



ML Strategies Update

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Energy & Environment Update

ENERGY AND CLIMATE DEBATE

Extenders Déjà Vu: Fate of Expired Clean Energy Tax Provisions Closely Tied to Election

By Bryan Stockton

From time to time, the Energy and Environment Update will focus on legislative and regulatory developments facing a particular energy sector.

Now that summer is drawing to a close, let's check in on one important bill that lost momentum just as the summer was beginning. Remember the Senate Finance Committee's tax extenders package (S. 2260), which the committee marked up on a bipartisan basis in mid-May? The one that was poised to pass the Senate but that surprisingly failed to reach cloture after Senate leadership blocked Republican amendments on the bill? At the time, congressional staff and lobbyists—and even Majority Leader Harry Reid (D-NV)—suggested that the extenders package would come up again in the lame duck session after the November election. The House was not expected to vote on an extenders package before then anyway, so the Senate delay would not really impact the timing of final passage of this two-year extension of more than 50 tax provisions.

Well, that was then. Today, almost two months before the mid-term elections, the future of the clean energy provisions in an extenders package—particularly the production tax credit (PTC) and investment tax credit in lieu of the PTC—depends a great deal on which party wins control of the Senate. Republicans are more confident that they can win the necessary six seats to take back the top chamber; and if they do, they will have more leverage in the lame duck about what the contents of an extenders package would be. The \$84 billion EXPIRE Act of 2014 not only extends the PTC by two years but also extends key clean energy depreciation benefits and tax credits, including a \$1-per-gallon credit for biodiesel and a 50-cent-per-gallon credit for alternative fuels. Senate Democrats strongly support the clean energy provisions. Certain Republicans, such as Chuck Grassley (R-IA), remain staunch supporters of the PTC and biodiesel credits, but many other Republicans are eager to eliminate or scale back the PTC and other clean energy provisions. If Senator Orrin Hatch (R-UT) learns he will be chairman of the Finance Committee next year in a Republican chamber, he has less of an incentive to work with current Chairman Ron Wyden (D-OR) and Democrats during the lame duck session. He can simply hold out and put forward his own extenders bill next year with popular provisions like the research and experimentation (R&D) credit and without clean energy incentives.

The extension of a handful of relatively popular and less controversial business and individual extenders such as the R&D credit and bonus depreciation is more assured. House Republicans, as part of a “tax-reform-lite” effort, have passed several bills making select provisions such as these permanent. For clean energy advocates, they have to cling to the more popular parts of the overall package and make sure their provisions are not trimmed away when Congress eventually takes it up. The business community, which wants many of the non-energy provisions in the EXPIRE Act extended, also must be much more vocal if the bill is to rise to the front of the agenda.

If Democrats do manage to hold onto control of the upper chamber, they very likely will be dealing with a reduced majority, and that too will give Republicans more leverage. With all the competing priorities in a very short legislative period, it will be difficult for the package to be enacted before the end of the year. Another retroactive extension in early 2015 could be possible. Congress has let the PTC lapse several times since 1992 before renewing it again. While it’s hard to avoid feeling a feeling of déjà vu when faced with another “will-they-or-won’t-they” end-of-year extension, this time also seems different. Many legislators thought the previous PTC extension would be the last one, so the stakes are high. Anti-PTC campaigns financed by conservative groups and utilities ratchets up the pressure on lawmakers. One possible way to blunt some Republican opposition would be to modify the PTC and either reduce the amount of the credit or include a deadline by which projects must complete construction—or both.

Several scenarios exist where even a change of control in the Senate would not preclude the passage of a tax extenders package. A short-term extension would give lawmakers some breathing room to debate tax reform. Some Republicans from wind-friendly states might prefer the clean energy provisions to pass under a Democratic watch rather than under Republican leadership in the new Congress. In this optimistic scenario, the lame duck session could mirror the productive session of 1980.

Ironically, election results in any one of three bio-energy and wind states--Colorado, South Dakota, and Iowa—could help decide the balance in the Senate and the fate of clean energy tax credits.

Congress is in recess for the next two weeks, but when it returns, both chambers will focus on crafting a continuing resolution and holding votes on several pre-election issue favorites, including an energy package in the House. In the meantime, Federal and State regulatory bodies continue to move forward with several energy and environmental issues this week.

CONGRESS

Clean Coal Reconsiderations Needed

The Congressional Research Service issued a [report](#) August 19 finding that Congress should review the efficacy of programs intended to promote clean coal investments in the broader context of its effort to reduce CO2 emissions.

ADMINISTRATION

NEPA Review Guidance

The White House Council on Environmental Quality released August 22 [draft guidance](#) to help agencies make better use of programmatic National Environmental Policy Act reviews. Making the reviews more effective and efficient could reduce subsequent project reviews.

DEPARTMENT OF COMMERCE

China Solar Trade Case

China sent a letter August 15 to Commerce Secretary Penny Pritzker requesting that the two nations enter into a Suspension Agreement, in an attempt to reach an antidumping settlement in the solar import case. The agency announced its preliminary determination July 25 that imports of these products from China were dumped in the U.S. at margins ranging from 26.33 to 165.04 percent, and is expected to issue a final ruling in December.

Warm July Recorded

The National Climate Data Center published August 18 the global [analysis](#) of average temperature for July 2014. Last month was the fourth warmest July on record, at 1.15 degrees above the average temperature of the 20th century. Ocean temperature tied July 2009 for the warmest on record.

DEPARTMENT OF ENERGY

NE Energy Reliance

The Energy Information Administration found August 22 that New England is increasingly relying on natural gas and hydropower, as they replace the use of coal and oil.

DEPARTMENT OF INTERIOR

Fracking Earthquakes Less Intense

The U.S. Geological Survey [found](#) August 19 that earthquakes and tremors from fracking shake the ground less than naturally occurring earthquakes of the same magnitude, causing less damage.

DEPARTMENT OF STATE

Keystone Segment Not Subject to NEPA

The U.S. District Court for the District of Columbia [ruled](#) August 18 that the federal government is not required to conduct an environmental impact review of a 589-mile segment of the Keystone pipeline because it is being constructed almost completely on private land by a private company.

Keystone FOIA

Friends of the Earth filed a Freedom of Information Act [request](#) August 18 seeking Keystone XL pipeline records from the State Department highlighting changes made to the final supplemental environmental impact statement for the \$5.4 billion project. The State Department said in the revision that changes were made after an earlier Federal Railroad Administration safety record search was found to be incomplete.

ENVIRONMENTAL PROTECTION AGENCY

Ozone Attainment Area Redesignation Denied

The Environmental Protection Agency denied August 14 Sierra Club and Earthjustice's request to redesignate 57 areas as not attaining the 2008 national ambient air quality standard for ozone based on 2010-2012 data.

CPP Reliable and Affordable

Environmental Protection Agency Office of Air and Radiation Acting Assistant Administrator Janet McCabe told the National Conference of State Legislatures August 20 that the Clean Power Plan recognizes states' need for reliable and affordable power. Administrator McCabe noted that states were able to adapt when the agency proposed acid rain rules, and the agency expects that states will undergo a similar process to ensure that they can meet power demands and comply with the rule.

NEPA Petition Lawsuit Withdrawn

The Center for Technology Assessment and the Center for Food Safety asked the U.S. District Court for the District of Columbia August 20 to voluntarily dismiss a lawsuit against the White House Council on Environmental Quality after it responded to their petition to include requirements to address climate change in the National Environmental Policy Act. The council had determined that current regulations are sufficient to address climate change. The group could file a new suit challenging the council's denial.

RFS to OMB

The Environmental Protection Agency sent to the Office of Management and Budget August 22 the final 2014 Renewable Fuel Standard volume requirements for interagency review.

MT County SO2 Attainment Rejected

The Environmental Protection Agency [denied](#) August 25 two petitions from Montana companies to reconsider air quality attainment designations for an SO2 standard. Montana Sulphur & Chemical Company and Treasury State Resource Industry Association as well as Yellowstone County submitted separate petitions to the agency last year asking it to reclassify Yellowstone County as in attainment of the 2010 SO2 national ambient air quality standard.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

CCI4 Persists

The National Aeronautics and Space Administration published a [study](#) August 18 finding that atmospheric concentrations of carbon tetrachloride persist in the atmosphere long after its use was banned, indicating that there

may be unreported sources of emissions. Global CCl₄ emissions average 39 kilotons per year even though the Montreal Protocol on Substances that Deplete the Ozone Layer phased out the substance.

NUCLEAR REGULATORY COMMISSION

Coalition Seeks Waste Confidence Vote Delay

A coalition of 34 environmental and advocacy groups asked the Nuclear Regulatory Commission August 21 to postpone an August 26 vote on a revised nuclear waste confidence rule until after Commissioner Bill Magwood leaves to begin serving as director general of the Organization for Economic Cooperation and Development's Nuclear Energy Agency on September 1. Commissioner Magwood denies any conflicts of interest or ethics violations.

INTERNATIONAL

Shenzhen ETS Expansion

China's State Administration of Foreign Exchange announced August 8 that it will allow foreign investors to participate in carbon transactions on the Shenzhen emissions trading system platform after they register with the exchange. The move makes the Shenzhen system the first of China's seven pilot exchanges to permit foreign investors.

Climate Negatively Impacting South Asian GDP

The Asian Development Bank published an [analysis](#) August 19 stating that climate change is having a growing negative impact on the gross domestic product of South Asian countries. The report predicted that South Asian annual GDP could be 1.8 percent lower by 2050, and 8.8 percent lower by 2100 if no efforts are taken to mitigate greenhouse gas emissions.

Antarctica Ice Loss

The Cryosphere journal published a [study](#) August 20 finding that the volume of West Antarctica ice loss over the last three years was three times greater than the ice loss from 2003 to 2009. Ice loss in Greenland was 2.5 times greater than earlier this century.

Australian Senate Climate Plan

Australia's Palmer United Party proposed August 22 introducing an emissions trading scheme that would begin only when the United States, China, the European Union, Japan, and South Korea have taken equivalent steps. The Senate reconvenes August 26. Palmer United Party leader Clive Palmer proposed plans August 18 to host a world climate change convention November 17 at his Sunshine Coast resort, the day after the G20 meeting in Brisbane and two weeks before the annual Conference of Parties.

STATES

NJ Climate Website

Rutgers scientists and data managers announced August 17 a new [website](#) with interactive maps that reflect climate change impacts in New Jersey.

IL CPP Considerations

The Illinois Commerce Commission began August 18 a series of formal hearings to discuss options for the state's compliance with the Environmental Protection Agency's Clean Power Plan. The Commission said that it would consider working with other states to implement a regional compliance plan. Other hearings will take place in September and October.

NJ Wind Reconsideration

The Superior Court of New Jersey's Appellate Division ordered the state August 18 to reconsider its rejection of a pilot wind farm project off the coast of Atlantic City, in light of a \$47 million federal grant the project received. Fishermen's Energy proposed the five-turbine pilot farm about three miles off the coast to generate up to 25 MW, but the state Board of Public Utilities rejected the company's financial plan, saying it would need state subsidies that would make the energy too costly.

MD Fracking Concerns

The Maryland Institute for Applied Environmental Health released a [study](#) August 18 finding that without adequate

safeguards, fracking could harm the health of residents, workers, and communities in Western Maryland. The Maryland Departments of Environment and Health and Mental Hygiene-commissioned report offers 52 recommendations for assessing and offsetting potential impacts.

OR Denies Coal Export Terminal

The Oregon Department of State Lands rejected August 18 a removal-fill permit for the proposed Ambre Energy Morrow Pacific export terminal on the Columbia River that would have been used to ship up to 8.8 million tons of coal a year to Asia.

Solar Power Priorities

The National Caucus of Environmental Legislators announced August 18 that solar power initiatives would be its first priority for 2015, citing bipartisan support for solar power.

Solar Doesn't Threaten Birds

NRG Energy Inc. announced August 19 that domestic solar thermal plants are less likely to kill birds than automobiles, cats, or communication towers, despite recent reports that they pose a significant threat to avian life. There were 321 avian fatalities in the first half of 2014 at the 392 MW Ivanpah solar project in Southern California; of those, 133 were scorched by heat from the plant. An August 18 Associated Press article cited federal wildlife investigators who estimated that concentrated sunlight at the Mojave Desert power plant burned one bird every two minutes.

CO Fracking Case

Residents of Lafayette, Colorado filed a motion for preliminary injunction August 19 in Boulder County District Court seeking to block the state from overriding a voter-approved measure giving the city the right to ban fracking.

FL Climate Meeting

Florida Governor Rick Scott (R) met with climate scientists August 19 to discuss the need for state policies to address climate change. Governor Scott has offered little detail about his climate plans, and is facing former Florida Governor Charlie Crist (D) in his bid for reelection. Governor Crist worked to reduce greenhouse gas emissions and promote renewable energy and energy efficiency during his term as governor.

Utah Reactors

Westinghouse and Utah developer Blue Castle Holdings signed a deal August 20 to build two new AP1000 reactors. Federal regulators have not yet approved construction of the Blue Castle site.

Diesel Exhaust Not RCRA Solid Waste

The U.S. Court of Appeals for the Ninth Circuit [rejected](#) an argument August 20 from environmental advocates that diesel emissions from BNSF Railway Company and Union Pacific Railroad Company rail yards could be regulated under the Resource Conservation and Recovery Act to address increased emissions-related cancer risks.

NC Coal Ash Legislation Approved

The North Carolina state Legislature approved legislation (S.B. 729) August 20 to require Duke Energy to drain and close all of its 33 coal ash ponds in the state by 2030 and prioritize their cleanups based on risk. The measure bans the wet disposal of ash beginning in 2020. Governor Pat McCrory (R) is expected to sign the measure.

CA Carbon Auction

The California Air Resources Board announced August 20 that the state sold 22.5 million carbon allowances at auction for \$11.50 each, just above analysts' expectations. The state received 1.14 bids for every permit offered.

TVA Approves Retirement

The Tennessee Valley Authority Board of Directors approved August 21 the retirement of its coal fired Allen power plant near Memphis, Tennessee.

NE Natural Gas Plan Stalls

Massachusetts Governor Deval Patrick (D) announced August 21 that a New England plan to bring more natural gas and Quebec hydropower into the region is on hold indefinitely. Six states signed an agreement last December to work together on an energy initiative that included bringing more natural gas into the region through pipeline expansion, but the Massachusetts Legislature failed to approve the governor's energy plan (H. 4187), and other states are following suit.

CA Simplifies Solar Permitting

The California state Legislature passed a bill last week (AB 2188) that would set simple statewide standards to simplify the permit process for rooftop solar. Governor Jerry Brown (D) is expected to sign the measure.

MISCELLANEOUS

Kellogg GHG Targets

Kellogg [announced](#) August 13 new goals for its global supply chain to reduce greenhouse gas emissions. The initiative will increase the company's environmental impact by working with growers, suppliers, and partners to measure and report emissions and reduction targets; reduce plant emissions; and create adaptation plans that include the entire supply chain.

Humans Causing Glacial Melt

Science published a [study](#) August 15 finding that global warming from anthropogenic sources has become increasingly responsible for glacial retreat. The report concluded that glaciers can take decades to centuries to respond to climate variations, so only about 25 percent of global glacial melt over the last century and a half can be linked to anthropogenic emissions, but those emissions have been responsible for nearly 70 percent of glacial melt since 1991.

Youth Climate Campaign

Al Gore's Climate Reality Project [launched](#) August 15 a campaign to increase youth climate change awareness. The campaign, "Why? Why Not?", focuses on encouraging young people to be climate change advocates.

Climate Treaty Likely to Fall Short

The Massachusetts Institute of Technology published a [study](#) August 18 predicting that the most likely United Nations climate treaty is unlikely to stop the world from warming more than two degrees Celsius above preindustrial levels, the internationally agreed upon target.

Microsoft Leaves ALEC

Microsoft Corporation confirmed August 20 that it left the American Legislative Exchange Council because of concerns about the group's opposition to renewable energy.

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