

**David Leiter**

**Sarah Litke**

*DJLeiter@mlstrategies.com*

*SLitke@mlstrategies.com*

## **ENERGY AND ENVIRONMENT UPDATE** **February 20, 2011**

### **Energy and Climate Debate**

Early Saturday morning, the House voted (235-189) to cut \$61 billion from current fiscal year 2010 spending levels (and approximately \$100 billion below what the President requested for fiscal year 2011) for the federal government for the remainder of the fiscal year. No Democrats voted for the continuing resolution (H.R. 1), which now goes to the Senate for consideration.

Representatives spent much of last week debating the spending cuts, beginning with a proposal from House Republicans to reduce at least \$100 billion in federal spending from the president's 2011 budget request. Over 500 amendments were filed during an open process in which congressmen were allowed to offer unlimited amendments to the bill, and the House voted on nearly 70 amendments, rejecting more than 50 of them.

The resolution would eliminate any unobligated economic stimulus funds approved in the Recovery Act, saving an estimated \$2 billion. The energy and water budget would be reduced by 11 percent from the 2010 enacted level to \$29.2 billion. The interior and environment budgets would be reduced 14 percent from the 2010 enacted level to \$27.8 billion. The Environmental Protection Agency's budget specifically would be cut by \$3 billion to 29 percent below the FY10 enacted level. Additionally, the measure as passed by the House includes an amendment from Representatives John Carter (R-TX), Ted Poe (R-TX), and Joe Barton (R-TX) that prevents the Environmental Protection Agency from implementing regulations that limit greenhouse gas emissions. The amendment was approved on a vote of 250 to 177. Additionally, the House voted February 18 to include an amendment that bars the Environmental Protection Agency's Environmental Appeals Board from considering, reviewing, rejecting, or remanding any air permits issued for Outer Continental Shelf sources located off the coast of Alaska.

Congressional Republicans face an uphill battle to reach a compromise on a CR with the Democratic-controlled Senate and a presidential veto threat of the bill. With about two weeks before the current continuing resolution expires, Congress is likely to have to pass another short-term CR to fund government operations while the two chambers negotiate a deal on spending levels for the remaining seven months in the 2011 fiscal year. Last Friday, House Democratic leaders introduced a temporary measure that would freeze current spending levels until March 31 to prevent a government shutdown on March 4, but House Republicans are opposed to the stopgap measure. The Senate will not start work on the funding bill until after Congress returns from the Presidents' Day recess on February 28, and Senate Majority Leader Harry Reid (D-NV) said last Thursday that Senate Democrats will propose \$41 billion in cuts from the requested FY 2011 levels when the continuing resolution comes up for debate in March, and Senate Democrats and President Obama immediately rejected the House-passed plan Saturday morning.

Looking ahead, President Obama submitted his fiscal year 2012 budget request to Congress on February 14. The administration's budget dealt a \$1.3 billion cut to the Environmental Protection Agency while increasing the Department of Energy's budget by 12 percent, moving money away from fossil-fuel research to pay for new investments in clean energy technology. The proposed budget would reduce this

year's estimated \$1.6 trillion deficit by more than half over the next five years. All in all, President Obama's fiscal year 2012 budget request, similar to the Administration's fiscal year 2011 budget proposal, places much of its hope in clean energy as a tool for job creation, asking Congress for \$8 billion in spending to boost wind and solar power, clean energy manufacturing, electric vehicles, and the development of nuclear reactors. In 2010, Congress approved \$6.6 billion in funding for clean energy programs across the federal government, so the fiscal year 2012 request does not constitute a large increase, but it is significant in a time of fiscal restraint and economic cutbacks. The budget fight, for both fiscal year 2011 and fiscal year 2012, is far from over, and we are likely to see several rounds go by before a consensus begins to form around specific numbers and programs.

## **Congress**

### Senate Democrats Unveil Agenda

Senate Democratic leaders unveiled their legislative agenda February 16. Senate Majority Leader Harry Reid (D-NV) said that the strategy calls for pushing legislation that will invest in priorities such as transportation, energy infrastructure, and education while making changes in the tax code to encourage innovation and reduce burdens on business. Among the planned bills to promote energy, manufacturing, and infrastructure are those that would renew the 48C Advanced Energy Manufacturing Tax Credit, reauthorize surface transportation programs, extend the Build America Bonds program, promote a smart electric grid, implement the National Consensus Appliance Agreements Act of 2011 to promote use of energy efficient appliances, expand and extend the income tax credit for research and development, develop a Clean Energy Deployment Administration to accelerate technology development, and promote energy efficient renovations in buildings with a mix of rebates, low-interest loans, and tax incentives.

### Shaheen to Introduce Efficiency Legislation

Senator Jeanne Shaheen (D-NH) said February 16 that she is drafting comprehensive energy-efficiency legislation that will include energy-use standards for appliances, incentives for energy-efficiency improvements to existing buildings, and other measures. Senator Shaheen hopes to introduce the legislation soon, and will incorporate energy-efficiency provisions that received bipartisan support in the 111th Congress, including measures related to vehicle efficiency, promoting efficiency in federal buildings, and energy-efficient building codes.

### Chu Testifies at Senate Energy Committee

Senate Republicans told Energy Secretary Steven Chu during a February 16 Energy and Natural Resources Committee hearing on the president's budget that the Department of Energy is unlikely to receive a budget increase for fiscal year 2012. They also objected to the administration's clean energy priorities, noting that they are too heavily skewed toward promoting renewables at the expense of new fossil fuel technologies such as carbon sequestration. Secretary Chu defended the president's budget plan, which was released February 14, as vital to ensuring that the US remains competitive.

### Lugar Bill to Include Diverse Energy Standard

Senator Dick Lugar (R-IN) is crafting energy legislation that is likely to include a diversified energy standard that would encourage greater use of renewable energy, nuclear power, and other domestic energy sources. Senator Lugar's Practical Energy and Climate Plan Act of 2010 (S. 3464) included a diverse energy standard that he is reconfiguring with plans to introduce legislation in several weeks. The proposal is similar to a clean energy standard that Senator Lindsey Graham (R-SC) introduced last September, and Senator Jeff Bingaman (D-NM) is working on a clean energy standard as well.

### Bingaman to Retire

Senator Jeff Bingaman (D-NM) announced February 18 that he will retire at the end of the 112th Congress. Senator Bingaman is the fourth member of the Senate Democratic Caucus to announce his retirement, and his move will open up key energy and finance panel seats, as he serves as chairman of the Senate Energy and Natural Resources Committee and chairman of the Senate Finance Subcommittee on Energy, Natural Resources, and Infrastructure.

### Loan Guarantee Information Sought

House Energy and Commerce Chair Fred Upton (R-MI) said February 17 that he is seeking documents and other materials from the Department of Energy in relation to a \$535 million loan guarantee for a California solar panel manufacturer that has since closed a factory and laid off workers. The Congressman sent a letter to Energy Secretary Steven Chu last Thursday questioning the successful candidacy of Solyndra Inc., the first recipient of an Energy Department loan guarantee under the Recovery Act in September 2009.

#### Committee Assignments

The Senate Environment and Public Works Committee announced its subcommittee leaders February 15. Senator Max Baucus (D-MT) will chair the Transportation and Infrastructure Subcommittee, with Senator David Vitter (R-LA) as ranking member. Senator Tom Carper (D-DE) will chair the Clean Air and Nuclear Safety Subcommittee, with Senator John Barrasso (R-WY) as ranking member. Senator Frank Lautenberg (D-NJ) will chair the Superfund, Toxics, and Environmental Health Subcommittee, with Senator Mike Crapo (R-ID) as ranking member. Senator Ben Cardin (D-MD) will chair the Water and Wildlife Subcommittee, with Senator Jeff Sessions (R-AL) as ranking member. Senator Bernie Sanders (I-VT) will chair the Green Jobs and the New Economy Subcommittee, with Senator John Boozman (R-AK) as ranking member. Senator Sheldon Whitehouse (D-RI) will chair the Oversight Subcommittee, with Senator Mike Johanns (R-NE) as ranking member. Senator Tom Udall (D-CO) will chair the Children's Health and Environmental Responsibility Subcommittee, with Senator Lamar Alexander (R-TN) as ranking member.

The Senate Energy and Natural Resources Committee unveiled subcommittee rosters February 16. Senator Jeanne Shaheen (D-NH) will chair the Water and Power Subcommittee, with Senator Mike Lee (R-UT) as ranking member. Leadership of the three other subcommittees – Energy, Public Lands and Forests, and National Parks – will remain the same.

#### Legislation Introduced

Congresswoman Candice Miller (R-MI) introduced legislation (H.R. 681) February 11 to require the EPA Administrator to finalize a proposed rule to amend the spill prevention, control, and countermeasure rule to tailor and streamline the requirements for the dairy industry.

Congresswoman Mazie Hirono (D-HI) introduced legislation (H.R. 684) February 15 to amend the Internal Revenue Code of 1986 to modify the incentives for the production of biodiesel.

Congressman Jim Sensenbrenner (R-WI) introduced legislation (H.R. 748) February 17 to prohibit the EPA Administrator from authorizing the use of gasoline containing greater than 10 percent ethanol in certain vehicles.

Congressman Michael Burgess (R-TX) introduced legislation (H.R. 739) the same day to provide that no Federal or State requirement to increase energy efficient lighting in public buildings shall require a hospital, school, day care center, mental health facility, or nursing home to install or utilize such energy efficient lighting if the lighting contains mercury.

Congressman Tim Walberg (R-MI) introduced legislation (H.R. 750) to preempt regulation of, action relating to, or consideration of GHGs under Federal and common law on enactment of a Federal policy to mitigate climate change.

Senator Jeff Bingaman (D-NM) introduced the Implementation of National Consensus Appliance Agreements Act of 2011 (S. 398) February 17. The legislation would set new or improved energy efficiency standards for more than a dozen consumer appliances as well as certain outdoor lighting.

Also last Thursday, Senator Bob Corker (R-TN) introduced the Electric Transmission Customer Protection Act (S. 400). The measure would impose restrictions on the Federal Energy Regulatory Commission's ability to spread the costs of building new power lines to accommodate renewable energy generation on the nation's electric grid.

### Upcoming Hearings

Congress is in recess until February 28 for Presidents' Day.

## **Department of Agriculture**

### GHG Measurements for Agriculture and Forestry

The Department of Agriculture is published a notice in the Federal Register February 18 seeking comments on how to best design methods for measuring GHG sources and sinks in the agriculture and forestry sectors. The guidelines will incorporate elements of existing methods and guidelines and are written to be clear enough that they can be used by farmers looking to reduce their emissions. The project should be completed by 2014.

## **Department of Energy**

### \$343 Million Loan Guarantee Awarded

The Department of Energy announced the approval of a \$343 million loan guarantee for NV Energy and Great Basin Transmission South LLC February 15. The company will construct a high-voltage transmission line through Nevada that runs 235 miles in the central-eastern part of the state to just north of Las Vegas and will carry about 600 MW of electricity, including power generated from renewable sources.

### \$5 Million for GATE Centers

Energy Secretary Steven Chu announced up to \$5 million in funding to support Graduate Automotive Technology Education Centers of Excellence February 16. The GATE Centers will focus on educating a future workforce of automotive engineering professions who will gain experience in developing and commercializing advanced vehicle technologies.

## **Environmental Protection Agency**

### Emissions Requirements Won't Impact Reliability

Speaking at the National Electricity Forum on February 16, EPA's Assistant Administrator for Air and Radiation Gina McCarthy said that upcoming emissions control requirements for power plants will not harm electric reliability and will withstand legal challenges. The agency is scheduled to propose standards in March for emissions of mercury and other pollutants from coal-fired power plants and to issue a final rule this summer requiring power plants in 31 states to control emissions of SO<sub>2</sub> and nitrogen oxides via the transport rule.

### GHG Inventory Published

The Environmental Protection Agency released its Draft Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2009 on February 16. The analysis found that domestic GHG emissions decreased by 6 percent in 2009 from 2008 levels, nearly twice the percentage-point reduction of the previous year, due to decreased energy consumption and an increase in fuel-switching from coal to cleaner natural gas.

### Industry Groups Sue EPA Over E15

The Alliance of Automobile Manufacturers, Association of Global Automakers Inc., National Marine Manufacturers Association, and Outdoor Power Equipment Institute filed a lawsuit February 16 in the U.S. Court of Appeals for the District of Columbia Circuit against the Environmental Protection Agency after it granted a Clean Air Act waiver allowing E15 to be used in model year 2001-2006 cars and light trucks. The agency approved E15 for use in model year 2001-2006 cars and light trucks on January 26, increasing the ethanol limit from 10 percent.

### EPA to Release Ozone Policy Docs

The Environmental Protection Agency announced on February 18 that it is preparing a number of policy documents that include the most recent epidemiological data on the effects of ozone exposure for the next five-year review of the ozone air quality standards. The new scientific documents come as EPA is reconsidering the ozone standards it set in 2008.

### EPA Solicits Regulatory Review Comments

The Environmental Protection Agency began seeking public comments on February 18 to help guide its review of regulations in response to President Obama's January 18 executive order aimed at strengthening the economy. Executive Order No. 13563 requires federal agencies to review existing regulations to determine which should be eliminated.

### Sectorwide Rules Provide Certainty

The Environmental Protection Agency's Assistant Administrator for Air and Radiation Gina McCarthy told the National Association of Regulatory Utility Commissioners on February 14 that taking a sectorwide approach to its regulations will provide power plants the flexibility to direct economic investment toward meeting pollution standards rather than requiring them to install controls piecemeal. The agency is developing regulations that would limit emissions of SO<sub>2</sub>, N<sub>2</sub>O, mercury, and other toxic air pollutants from power plants as well as regulations for cooling water intakes at power plants, GHG performance standards, and the handling and disposal of coal ash waste.

### State Air Plan Revision Requirements Challenged

Texas, the Utility Air Regulatory Group, and the SIP/FIP Advocacy Group filed lawsuits on February 11 challenging an Environmental Protection Agency rule requiring states to adopt laws and regulations allowing them to issue permits to large new and modified stationary sources for GHG emissions. The lawsuits, filed in the U.S. Court of Appeals for the District of Columbia Circuit, are the latest in a series of challenges by Texas as well as other states and industry groups to EPA rules to regulate GHG emissions under the Clean Air Act.

### Diesel Engine Limits Too Restrictive

Power providers and some state air pollution regulators submitted comments on February 14 to an Environmental Protection Agency's rule that limits when diesel engines can provide emergency power to the electrical grid. They found that the rule is too stringent and could cause reliability problems for smaller power systems, and suggested that the agency either extend the annual limit or otherwise revise its rule for the engines to allow them to participate in emergency demand response programs.

### Environmental Groups Urge Tough GHG Limits

During a February 15 hearing at the agency's Region 4 headquarters, environmental groups from across the Southeast urged the Environmental Protection Agency to set strong standards for GHG emissions from power plants and petroleum refineries and place greater emphasis on public health. The hearing is the second of five listening sessions the agency is holding to provide interested parties an opportunity to voice their concerns about GHG emissions limits.

## **Federal Energy Regulatory Commission**

### FERC Proposes Frequency Regulation

The Federal Energy Regulatory Commission proposed a new method of compensating providers of a key balancing service on the bulk power grid known as frequency regulation on February 17. The proposed rule would apply to the organized markets operated by regional transmission organizations and independent system operators.

## **Miscellaneous**

### Pew Transportation Report Released

The Pew Center on Global Climate Change issued a white paper on February 15 that found that a combination of existing policies and new legislative proposals could help the U.S. to achieve significant GHG reductions and reduce oil consumption within the transportation sector. The document, *Saving Oil and Reducing Greenhouse Gas Emissions through U.S. Federal Transportation Policy*, outlines eight legislative proposals aimed at reducing fossil fuel consumption and emissions, including a federal excise tax on fuel.

### CA Biomass Plants Pay

Under proposed consent decrees by the Environmental Protection Agency announced on February 15, two California biomass power plants have agreed to pay \$835,000 in penalties for alleged violations of the Clean Air Act and local clean air laws. The agreements involve the Ampersand Chowchilla Biomass LLC and Merced Power LLC plants.

### Green Chemistry Regs for CA

Following a December delay for implementing its Green Chemistry regulations, the California legislature announced a series of joint oversight hearings on green chemistry and methyl iodide. The first hearing was held by the Environmental Safety and Toxic Materials Committee and the Assembly Health Committee February 15. Additional hearings will be held February 22 and 28.

### UN Urges Green Militaries

Christiana Figueres, executive secretary of the United Nations Framework Convention on Climate Change urged the world's militaries on February 15 to invest in technologies that can help reduce emissions and dependence on fossil fuels.

### TSCA Revisions Proposed

Environment America called released a report on February 10 calling for stricter chemical regulations to promote green chemistry practices. The report, *Safer by Design: Businesses Can Replace Toxic Ingredients through Green Chemistry*, concludes that businesses should be required to publish chemical use information, suggests that the Environmental Protection Agency should have more authority to require companies to phase out the use of toxic chemicals, and requires companies using toxic chemicals to pay for public health or environmental impacts through corporate taxes or fees.

### Sustainability Good for Bottom Line

A February 10 report from the journal MIT Sloan Management Review found that businesses that are sustainability leaders have seen not only positive effects on their bottom line, but also less tangible benefits. The report analyzed a 2010 Boston Consulting Group survey of 3,000 businesses around the world.

### Aggressive CA Policies Needed

A February 16 report from the California Secure Transportation Energy Partnership, *The California Action Plan 2.0 for Transportation Energy Security*, urges California to adopt more aggressive energy policies to reduce its dependence on petroleum. Specific actions include adopting measures to reduce petroleum use to 15 percent below 2003 levels by 2020 and to require 26 percent of the transportation fuel used in the state to come from alternative sources by 2020.

### Shareholder Resolutions Sought

Shareholders have filed 95 environment-related resolutions with about 70 companies this year asking for changes such as sustainability reports, environmental expert board members, and the setting of GHG reduction goals. Investor coalition group Ceres compiles the resolutions each year, and this is the first time that there has not been an increase in the number of environmentally-related resolutions filed.

### European Transportation Emissions Limited

The European Parliament approved legislation on February 15 that will require manufacturers of vans and light commercial vehicles sold in the European Union to limit CO2 emissions. An initial limit of 175 g/km must be met by 70 percent of new vans in 2014, and all fleets should average within the limit by 2017. The limit will be tightened to 147g/km in 2020.

### SD Permit Includes GHG Limits

The South Dakota Department of Environment and Natural Resources issued a draft air permit on February 17 for the Hyperion Energy Center, a petroleum refinery and power plant, that includes GHG emissions limits based on energy efficiency. The draft permit is the second air permit issued with emissions limits since January 2, when air permits were first required by the Environmental Protection Agency to include the limits.

Canadian Marine Emission Regulations Finalized

Environment Canada published finalized regulations on February 16 to limit emissions of smog-forming pollutants from marine engines, vessels, and off-road recreational vehicles, including hydrocarbons, nitrogen oxides, carbon monoxide, and particulate matter. The regulations take effect with the 2012 model year and are aligned with US EPA standards.

MD Considers Power Purchase Agreements

The Maryland House Economic Matters Committee will hold a March 3 hearing on legislation proposed by Governor Martin O'Malley (D) that would require electric utilities to enter into 20-year contracts to buy power from offshore wind facilities. The legislation (H.B. 1054) would become the strongest state mandate along the east coast for power purchase agreements linked to offshore wind if enacted because it would require the development of 400 to 600 MW of offshore wind capacity.