advisor with the Surface Mining, Reclamation and Enforcement office; Walter Cruickshank, Bureau of Ocean Energy Management Deputy Director; and Kallie Hanley, senior advisor for the assistant secretary of the department's Interior Affairs office have been invited to testify.

The Senate Environment and Public Works Committee will hold a climate science hearing August 1.

Administration

Manufacturing Strategy

The President's Council of Advisors on Science and Technology released a report July 17 that recommends encouraging domestic manufacturing by aggressively promoting research and development for low-carbon technology, extending backing for renewable energy and energy storage research, and offering incentives for energy efficiency and conservation.

CAFE Standards

The White House announced last week that it is reviewing an Environmental Protection Agency and National Highway Traffic Safety Administration final rule that would increase the fuel economy requirement for cars and light-duty trucks to a combined 54.5 miles per gallon by 2025 and establish more stringent greenhouse gas emissions standards. The agencies sent the final rule to the Office of Management and Budget July 16 and are expected to release the rule by the end of the summer.

Department of Defense

Western Coal Exports

The U.S. Army Corps of Engineers announced July 13 that it is requiring an environmental impact statement on a proposed coal-export terminal near the mouth of the Columbia River. The Millennium Bulk Terminal is one of six projects proposed in Oregon and Washington that could more than double domestic coal exports if all six begin operations. The proposals would bring coal by rail and barge from Wyoming and Montana's Powder River Basin to Northwest ports for shipment to Asian markets.

Department of Energy

\$2.4 Million for Hydrogen Infrastructure

The Department of Energy announced July 18 a \$2.4 million investment to collect and analyze performance data for hydrogen fueling stations and advanced refueling components. Five projects in California, Illinois, and Connecticut will track the performance and technical progress of innovative refueling systems at planned or existing hydrogen fueling stations to find ways to reduce costs and improve operation.

Efficient Buildings Award

The Department of Energy began accepting nominations July 20 for its 2013 Better Buildings Federal Award. The award recognizes the federal government's highest-performing buildings during a year-long competition to achieve the greatest reduction in annual energy intensity. The nomination process will be open through September 7, with a winner announced late next year.

\$2.6 Million for Wind Testing

The Department of Energy, Sandia National Laboratories, and Texas Tech University broke ground July 17 on a new state of the art wind turbine test facility in Lubbock, Texas. Supported by a \$2.6 million investment from the department's Office of Energy Efficiency and Renewable Energy, the Scaled Wind Farm Technology facility will be the first public facility of its kind to use multiple wind turbines to measure how they interact with one another in a farm; it will begin operation later this year.

Department of State

Tar Sands Climate Impact

Ten climate scientists released a letter July 17 to Secretary of State Hilary Clinton urging the State Department to consider the effects on the planet's climate of opening Canada's tar sands to exploitation as it reviews the Keystone XL Pipeline.

Department of Treasury

\$658 Million in Tax Credits Available for Clean Coal Projects

The Internal Revenue Service announced July 20 that \$658.5 million in investment tax credits are available for Section 48A Phase III clean coal projects. The deadlines for the Departments of Energy and Treasury portions of the application are October 15, 2012 and February 15, 2013 respectively. Companies who wish to qualify for the program must meet certain standards regarding emission levels and removal of pollutants.

Environmental Protection Agency

Mercury Rule Reconsideration

The Environmental Protection Agency agreed July 20 to reconsider the mercury and air toxics standards it set for new power plants. The Institute of Clean Air Companies, the International Brotherhood of Boilermakers, and others have asked the agency to reconsider mercury limits for new sources because current technology cannot continuously monitor mercury concentrations so low. The agency will not reconsider aspects of the rule pertaining to existing power plants. Deferring emissions standards for three months, the agency will make a final determination by next March.

SO2 Ruling

The U.S. Court of Appeals for the District of Columbia Circuit ruled July 20 to uphold the Environmental Protection Agency's sulfur dioxide air quality standard. Rejecting challenges by state and industry groups to the SO2 rule, the court ruled that the agency can not set an air quality standard at a level that is higher than is protective of public health, but that setting a lower standard that is requisite to protect the public health is within the agency's authority.

Environmental Groups Call for Standards Update

The Environmental Integrity Project and Earthjustice issued a notice of intent July 18 to sue the Environmental Protection Agency for its failure to review the toxic air pollution emissions standards for petroleum refineries as required by the Clean Air Act. The environmental groups charge that the agency has missed the statutory deadline to review and revise national emissions standards for hazardous air pollutants for petroleum refineries and their catalytic cracking units, catalytic reforming units, and sulfur recovery units as required every eight years by the Clean Air Act. The groups released a second notice claiming that the agency is overdue to review the emissions factors it uses to estimate emissions of carbon monoxide, volatile organic compounds, and nitrogen oxides from flares, storage tanks, and wastewater treatment systems as required every three years under the Clean Air Act.

Fine Particulate Matter Standard Changes

According to documents released last week, the Environmental Protection Agency intended to propose an air quality standard for fine particulate matter of 12 micrograms per cubic meter of air, but that the White House Office of Management and Budget changed the proposal to be in a range between 12 and 13 $\mu\text{g}/\text{m}^3$ during interagency review. The current annual primary national ambient air quality standard for fine particulate matter is 15 $\mu\text{g}/\text{m}^3$. The less stringent standard would be less costly but carry fewer health benefits. Comments are due August 31, and the final rule is due December 14.

Court Dismisses Ethanol Exemption Challenge

The U.S. Court of Appeals for the District of Columbia Circuit dismissed a lawsuit brought by several meat industry groups who challenged an Environmental Protection Agency rule. The rule exempts producers from a requirement that gas and biomass-powered ethanol plants built between 2008 and 2009 demonstrate that their fuels have 20 percent fewer lifecycle greenhouse gas emissions than petroleum based fuels. The meat industry groups claimed that the rule would incentivize corn producers to reserve more of their output for ethanol production and, consequently, drive up feed prices.

Federal Energy Regulatory Commission

Hydro Regulations Clarified

The Federal Energy Regulatory Commission and the Interior Department's Bureau of Ocean Energy Management revised federal guidelines July 19 to clarify the regulatory process and hasten development of marine and hydrokinetic projects. The new guidelines replace others issued by the Minerals Management Service and the commission as part of a 2009 memorandum of understanding that sorted out their jurisdictional authority over projects. Industry representatives are cautioning that the guidelines for developers of wave, tidal, and ocean-current energy projects on the Outer Continental Shelf will likely do little to help the nascent industry. The Energy Department's water power program was appropriated \$58 million in 2012, but the funding has been spent mostly on theoretical studies. Industry studies indicate that the technologies may provide 10 percent of the country's electricity.

SPA Fine Approved

The Federal Energy Regulatory Commission unanimously approved July 19 a \$19,500 fine penalty that the North American Electric Reliability Corporation had imposed against the Department of Energy's Southwestern Power Administration last year for violating reliability standards. Though the agency acknowledges the four violations, it has been working to have the penalty dismissed because the administration is part of the federal government. The decision is still subject to rehearing and potentially a series of court challenges.

FERC Order Allows NERC Penalty

The Federal Energy Regulatory Commission approved a final rule July 19 that updates standards for business practices governing interstate natural gas pipelines, including standards aimed at improving coordination between pipelines and electric utilities. The new rule comes shortly before a series of commission natural gas-electric market coordination conferences next month, incorporates the latest version of business practice standards adopted by the North American Energy Standards Board.

States

NE Keystone XL Feedback

The Nebraska Department of Environmental Quality announced July 16 that it has provided an initial feedback report to TransCanada Corp. concerning a possible new route for the proposed Keystone XL Pipeline, and has found that the route meets the state's intention to avoid the environmentally sensitive Sand Hills region. The new route still crosses areas with similarly fragile, sandy soils as well as areas with thin unconfined aquifers; the state asks TransCanada to consider route variation to avoid these areas.

CA GHG Plan Considered

The Metropolitan Transportation Commission and Association of Bay Area Governments considered July 19 a regional transit and environmental strategy to meet state greenhouse gas reduction requirements, including potential fees or taxes based on miles driven. The plan, which will be adopted by next April, will be part of the sustainable communities strategy required under 2008 legislation (S.B. 375) to integrate transportation, land use, housing, and environmental planning with the state's climate policies. Forty percent of the area's GHG emissions are mobile-related. The targets are scheduled to reduce emissions from 2005 levels by 7 percent in 2020 and 15 percent in 2035.

NM Atmospheric Trust Case Proceeds

Judge Sarah Singleton of the New Mexico District Court allowed a climate change lawsuit against the state to move forward July 14. Contrary to a similar case in Texas District Court just days prior, she denied defendants' motion to dismiss and allowed the atmospheric trust case to proceed on its merits.

CA High Speed Rail

California Governor Jerry Brown (D) signed legislation (S.B. 1029) July 18 authorizing \$6.2 billion in funding for the first segment of construction on the state's high speed rail project. The bill amends the Budget Act of 2012 to provide funding for construction on the Merced to Fresno segment and appropriates money for regional transit upgrades intended to improve integration with the high-speed rail system.

International

APEC to Update Environmental Framework

During a meeting in Khabarovsk, Russia, July 18, environmental officials from Asia Pacific Economic Cooperation countries agreed on a statement on environmental cooperation and protection that addresses green growth, climate change, and cross-boundary air pollution. The document, which names species extinction, deforestation, natural resources depletion, ocean and atmospheric pollution, unsustainable consumption, global climate change, and fresh water supply as key issues, is expected to be adopted in the ministerial meeting in Vladivostok in September.

GHG Overlap from Oil Sands, Normal Crude

Researchers from the Universities of Calgary and Toronto released a report July 13 finding that perceptions that production of transportation fuels from the Alberta oil sands is more greenhouse gas intensive than production from conventional crude are supported by new research, although the opposite can also be true. They found that emissions for both types of production vary widely, depending on individual project operating conditions, technology used, and other factors.

Record High Global CO₂ Emissions

The European Commission's Joint Research Center and the Dutch Environmental Assessment Agency published a report July 18 concluding that global carbon dioxide emissions increased by 3 percent in 2011 to record levels, principally driven by rises in China. The report, *The Trends in Global CO₂ Emissions: 2012 Report*, showed that worldwide energy-consumption-related emissions in 2011 were 34 billion metric tons, up from 33 billion in 2010. Chinese per-capita emissions stand at 7.2 metric tons, only slightly less than the European Union level of 7.5 metric tons, and ahead of a number of EU countries, now produce 29 percent of global emissions.

EU Sequestration

The European Commission published a report July 12 finding that European Union countries that want to host large-scale carbon sequestration or renewable energy projects under a program partly funded by the sale of EU carbon allowances should confirm their backing by the end of September. The NER300 program will involve the sale of 300 million carbon allowances, covering up to 50 percent of project costs, from a reserve for new entrants into the European Union's Emissions Trading System.

Minimal Canadian Biodiesel Risks

Health Canada released an assessment July 14 in the *Canada Gazette* concluding that the production, distribution, storage, and use of biodiesel fuels pose no greater environmental or human health risks or benefits than conventional ultralow-sulfur diesel fuels. Through amendments to the Renewable Fuels Regulations effective last July, the government imposed a 2 percent renewable content requirement on diesel and heating oil.

Canadian Kyoto Withdrawal OK'd

The Federal Court of Canada ruled July 17 that the Canadian government's decision to withdraw from the Kyoto Protocol is not subject to review by the courts, as the executive branch has exclusive powers to conclude or withdraw from treaties.

Eco-Label Mutual Recognition

South Korea's Ministry of Environment announced July 17 that it has added the United States and Canada to its growing list of mutual recognition agreements for sharing jurisdiction over environment-friendly product certification. The ministry said that the Korea Environmental Industry and Technology Institute, which oversees the country's Eco-Label certification program, has agreed with Green Seal of the United States and EcoLogo to extend recognition of green product certification to one another's export products.

China Investigating Solar Imports

The Chinese Ministry of Commerce announced July 20 that it will investigate solar imports from the United States and South Korea. China will specifically look at solar-grade polysilicon, the raw material used to construct some types of solar panels and a major chunk of U.S. solar imports to China.

Miscellaneous

Low Carbon Standard Reports

The National Low Carbon Fuel Standard Project, a collaboration by Oak Ridge National Laboratory, the University of California at Davis, the University of Illinois at Urbana-Champaign, the University of Maine, Carnegie Mellon University, and the International Food Policy Research Institute released a report, *National Low Carbon Fuel Standard: Technical Analysis Report*, July 19 finding that a national low-carbon fuel standard along with the congressionally mandated renewable fuel standard would reduce emissions by 4.5 percent, over 3 percentage points more than just the renewable fuel requirements alone. A second report, *National Low Carbon Fuel Standard: Policy Design Recommendations*, which details how the national program could be implemented, recommended a low-carbon fuel standard that would reduce the carbon intensity of fuels by 10 to 15 percent by 2030.

Alternative Fuel Vehicles Embraced

During a July 17 American Council on Renewable Energy forum, General Motors' manager of vehicle fuels and advanced technology said that petroleum's role as the dominant source of transportation fuel is coming to an end as vehicle manufacturers begin to embrace alternative fuel vehicles. He said that the company is focusing on fuel efficiency improvements for traditional vehicles as well as biofuels. The same day during a House Energy and Commerce Subcommittee on Energy and Power, Howard Gruenspecht, the deputy administrator of the Energy Information Administration, said that petroleum products provided about 93 percent of total transportation energy in 2010, with gasoline accounting for 92 percent of passenger cars and light-duty trucks.

Americans Favor Shift Away from Oil Consumption

The Consumer Federation of America released a poll July 16 concluding that 74 percent of poll respondents said setting higher fuel economy standards for vehicles is a good idea, with 66 percent saying they support the standard even if it increases vehicle prices. The poll, *A Key Step to Ending America's Oil Addiction: Policymakers, Consumers, and Automakers are Shifting New Vehicles to Higher Fuel Economy*, found broad support for efforts to reduce domestic oil consumption.

Apple to Relist with EPEAT

Apple announced July 13 that it will relist its products to the Electronics Product Environmental Assessment Tool, calling its June decision to remove the products a mistake. Developed in part by a grant from the Environmental Protection Agency to the Zero Waste Alliance, EPEAT is an environmental rating system that lists more than 2,800 products from 48 different manufacturers. The Obama administration directed the General Services Administration last July to remove all products not certified by EPEAT or Energy Star from government IT contracts.

Nationwide Doesn't Cover Fracking Damage

Nationwide Insurance company said last week that, like most others, it does not cover damage from fracking in its standard homeowners' policies and never has. The company clarified its coverage policies because of a mischaracterization on social media sites that the company was changing its stance.

LEED Concerns

A group of 27 organizations led by the American Chemistry Council, the U.S. Chamber of Commerce, and the National Association of Manufacturers formed a coalition July 18 to promote green building ratings systems as an alternative to the U.S. Green Building Council's Leadership in Energy and Environmental Design rating system. The American High-Performance Buildings Coalition objects to the next version of LEED, finding that proposed new credits would stigmatize certain building products. LEEDv4 is scheduled to come out in 2013; it was slated to be issued this year, but was delayed due to industry concerns. The coalition is concerned about the General Services Administration's continued use of LEED as the primary federal green building standard, positing that it creates a monopoly among green building rating systems. The agency is scheduled to issue a decision this fall on whether it will continue using LEED.