



**ML**  
STRATEGIES

**David Leiter**

**Sarah Litke**

**Daniel Phillips**

DJLeiter@mlstrategies.com

SLitke@mlstrategies.com

HDPhillips@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**

**May 6, 2012**

### **Energy and Climate Debate**

With budget negotiations heating up, and election year politics becoming more relevant than ever, energy issues continue to play a key role in the national debates. The House returns from recess slated to bring the year's first appropriations bill to the floor, while the Senate looks to spend its first week back debating a student loan bill and the Small Business Jobs and Tax Relief Act.

The House-Senate conference on the surface transportation bill (S. 1813) is scheduled to begin this Tuesday, and an agreement on the final bill may turn on whether conferees can resolve differences over environmental provisions. House Republicans want to include provisions that would block new rules for handling coal ash from coal-fired power plants and force regulators to accelerate a decision on the Keystone XL oil pipeline permit, while the Senate-passed version does not include such provisions.

TransCanada reapplied for a presidential permit May 4 for the Keystone XL pipeline. The company's application covers the proposed pipeline from the United States-Canada border in Montana to Steele City, Nebraska, and plans to supplement the application once an alternative route is selected within the state.

Though consensus over broad energy and climate change legislation is unlikely in the near future, the House is considering cobbling together its own energy legislation, while the Obama administration and the Senate are both eyeing industrial energy efficiency as a potential route for energy debate this year. At the same time, policymakers, in addition to preparing for an intense lame duck negotiation that may include tweaking energy tax extenders programs, are looking to next year's expected comprehensive corporate tax reform effort as a potential vehicle for significant energy tax policy.

### **Congress**

#### **CES Report**

The Energy Information Administration released a report May 2 finding that Senator Jeff Bingaman's (D-NM) Clean Energy Standard Act of 2012 (S. 2146) would increase electricity generation from renewable sources and significantly reduce CO2 emissions from the power sector. The report, *Analysis of the Clean Energy Standard Act of 2012*, found that the legislation would result in a 54 percent reduction in coal-fired electricity generation by 2035, while increasing the amount of nuclear, natural gas, and renewable energy sources and would lead to an annual 44 percent decrease by 2035 in electricity sector CO2 emissions. A hearing on the bill is scheduled for May 17.

#### **Tax Deduction Records Requested**

House Ways and Means Subcommittee on Oversight Chairman Charles Boustany (R-LA) requested documents and information May 3 to investigate whether departments require contractors to pay back percentages of an energy efficiency tax deduction. The request comes in the wake of the committee receiving documentation that suggests that the General Services Administration may be using the Energy

Efficient Commercial Buildings Deduction to get additional money from contractors. The congressman requested that the information be sent by May 18.

#### RAPID Act Mark-up

On May 8, the House Judiciary Committee is scheduled to mark up Rep. Dennis Ross' (R-FL) Responsibly and Professionally Invigorating Development Act (RAPID Act), which would set a 54-month deadline for state and federal reviews of infrastructure projects, an 18-month deadline for environmental assessments, a three-year deadline for the more lengthy environmental impact assessments, as well as a provision restricting environmental groups from filing last-minute legal challenges. The RAPID Act was referred to the House Natural Resources Committee as well, but has not yet been taken up. The House version of the transportation bill included similar streamlined review and permitting provisions, but it is uncertain whether these provisions will survive the House-Senate conference.

#### House ExIm Reauthorization Deal

On May 4, House Democrats and Republicans reached an agreement on the reauthorization of the U.S. Export-Import Bank that will be introduced and considered under a suspension of the rules this week. The deal would increase the credit exposure limit to \$120 billion through September 30, \$130 billion in FY2013, and \$140 billion in FY2014.

#### Legislation Introduced

Representatives Bill Pascrell (D-NJ) and Brian Bilbray (R-CA) introduced legislation (H.R. 4953) April 26 that would provide a tax credit to renewable chemical producers. The bill would provide a 15 cent per pound tax credit for production of eligible renewable chemicals and would be in effect for five years or until recipients reach a cap of \$500 million. The bill would limit the annual amount provided to a single producer to \$25 million. The measure would apply to plant-based chemicals used in the production of plastic polymers or formulated products, but not to bio-based materials used in food, feed, or fuel production.

#### Hearings Scheduled

On May 9, the House Natural Resources Committee will hold a hearing on President Obama's offshore drilling plan. The panel will hear testimony from Tommy Beaudreau, director of the Department of the Interior's Bureau of Ocean Energy Management.

On May 9, the House Small Business Committee will hold a hearing on the relationship between high gasoline prices and small businesses.

On May 9, the House Energy and Commerce Subcommittee on Energy and Power will hold a hearing on H.R. 4273, which would allow compliance with an emergency order under the Federal Power Act without risk of violating any other federal, state, or local environmental law or regulation, as well as the Hydropower Regulatory Efficiency Act, designed to streamline the delivery of hydropower.

On May 10, the House Science, Space, and Technology Subcommittee on Energy and the Environment will hold a hearing on the relationship between emerging energy production technology and job creation.

Several House Agriculture Committee panels meet this week to consider provisions of the 2012 farm bill.

### **Administration**

#### 10 Year Climate Plan

The U.S. Global Change Research Program released April 27 a strategic plan for 2012-2021 that will place more emphasis on the environmental impact of altered ecosystems and human activities. The research plan, a draft of which was released last September, will incorporate work by 13 federal agencies that study global changes to incorporate the new factors with its traditional reliance on observations, process research, and climate modeling. The ten-year plan calls for additional research on climate adaptation and mitigation; improving the understanding of the physical, chemical, biological, and human components of the environment; and developing improved modeling in order to better anticipate and respond to changes in the global environment.

### **Department of Agriculture**

#### Biobased Product Use

The Department of Agriculture proposed an expansion May 2 of its definition of biobased products following the White House's release of the National Bioeconomy Blueprint last week. Under the new rule, the agency would allow intermediate ingredients such as fibers, resins, and chemicals to be considered

biobased so that products can meet federal procurement standards. The proposal also would allow complex assembly processes to qualify if one or more components are made from biobased ingredients.

## **Department of Defense**

### DOD Energy Budget Requests

Speaking at an Environmental Defense Fund reception May 2, Defense Secretary Leon Panetta said that higher than anticipated fuel costs are causing a budget shortfall of more than \$3 billion at the agency as the Pentagon seeks billions of dollars in new energy efficiency spending. The measures, which range from energy-efficient aircraft engines to ships with hybrid electric drives, are included in the agency's \$614 billion fiscal year 2013 budget request. The request includes \$1.4 billion for operational energy enhancements that will improve energy efficiency, including over \$268 million for efficient aircraft and aircraft engines and \$255 million for combat vehicle energy efficiency. The agency is also requesting \$1.1 billion for energy efficiency improvements such as lighting retrofits and boiler plant upgrades at its 300,000 existing buildings. The Defense Department, the country's largest energy consumer, spent \$15 billion on fuel for military operations last year.

## **Department of Energy**

### Carbon Storage Atlas

The Department of Energy released the *North American Carbon Storage Atlas* May 1, showing potential sites throughout the country where CO<sub>2</sub> could be captured from power plants and industrial sources and stored underground for the next 500 years. According to the report, which was developed with climate specialists across the continent, there are approximately 2,250 large CO<sub>2</sub>-emitting stationary sources in the United States, Canada, and Mexico. The report's most conservative estimate is a potential storage capacity of 136 billion MT CO<sub>2</sub> at oil and gas fields, 65 billion MT at coal fields; and more than 1.7 trillion MT within saline reservoirs.

### Utility Data Access Map

The Department of Energy launched its Utility Data Access Map tool April 30. The interactive online platform enables electric utilities across the country to show customers the data that can access on their electricity use in an attempt to help them save money on energy bills.

### Commercial Building Appraisal and EE

The Department of Energy announced April 30 that it is partnering with the Appraisal Foundation to factor commercial buildings' energy efficiency characteristics into their appraised values. The agency has entered into a memorandum of understanding with the foundation, and is working to gain senior management support for energy efficiency through the Better Buildings Initiative. The initiative will publish numerous building case studies across sectors within the next year and a half.

## **Department of Interior**

### Fracking Rule Forthcoming

Department of Interior Secretary Ken Salazar and Bureau of Land Management Director Robert Abbey unveiled May 4 a draft of the bureau's proposed fracking rule scheduled to become final by the end of the year. The proposal contains provisions that will require the disclosure of fracking fluids used on federal lands. The agency will publish the proposed rule in the Federal Register next week, followed by a 60-day comment period. The draft proposed rule is expected to require prior approval before fracking can occur on federal or tribal lands and the disclosure of the composition of fracking fluids used.

### AZ Wind's Likely Approval

The Interior Department released a draft environmental impact statement last week finding that construction of a 500 MW wind farm on more than 47,000 acres of public land in Arizona could receive federal approval by the end of 2012. BP Wind Energy North America's 283-turbine Mohave County Wind Farm Project would be located about 20 miles southeast of Hoover Dam, and would be located on 38,000 acres of Bureau of Land Management land and 9,000 acres of Bureau of Reclamation land, thus needing approval from both agencies following issuance of a final draft environmental impact statement.

## **Environmental Protection Agency**

### Coal-Fired Plants Face EPA Challenges

White Stallion Energy Center LLC, Sunflower Electric Power Corporation, Tri-State Generation and Transmissions Association Inc., Power4Georgians LLC, Deseret Power Electric Cooperative, and Tenaska Trailblazer Partners filed a motion April 27 in the U.S. Court of Appeals for the District of

Columbia Circuit contending that they are unable to begin construction on their plants because the new Environmental Protection Agency mercury limits are unattainable, but that they must begin construction by next April to avoid being subject to unattainable greenhouse gas standards. The group asked the court to sever new source issues from the issuer issues being raised in consolidated cases challenging the agency's Mercury and Air Toxics Standards and asked the court to expedite the briefing schedule. The Institute of Clean Air Companies asked the Environmental Protection Agency to reconsider the mercury standards last week, saying that they are so stringent that they could prevent new coal-fired power plants from being built.

#### Batteries' Health and Environmental Impacts

The Lithium-ion Batteries and Nanotechnology for Electric Vehicles Partnership, a public-private partnership of lithium-ion battery manufacturers and suppliers, recyclers, trade organizations, university scientists, and officials from the Environmental Protection Agency and the Department of Energy, released a life-cycle assessment April 30 finding that reducing the use of metals in lithium-ion batteries, incorporating recycled materials, and using a process without solvents to make them would improve their environmental profile. The report, *Lithium-ion Batteries and Nanotechnology for Electric Vehicles: A Life Cycle Assessment*, also encourages researchers to find ways to reduce the energy needed to make single-walled carbon nanotubes, which are being designed to be a component of Li-ion batteries.

#### NSPS Comments Extended

The Environmental Protection Agency announced May 4 that it would extend until June 25 the comment period for its greenhouse gas emissions rule for new power plants. In the same Federal Register notice, it scheduled two public hearings on the rule for May 24, in Washington, D.C., and Chicago. The agency published its New Source Performance Standards, which would limit new fossil fuel-fired power plants with a generating capacity greater than 25 MW to 1,000 pounds of CO<sub>2</sub> per MWh, on April 13.

#### SO<sub>2</sub> Case

The U.S. Court of Appeals for the District of Columbia Circuit quashed May 3 whether the Environmental Protection Agency's recent announcement on how it will implement the sulfur dioxide air quality standard suspends a key argument made by petitioners who are challenging the standard. North Dakota and other state petitioners told the court during oral arguments that the agency's final rule revising the SO<sub>2</sub> standard required implementation through air quality modeling rather than monitoring data. However, in April 12 letters, the agency indicated that it would not require state implementation plans, due next June, to rely on modeling.

#### Creative Programs for Contaminated Property Energy Development

Charlie Bartsch, senior program adviser for economic development in the Environmental Protection Agency's Office of Solid Waste and Emergency Response, told the conference on sustainable properties for distressed assets May 1 that developers wishing to put energy projects on contaminated properties should use a creative combination of environmental and financial programs to meet the full range of site redevelopment. He also said that renewable energy tax credits, new markets tax credits, rehabilitation tax credits, low-income housing tax credits, and brownfield cleanup expensing can be linked to cleaning up distressed properties at little or no cost to the project.

#### 45 Areas Don't Meet Ozone Standard

The Environmental Protection Agency released a final rule May 1 designating 45 areas in nonattainment of the 2008 ozone air quality standard, with another expected by the end of the month. The final designations are the agency's next step in implementing the zone standard of 0.075 ppm. The process had been delayed while the administration considered establishing a more protective standard. For the purposes of transportation conformity, the rule, which includes more areas than previously expected, also revokes the less stringent 1997 ozone standard of 0.08 ppm.

#### Energy Star Participation

The Consumer Electronics Association announced last week that it is considering pulling out of the Environmental Protection Agency's Energy Star program, saying that new testing requirements and other changes make participation too costly. As of January 2011, the voluntary program requires companies to have their products' energy usage tested in third-party labs. Representative Ed Whitfield (R-KY) sent a letter April 27 to Administrator Lisa Jackson contending that the third-party certification may be unjustified and counterproductive.

#### OH Plants Stay Open

FirstEnergy Corporation of Ohio announced last week that it would continue operating three coal-fired power plants previously scheduled to be closed by September, after its Mid-Atlantic regional grid operator determined the plants are needed to maintain grid reliability. The company announced plans in January

and February to retire nine older plants this fall rather than upgrade them to comply with new environmental regulations, including the Environmental Protection Agency's mercury rule. In a May 1 quarterly earnings conference call, company executives said that they have reached an agreement with PJM Interconnection LLC to continue operating the three plants on a "reliability must run" basis until the first quarter of 2015.

#### Ontario Requires U.S. Pollution Reduction

Ontario submitted a friend of the court brief to the U.S. Court of Appeals for the District of Columbia Circuit May 1, contending that areas of the province near the U.S. border cannot meet their ozone air quality standard because of power plant pollution that crosses into Canada. The province is supporting U.S. states and advocacy groups that are challenging the 2008 national ambient air quality standard for ozone of 0.075 ppm as not protective enough. The province is closing all of its coal-fired power plants by 2014, but will still not meet its 0.065 ppm standard because of U.S. pollution.

#### Diesel Fracking

The Environmental Protection Agency released its draft permit-writing guidance May 4 for the use of diesel fuels in the fracking fluid. Fracking was exempted from Safe Drinking Water Act underground injection control requirements in the 2005 energy law, but only if the fluids do not include diesel. Fracking fluid including diesel fuels are regulated under EPA's Underground Injection Control program, which is run by states agencies in 33 states, the EPA in 10 states, and a combination of the two in 7 states. The draft guidance will be published in the Federal Register and subject to a 60-day comment period.

### **Federal Energy Regulatory Commission**

#### Geomagnetic Disturbances May Require New Standards

The Federal Energy Regulatory Commission announced April 30 that it is considering whether new standards are necessary to protect against widespread disruptions and blackouts on the North American electric grid that could result from geomagnetic disturbances like solar storms. The Office of Electric Reliability will soon make recommendations, and is soliciting written comments through May 21.

### **Government Accountability Office**

#### Performance-Based Credits Preferable

The Government Accountability Office released a report May 2 finding that a performance-based tax credit for homeowners who invest in energy efficiency measures would more likely reduce energy consumption and emissions than a cost-based credit would, but that it would be more costly. The report, *Energy Conservation and Climate Change: Factors to Consider in the Design of the Nonbusiness Energy Property Credit*, suggested that homeowners would be required to pay for an energy audit to determine how much their efficiency has improved. The credit is a percentage of the costs up to \$500 in 2011.

### **Nuclear Regulatory Commission**

#### Yucca Mountain Application

Three federal judges in the U.S. Court of Appeals for the District of Columbia Circuit appeared inclined to agree May 2 that the Nuclear Regulatory Commission violated the law by ceasing work on a Yucca Mountain nuclear waste repository licensing application, but the panel did not make clear whether it would order the commission to revive the proceedings. The agency has defended its decision to stop the work, contending that it was a reasonable move given the expectation that Congress would allow program funds to expire. Two states, two counties, three individuals, and the National Association of Regulatory Utility Commissioners urged the court to issue a writ of mandamus compelling the commission to restart work on a Department of Energy license application for the repository.

### **States**

#### NC Fracking OK'd

North Carolina's Department of Environment and Natural Resources submitted May 1 a final report evaluating oil and gas exploration in the state. Stemming from a June 2010 state law directing the agency to study oil and natural gas exploration in the state with a specific focus on fracking, the study concluded that fracking may be conducted safely in the state as long as certain protections are in place. Required considerations prior to issuing permits include the collection of additional water and air quality data, limits on water withdrawals, and a prohibition on the use of diesel fuel in fracking fluids.

#### MA Biomass Criteria

The Massachusetts Department of Energy Resources proposed rules April 27 that would revise eligibility criteria for woody biomass facilities to receive financial incentives under the state's Renewable Energy Portfolio Standard. Public comments will be accepted between May 19 and June 18, with a final regulation in place this summer.

#### RGGI Economic Benefits

Environment Northeast released a report last week finding that the Regional Greenhouse Gas Initiative has generated significant economic benefits in participating states, and that those states could benefit even more under an improved program. Proceeds from RGGI allowance auctions are reinvested in energy-efficiency programs, thus generating direct employment and electricity savings at the household and wholesale levels free up funding that can be spent in local economies rather than on imported power. Through April 2011, allowance auctions have generated over a billion dollars in revenue, putting the program on track to add over \$1.7 billion in net value to state economies and over 17,100 job years.

#### No Anti-Competitive Behavior at RGGI

On May 4, Potomac Economics, the official market monitor for the Regional Greenhouse Gas Initiative's (RGGI) carbon dioxide auctions, released the *Annual Report on the Market for RGGI CO<sub>2</sub> Allowances: 2011* finding that RGGI did not engage in any anti-competitive conduct or raise any material concerns. This is the third straight year no questionable behavior was found, and the report went on to give RGGI's secondary market similarly high marks.

#### Vermont Legislature Bans Fracking

On May 4, the Vermont House passed, on a 103-36 vote, H. 464 that would ban hydraulic fracturing for natural gas exploration. Gov. Peter Shumlin (D), who has already expressed his own opposition to fracking, must now sign the bill that the Senate passed by a voice vote early last week.

### **International**

#### Israel Encourages EV Purchases

Israel's finance minister announced April 29 a small window of tax breaks for electric, hybrid, and plug-in hybrid vehicle purchases to encourage drivers to buy the cars before the credits expire. The tax breaks will cost the state \$34.4 million and save consumers \$1,600 to \$2,600 per vehicle. Beginning June 1, the purchase tax on electric cars will reduce from 10 to 8 percent.

#### India's e-Waste

India's Central Pollution Control Board announced May 1 new rules for handling, storing, and recycling electronic waste. The rules, which assign duties along the entire value chain, will apply the principle of extended producer responsibility.

#### China Pearl River Pollution

Hong Kong's Environmental Protection Department and the Guangdong Environmental Protection Bureau released a report April 26 finding that average levels of ambient SO<sub>2</sub> and N<sub>2</sub>O fell in China's Pearl River Delta region in 2011, while ozone pollution worsened. Clean Air Network, however, found increases in each pollutant as well as coarse particulate matter in Hong Kong, and said that the Special Administrative Region's government could no longer blame mainland China for its local air pollution problems.

#### China's Rare Earth Policies

The Congressional Research Service published a report April 30 summarizing United States action against China regarding the country's rare earth policies and export restrictions. The report, *China's Rare Earth Industry and Export Regime: economic and Trade Implications for the United States*, details implications of the country's export restrictions, which countries such as the U.S. and Japan have argued provides an unfair advantage to China's domestic manufacturers.

#### Asian Development Bank Carbon Report

On May 3, the Asian Development Bank and the Asian Development Bank Institute (ADBI) released *Policies and Practices for Low-Carbon Green Growth in Asia* arguing that since Asia now accounts for 27% of world wide energy carbon-dioxide emissions, a share predicted to reach 40% by 2030, environmentally sustainable cities are desperately needed to curb emissions growth. The study called for regional carbon markets, the gradual elimination of fossil fuel subsidies, and a free-trade zone for cleantech. The ADB, which has invested \$7 billion in clean energy projects in recent years, says \$40 billion annually will be needed for thorough adaptation in the Asia-Pacific region.

### **Miscellaneous**

#### Domestic Solar Difficulties

The Congressional Research Service released a finding last week that the United States' ability to build a manufacturing base for photovoltaic solar equipment is in question following expiration of a number of federal subsidies and because of increased competition from natural gas-fired power plants. The report, *U.S. Solar Photovoltaic Manufacturing: Industry Trends, Global Competition, Federal Support*, also predicted that electricity from PV will become less competitive, and cited the closure of at least ten domestic solar manufacturing facilities since 2011 as a contributing factor.

#### Plastics-to-Energy Benefits

The American Chemistry Council released a report April 24 finding that new technologies that convert nonrecycled plastic waste into energy or raw materials, particularly pyrolysis and gasification, could provide environmental benefits and cost savings compared to landfill disposal. The report, *Environmental and Economic Analysis of Emerging Plastics Conversion Technologies*, identified 41 facilities in development or undergoing demonstration and predicted that they would become commercially viable within five to ten years.

#### Corporate Sustainability Rankings

On May 1, the London-based research firm EIRIS released *On Track for Rio+20: How are Global Companies Responding to Sustainability?*, which found that U.S. and Asian companies rank worse than their European counterparts in key sustainability indicators. In fact, not a single U.S. company rated in the top 10 in sustainability, a list that included Puma, GlaxoSmithKline, and Philips Electronics.