

Bryan Cave Energy Update

January 15, 2010

Congress

Reid Includes Climate Change Legislation on Spring Agenda

Senate Majority Leader Harry Reid (D-NV) said that he planned to pass energy and climate change legislation this Spring and that it would not be tabled due to the crowded election year Senate schedule. While a number of moderate Senate Democrats and Republicans have encouraged Reid to move forward with an energy-only bill, Reid said he would move a package similar to the House-passed bill that addressed climate change. In prepared remarks, Reid said, "Congress needs to send the market a clear signal on the costs of global warming pollution to drive far greater investments into geothermal and every other form of renewable energy and energy efficiency."

Inclusion of Cap-and-Trade Provision Uncertain

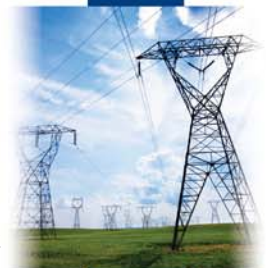
Three Senators – Sen. John Kerry (D-MA), Sen. Lindsey Graham (R-SC), and Sen. Joe Lieberman (I-CT) – working on the climate bill intend to hold daily meetings on the issue to find a way to reach 60 votes. While there has been speculation that a cap-and-trade program would not be included in the bill, Reid's comments, as well as recent comments from White House Climate Advisory Carol Browner, are leading environmentalists to conclude that the Senate will address climate change. Browner did not explicitly

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endorse cap-and-trade, but recently called for comprehensive "clean energy and climate legislation."

Murkowski Amendment to Delay EPA From Regulating Carbon Dioxide

As soon as January 20, Sen. Lisa Murkowski (R-AK) may offer an amendment to delay introduction of an amendment that would prevent the EPA from regulating carbon dioxide as a pollutant under the Clean Air Act. A spokesperson for the senator said she has not decided whether to offer the amendment to a bill that would raise the statutory cap on the amount of money the Treasury can borrow. The Senate has already agreed by unanimous consent to allow an EPA-related amendment if she chooses to offer one. Most cap-and-trade opponents support delaying the EPA regulations. Another possibility is that she could offer the entire Kerry-Boxer climate bill in an effort to show that there are not currently 60 votes in support of that legislation.



Industry

California Utilities Not Expected to Meet 2010 Renewable Energy Targets

Privately-owned utilities in California are not expected to meet a state mandate to generate at least 20 percent of their power from renewable sources. The mandate became law in 2002 and has spurred market activity and speculation but has not resulted in the construction of new power plants. In addition, Pacific Gas & Electric Co., Southern California Edison and San Diego Gas & Electric Co. have seen their production of renewable energy as a percentage of their total energy production decline. According to a California Public Utilities Commission analysis, the procurement process has resulted in contracts for more than 7000 megawatts of renewable energy. However, actual construction of new projects has been delayed due to numerous regulatory requirements from multiple agencies with overlapping jurisdictions. The analysis noted: "A typical project must obtain a CPUC-approved power purchase agreement with an investor-owned utility (IOU); a host of generation facility permits from the county, the [California Energy Commission], air quality districts and other agencies, including environmental, as required under the California Environmental Quality Act or the National Environmental Policy Act; site control through purchase or lease from a private landowner or land use agency; financing; interconnection agreement with the California Independent System Operator or another grid operator; equipment; and an engineer-procure-construct contract."

Energy produced by biomass also has declined, down 19 percent in 2008 from 22 percent in 2003. In addition, the number of biomass plants operating in California have declined by half since 1980.

Small Business Administration Criticizes EPA's Greenhouse Gas Proposal

The EPA did not properly assess the effects of its proposed tailoring rule for greenhouse gases, according to an advocacy office within the Small

Business Administration. EPA earlier proposed a rule that would exempt smaller emissions sources from permitting requirements that may actually be applied to small businesses when the agency finalizes its greenhouse gas limits for automobiles. The proposed rule would raise emissions thresholds for facilities that need permits from 100 or 250 tons of pollution annually to 25,000 tons of carbon dioxide equivalent per year. The Small Business Administration's Office of Advocacy, an independent office within the SBA, contends the agency did not evaluate the economic effects that the rule would have on small businesses. "Whether viewed separately or together, it is clear that EPA's Clean Air Act greenhouse gas rules will significantly affect a large number of small entities." For example, the advocacy office estimated that at least 1200 small businesses would be required to obtain Clean Air Act operating permits. In addition, state and local authorities are requesting that the EPA delay the requirements to ensure conflicts between the rule and state programs do not overwhelm state regulators. The National Association of Clean Air Agencies Executive Director Bill Becker said, "The issue isn't whether EPA can proceed with its regulation. The issue is the extent to which going forward with the regulation is going to be done in a smooth transition or will wreak some havoc amongst the states."