



**ML**  
STRATEGIES

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

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

## **ENERGY AND ENVIRONMENT UPDATE** **July 5, 2011**

### **Energy and Climate Debate**

The debt ceiling and budget continue to dominate the agenda in Washington, with everything else coming in a distant second. The ethanol industry is attracting much negative attention on the Hill as deficit hawks see it as an easy cut in budget negotiations. The EPA is poised to publish what is being dubbed the “transport rule” this week which would regulate GHG emissions in Eastern states that might migrate to other states. A rupture in a Montana oil pipeline, discovered over the weekend to have leaked 1,000 barrels of oil into the Yellowstone River, could have implications for multiple pieces of energy legislation, but again, everything at the moment is subsumed by deficit and budget issues.

The House returns from a week-long recess to resume consideration of fiscal year 2012 appropriations legislation during the July 5 week, while the Senate is scheduled to continue consideration of a resolution related to the ongoing military operation in Libya.

The House is scheduled to meet July 6 to continue on the Department of Defense Appropriations Act of 2012 (H.R. 2219). Next, the House leadership plans to bring up the energy and water development appropriations bill (H.R. 2354) for debate, probably by July 7. The legislation includes \$30.6 billion in funding, which is about \$1 billion lower than last year’s level and \$5.9 billion under Obama’s budget request.

The Senate had been scheduled to take a week-long recess in observance of the July 4 holiday. However, Sen. Majority Leader Harry Reid (D-NV) announced June 30 that the Senate will be in session starting July 5, in order to resume negotiations on deficit reduction and raising the debt limit.

### **Congress**

#### **Senators Close to Striking Deal to Reform Federal Support of Ethanol**

While no agreement has been set, farm-state senators are close to striking a deal to reform federal support of ethanol. Though, it remains unclear which legislative vehicle the measure will be attached to. That uncertainty has ethanol proponents racing against the clock. The tentative deal would divert the remaining \$2.5 billion of subsidy money toward the debt and energy infrastructure.

#### **Senate Democrats Seek VEETC Repeal in Deficit Reduction; GOP Ambivalent**

Senate Democrats renewed calls to repeal the Volumetric Ethanol Excise Tax Credit, or VEETC, as part of a deficit reduction deal. The Republican leadership has remained steadfastly opposed to eliminating any and all tax incentives, despite many GOP members expressing support for the repeal. Sen. Tom

Coburn (R-OK), one of the Senate's leading proponents of repealing the VEETC, has estimated a \$6 billion per year cost for the subsidy, set to expire at the end of 2011. Meanwhile, Senator Amy Klobuchar (D-MN) and fellow Senate negotiator John Thune (R-SD) authored a bill (S. 1185), which seeks a repeal of the VEETC, but includes language extending a contentious \$1.01-per-gallon tax credit for cellulosic biofuels and an expansion of that tax credit to algae-based biofuels.

#### Lugar Re-launches "Practical" Energy Plan

Senator Dick Lugar (R-IN) re-launched his Practical Energy Plan of 2011 through Facebook on June 30. Lugar's plan is summarized as: "Save Money. Drop Foreign Oil." The Bipartisan Policy Center's Energy Project chairmen, former Senator Trent Lott (R-MS) and General James L. Jones lauded the "practical" energy plan, saying the plan will increase domestic oil and gas production, improve efficiency for the auto fleet and manufacturing, and will strengthen investment in the energy infrastructure.

#### Boiler Bill to be Introduced

A bipartisan group of senators including Mark Pryor (D-AR) and Susan Collins (R-ME) are planning on introducing legislation delaying EPA's boiler air pollution standards despite the agency's release of the timeline last week. Collins has led the efforts, evidenced by a February letter.

#### Bingaman-Murkowski Impasse on Clean Energy Standard (CES)

The Senate Energy and Natural Resources Committee Sens. Jeff Bingaman (D-NM), the committee's chairman, and Lisa Murkowski (R-AK), the ranking Republican, are stalled in their effort to introduce CES legislation. The largest fundamental disagreement between Murkowski and Bingaman involves whether a CES would substitute or be dependent upon the EPA's authority over regulating GHG emissions. However, that is not the sole issue of contention, the Senators are also having a difficult time deciding which energy technologies would get credit and how much credit they would get. Senator Bingaman is reportedly "considering his options," which might entail the introduction of a bill without Murkowski's support. Stripping the EPA of the authority to regulate GHG emissions is widely held to be vital to gaining Republican support for a bill, but Bingaman's unwillingness to negotiate on the issue is unlikely to change. The committee may hold a series of listening sessions or hearings to get additional information on the measure, but at the moment both staffs are reporting a deadlock.

#### Murkowski Legislation Proposes Interim Disposal Sites

In response to the Obama administration's decision to shut down the Yucca Mountain nuclear waste repository project, Sen. Lisa Murkowski (R-AK) and Sen. Mary Landrieu (D-LA) introduced the Nuclear Fuel Storage Act (S. 1320) that would establish temporary storage sites for spent nuclear, end lawsuits against the federal government, and give the domestic nuclear industry guidance on the problem of storing used nuclear fuel. Introduced June 30, the legislation would provide access to local governments to federal funding for temporary storage sites until a long-term nuclear waste storage solution is devised at the federal level.

#### Lugar Bill Would Increase Efficiency and Cut Oil Imports

Sen. Dick Lugar (R-IN) introduced The Practical Energy Plan Act of 2011 (S. 1321) on June 30<sup>th</sup> that calls for increased domestic oil production, the codification of fuel efficiency targets for motor vehicles, incentives for alternative fuels, among other things, with the goal of halving foreign oil imports by 2030. The bill would also require that all new federal buildings meet or surpass national model energy efficiency codes, would help rural homeowners and businesses with energy-efficiency retrofits by creating a low-interest loan program to assist, and would require medium and heavy-duty trucks to meet fuel efficiency standards by 2017 that would be revised very four years thereafter. The legislation's most progressive provision would grant DoD contracting authority for alternative fuels and the capacity to form public-private partnerships in the name of fuel efficiency.

#### Legislation Introduced

Senators Herb Kohl (D-WI) and Roy Blunt (R-MO) introduced a bill (S. 1285.) to the Finance Committee to amend the Internal Revenue Code of 1986 to extend and modify the credit for new qualified hybrid motor vehicles, and for other purposes.

Senators Klobuchar (D-MN) and Johnson (D-SD) introduced a bill (S. 1291.) to the Finance Committee to amend the Internal Revenue Code of 1986 to provide a renewable electricity integration credit for a utility that purchases or produces renewable power.

Senator Patrick Toomey (R-PA) introduced a bill (S. 1292.) to require the Administrator of the EPA to consider the impact on employment levels and economic activity prior to issuing a regulation, policy statement, guidance document, endangerment finding, or other requirement, implementing any new or substantially altered program, or denying any permit.

## **Administration**

### Administration's "Better Building Initiative" Receives Boost

On June 30 fourteen partners decided to help launch President Obama's Better Buildings Initiative, which the president announced in February. Over 260 million square feet of building space will be retrofitted by the five companies. Also, six financial partners and the cities of Atlanta, Seattle and Los Angeles will be participating.

### White House Initiative to Help Expand Energy-Efficient Building Retrofitting

Building on the administration's proposal to retrofit commercial buildings with energy efficient technologies, the Obama Administration unveiled June 30 a similar initiative, "Better Buildings Challenge," that will solicit large-scale, green building commitments, and provide financing and technical assistance. This public-private partnership is the offspring of the administration's "Better Buildings Initiative." The "Better Buildings Challenge" seeks to help make commercial buildings 20 percent more efficient over the next decade, saving \$40 billion annually in energy costs and creating 114,000 jobs over two years. The "Better Buildings Challenge" received commitments from eleven corporations and three cities to retrofit millions of square feet of industry and government space with energy-efficient technologies. The cities include: Atlanta, Los Angeles, and Seattle. In addition, the program has secured \$575 million in financing for the proposed retrofits and has received commitments from companies for green technology retrofits.

## **Department of Energy**

### Loan Guarantees awarded for PV Projects

The Department of Energy offered \$4.5 billion in conditional loan guarantees to three large solar power projects in California on June 30. All three photovoltaic projects are being sponsored by Arizona-based First Solar Inc. Together the projects are projected to produce 1.33 gigawatts of power.

## **Environmental Protection Agency**

### Clean Air Regulation of Ships

The EPA and the Coast Guard signed a memorandum of understanding on June 27 to jointly enforce laws regulating air pollution from ships in U.S. waters. Ships are required to control emissions of nitrogen oxides and use low-sulfur fuel.

### EPA to Debut Transport Rule This Week

EPA is expected to finalize a rule that would cut air toxic pollution from power plants in Eastern states. The rule will come after missing the agency's own deadline of Thursday. On the same day the Senate Environment and Public Works Committee will hold a hearing on the rule in question, which has been dubbed the "transport rule" as it tries to limit the spread of pollution from one state to another. Set to testify is Gina McCarthy, EPA's assistant administrator for Office of Air and Radiation. Also on the agenda are the agency's mercury standards for power plants – probably the most contentious after the GHG emissions standards.

### Organizations Against Approval of Air Permit for California Plant

Various environmental organizations filed petitions for review with the EPA's Environmental Appeals Board of the agency's approval of an air permit for a proposed California power plant. Avenal Power Center LLC's permit exempts the plant from complying with permitting requirements for greenhouse gas emissions and air quality standards for nitrogen dioxide and sulfur dioxide. The EPA will not require Avenal to comply with the new requirements because EPA received Avenal's application for a prevention of significant deterioration permit under the Clean Air Act before the standards were proposed. Avenal applied for its permit in 2008. EPA approved Avenal's application the day after a Federal Judge ordered the agency to approve or deny the application within 90 days. EPA's decision is subject to review by the Environmental Appeals Board with a final decision required by August 27.

#### EPA Issues Final Pump Labeling Rule for Ethanol

The EPA released a final rule June 28 requiring gasoline sellers to clearly label pumps which offer the E15 blend (15 percent ethanol) and to warn customers about vehicle-fuel compatibility. In addition to the labeling provisions, the rule calls for the tracing of E15 as it moves through the supply chain. With this provision, the EPA hopes to ensure that ethanol is properly blended as labeled and will include a survey of gas pumps to ensure that E15 pumps are properly labeled. The rule modifies the Reformulated Gasoline Program as well, to allow producers to certify their batches of E15 as meeting the program's standards.

#### EPA Provides Incentives for Reducing Dray Trucks Emissions

The EPA announced last week that short-haul trucks working at ports will receive incentives for reducing particulate matter and nitrogen oxides emissions. This new voluntary program will be part of the SmartWay Transport Partnership initiative to reduce supply chain air emissions. The large diesel trucks the EPA is targeting known as dray trucks – used in ports to haul freight from ships to distribution centers – older than model year 1994 emit 60 times more fine particles than 2007 or newer trucks, says the EPA. The ports of Virginia, Baltimore, Wilmington, and Philadelphia; the states of Delaware, Maryland, Pennsylvania, and Virginia; and a \$3.3 million base grant from EPA are the three sources of funding.

#### EPA Grants Three-Year Deferral Biomass Facility Permits for Industry

On July 1, the EPA ruled that new and modified facilities that burn wood waste, or landfills with emissions from decomposing biomass, need not seek GHG permits for at least another three years, because EPA needs to refine its system of measuring the CO<sub>2</sub> emitted by such operations. Stationary sources such as biomass combustion plants, landfills where carbon dioxide is emitted from the decomposition of biogenic materials, wastewater treatment plants, and manure containment facilities will all be affected by this rule. Unsurprisingly, industry groups like the National Alliance of Forest Owners and some utilities, who supported delay in their May comments on the rule, are pleased with the ruling.

### **Personnel**

The Senate cleared a large package of nominees late June for posts throughout the federal government 30. Among those confirmed were; Daniel M. Ashe, the new director of the United States Fish and Wildlife Service, Department of the Interior; Michael S. Devany, rear admiral at the National Oceanic and Atmospheric Administration; Richard C. Howorth; Board of Directors of the Tennessee Valley Authority; and William Charles Ostendorff, Nuclear Regulatory Commission.

### **Miscellaneous**

#### State Board to Continue Working on Cap-and-Trade Program

The California Court of Appeals, First Appellate District, allowed the California Air Resources Board (CARB) on June 24 to continue implementation of the GHG cap-and-trade program. The First Appellate District granted CARB's request to stay a May 20 trial court injunction that had halted work on the program. The appeals court lifted the injunction imposed by Superior Court Judge Ernest Goldsmith. Goldsmith imposed the injunction because the agency had not weighed alternatives to cap-and-trade, when it addressed a strategy to implement the Global Warming Solutions Act of 2006 (A.B. 32).

#### China Plans to Exempt Vehicle Tax on Alternative Vehicles

China plans to eliminate its annual motor vehicle “travel tax” for owners of electric, fuel-cell, and plug-in hybrid vehicles and to charge a reduced rate for smaller combustion-engine vehicles, beginning in January 2012. Owners of gas or diesel powered cars with a 1.6-liter engine or smaller would be required to pay \$10 to \$80. Automobiles with 3.0-liter engines and larger would be taxed annually between \$370 and \$830. In June 2010, China subsidized purchases of electric and hybrid vehicles that cut up to a maximum of \$9,254 off the sales price of the alternative vehicles. On June 8, China announced they will setup a new “cash-for-vehicles” scrapping program. Consumers could get \$1,696 to \$2,776 for trading in vehicles older than 6 years.

#### Google’s Study Indicates that a Price on Carbon Would Boost Economy

Google released a study on June 28 concluding that a price on carbon or renewable energy mandate could significantly spur clean-energy innovation expanding the U.S. economy by \$150-\$244 billion per year and create 1.1-1.9 million new full-time jobs. Furthermore, the study indicated that changes in the U.S. at the household level could save \$942-995 per year, reduce oil consumption by 1.6 billion barrels per year, and lower U.S. carbon emissions by 13-21 percent per year.

#### Attack on RGGI

Three New York business owners filed a suit on June 28 to remove the state from a regional climate Initiative. They argued in front of the state Supreme Court in Albany that the state illegally joined the Regional Greenhouse Gas Initiative (RGGI), a cap-and-trade program for power plants.

#### Plan Proposed To Track Compliance in Emissions Trading

The Western Climate Initiative outlined how it would use a Compliance Instrument Tracking System Service (CITSS) to track compliance with the regional greenhouse gas emissions trading program it hopes to launch in 2012. The proposal describes the general administrative processes that would be required to track all emissions allowances, or permits, and offset credits from issuance to retirement. The system would be generic enough to be applied to all participating government entities, and was designed to reflect the framework for the regional cap-and-trade program WCI unveiled in 2010. WCI is forging ahead with launching the trading program in 2012, even though a bad economy and an unfriendly political environment may reduce the number of participants.

#### Survey Identifies American Public Opinion on Climate Policy

Stanford University Professor released a new survey of voter attitudes on climate change on June 28. The survey concluded that candidates are likely to win Democratic and independent votes by taking a green position on climate change and lose votes by taking a non-green position. The survey also concluded that neither a green position nor a non-green position had a major impact on the voting behavior of Republicans.

#### NOAA, Pew Center, *Scientific American* All Release Climate Change Pieces

On June 28 the National Oceanic and Atmospheric Administration’s *State of Climate in 2010* report said 2010 was the warmest or second-warmest year on record. On the same day the Pew Center on Global Climate Change released *Extreme Weather and Climate Change: Understanding the Link, Managing the Risk* on the link between climate change and the frequency of extreme weather events, and *Scientific American* published its first in a series of three articles about the same topic. recommended a “probability-based risk management framework” as the “correct way to consider the link between climate change and extreme weather.” John Carey, author of the *Scientific American* series said that while it is impossible to link individual events, climate change is making these extreme events more likely.

#### Xcel Energy Adds 200 Megawatts of Power From Wind Farm in Eastern Colorado

Xcel Energy announced that its Colorado subsidiary is expanding its wind energy capacity to nearly 2,000 MW in the state after agreeing to purchase 200 megawatts of power from a wind farm under construction near Limon. The agreement with NextEra Energy Resources states that construction will begin in early 2012 with completion expected in late 2012.

#### 2012 U.N. Sustainable Development Summit Seeks Renewed Support for Agreements

The U.N. Conference on Sustainable Development said the organization's 2012 summit in Brazil, being called Rio+20, seeks a renewal of the political commitments to agreements reached at previous summits. The 2012 conference, to be held in Rio de Janeiro June 4-6, will focus on two themes: the institutional framework for sustainable development and the green economy in the context of sustainable development and poverty eradication. Green jobs, social inclusion, food security, sustainable agriculture, sound water management, sustainable cities, management of oceans, and improved resilience and disaster preparedness are also topics on the agenda.

#### Consumer Federation Supports 56 MPG as Fuel Economy Standard

According to a June 28 issue from the Consumer Federation of America, increasing the fuel economy standard for motor vehicles to 56 miles per gallon by 2025, which would be a five percent increase each year between now and 2025, would add 200,000 U.S. jobs and cut oil imports by one-third.

#### Governors Ask Administration to Consider Economic Impact of New Fuel Standards

The Obama administration should take a "balanced and thoughtful approach" to raising fuel economy standards by considering the action's economic impact, says a June 29 letter from fifteen governors. The letter was signed by the governors of Alabama, Idaho, Indiana, Iowa, Kansas, Kentucky, Maine, Michigan, Mississippi, Nevada, Ohio, South Carolina, Tennessee, Utah, and Virginia and sent to Department of Transportation and the Environmental Protection Agency. The governors urged these two agencies to consider the affect on consumers and businesses in their state of higher corporate average fuel economy standards for model year 2017 through 2025 cars and light trucks.

#### German Parliament Approves Ending Use Of Nuclear Power

The lower house of the German parliament voted 513-79 last week to shut down the nation's nuclear power plants by the end of 2022. As late as last year, the government had planned on extending the life span of the country's 17 reactors, but has changed course since the disaster at Japan's Fukushima Dai-ichi plant. To make up for the lost power, the country is aiming to double the share of energy it gets from water, wind, sun or biogas by 2020, to at least 35 percent.

#### Federal Court Approves TVA Settlement

A federal Court gave its final approval of the Tennessee Valley Authority (TVA) pollution control settlement June 30. Under the major agreement, TVA will invest between \$3 billion and \$5 billion on new air pollution controls and retire one-third of its coal generating power. The settlement resolves alleged violations of Clean Air Act Provisions at 11 of TVA's coal-fired power plants in Alabama, Kentucky, and Tennessee. At least 18 of TVA's 59 coal-fired power plants will have to shut down and new emissions control equipment must be installed on all of the remaining plants.

#### MA and Owners of Coal-Fired Power Plant Agree To Monitoring in Deal

A state court ruled that the Mount Tom power plant in Holyoke, MA will have to install a system to provide continuous monitoring of the facility's emissions to settle state allegations that the plant repeatedly exceeded emissions limits over the past several years. It is the first coal-fired power plant in the state to do so, after the Mount Tom Generating Co. and FirstLight Power Resources, owners of the plant, to agreed meet substantially stricter emissions limits for particulate matter and install a system to ensure compliance.