

Please contact authors below if you have any questions regarding this alert.

Authors:

Elias B. Hinckley
ebhinckley@Venable.com
202.344.4639

Brenna V. Greenwald
bvgreenwald@Venable.com
202.344.4013

The Energy and Climate Debate is Heating Up in Washington: What to Watch for in Federal Energy and Climate Developments

The fallout from the Deepwater Horizon explosion and the resulting oil spill in the Gulf of Mexico are catalyzing political support in Washington for action on energy. While several members of the House and Senate have signed on to specific measures aimed at tighter controls and more liability for offshore exploration, there is a growing consensus in Democratic leadership that a legislative response to the events in the Gulf can be effectively tied to more sweeping energy or climate legislation. Combined with several energy-specific items already on the Washington agenda and an ongoing debate over how to regulate the exploding unconventional natural gas production process, the next several weeks should prove to be a defining period in U.S. energy policy.

This week, the U.S. Senate will renew its focus on energy and climate legislation and will likely provide valuable insight into the energy policy landscape. Against the backdrop of the continuing Gulf oil spill, several key events are slated for this week:

- On June 9th, the U.S. Environmental Protection Agency ("EPA") will deliver to the Senate economic modeling results of the American Power Act, the climate legislation released by Sens. John Kerry (D-MA) and Joe Lieberman (I-CT).
- On June 10th, Sen. Lisa Murkowski (R-AK) will take her resolution disapproving of the EPA's regulation of greenhouse gases to the floor of the Senate—even without enough votes for passage, significant support could be a bellwether for the prospects of climate legislation this year.
- Senator Majority Leader Harry Reid (D-NV) will meet with Committee leaders with jurisdiction over energy and devote an entire Senate Democratic Caucus to energy issues.

Sen. Reid has pledged to highlight energy issues coming out of the Memorial Day recess, publishing a letter on June 3rd, in which he called on eight committee chairmen for recommendations and legislation to address the Gulf spill in the context of "comprehensive clean energy legislation" before the Congressional 4th of July recess.

To fully analyze the potential impact of these upcoming events, we provide more detail below on pending energy legislation and the political climate of the energy debate.

Climate Legislation: The American Power Act

Sens. Kerry and Lieberman released their energy and climate bill, the American Power Act, on May 12, 2010, despite the conspicuous absence of long-time collaborator Sen. Lindsey Graham (R-SC). The bill calls for a 17% reduction in emissions below 2005 levels by 2020 by establishing caps on greenhouse gases with a long-range goal of an 83% reduction by 2050. The bill also proposes specific incentives for a number of technology areas such as biomass, clean transport vehicles, and nuclear power and increases funding for the Innovative Loan Guarantee Program. Earlier this year, the House passed the American Clean Energy and Security Act, also known as the Waxman-Markey bill, which proposed a federal renewable energy standard as well as carbon pricing and regulation.

The Kerry-Lieberman bill faced a significant hurdle when co-sponsor Graham walked away from negotiations citing concerns that immigration issues would overtake climate discussions and prevent any progress on the bill. Sen. Graham's influence can still be seen in the bill's promotion of nuclear power and offshore oil and gas development. While the inclusion of offshore drilling provisions is key to gaining Republican support, the recent oil spill in the Gulf of Mexico has made the issue of offshore drilling even more divisive. With a six-month moratorium now in place for all deepwater exploration there may be still more available options for compromise than there were when the bill was released last month, but at the very real risk of losing the support of many Democrats.

The EPA's economic modeling report on the bill is expected to be delivered to the Senate on June 9th and available to the public on June 10th. The report is expected to project household costs and energy consumption associated with the bill's proposals.

Sens. Kerry and Lieberman are hoping to keep the bill on track for a vote early this summer, although

there has been some discussion of a quick pivot to one of the “energy-only”, rather than climate-focused, bills if it appears that there is not adequate support for the bill early during the initial debate.

Murkowski Resolution on EPA Regulation of Greenhouse Gases

Whether or not climate legislation is passed into law this year, the EPA is set to move ahead with the regulation of greenhouse gases next year based on the endangerment finding that greenhouse gases threaten public health. While only one of several actions related to carbon controls that the EPA is pursuing, this is likely the most meaningful, and is viewed as providing substantial leverage for a legislative alternative this year or early next year.

Sen. Lisa Murkowski of Alaska has been working on a resolution of disapproval which, if passed, would essentially veto the EPA's endangerment finding and hamstringing the EPA's ability to regulate greenhouse gases in its emissions standards or otherwise. Sen. Murkowski needs 51 votes to clear the Senate but even upon passage, the resolution is unlikely to pass the House or get President Obama's signature. She is believed to have 41 votes in the Senate including three Democrats but has kept her official vote count under wraps. According to Senate procedure, the resolution is guaranteed to go to the floor for an up or down vote, scheduled for June 10th by agreement with Sen. Reid.

Other proposals have also been floated by Sen. Jay Rockefeller (D-WV), Sen. George Voinovich (R-OH) and Sens. Tom Carper (D-DE) and Bob Casey (D-PA) to limit the EPA's ability and authority to regulate greenhouse gases. Sen. Murkowski's resolution is at the forefront of the fight against EPA regulation as it has garnered the most publicity and is guaranteed to have a vote on the floor of the Senate. While the resolution may not pass, significant support for it could signal challenges ahead for pending climate legislation, particularly the Kerry-Lieberman American Power Act.

Offshore Action and Reaction

On Thursday, May 28, 2010, President Obama announced a six-month moratorium on deepwater offshore drilling and exploration (the exact language has caused some confusion about shallow water drilling as well, though this was clearly not the target of the moratorium). Several members in both the House and Senate have sponsored bills in response to the Gulf spill, primarily focused on raising or repealing the \$1 billion liability limit for spills and related events. Both of these actions have been subject to vocal criticism from several politicians and the hydrocarbon lobbies as detrimental to the industry, a disaster for Gulf area employment, and a potential energy security threat. The rhetoric on both sides of this issue will dramatically impact energy legislation debate and decisions this summer.

Energy Legislation Alternatives

There are several narrower or targeted legislative energy alternatives that have been proposed in the event that a broad climate bill does not pass this year.

American Clean Energy Leadership Act. The Kerry-Lieberman bill joins the pending “energy-only” bill proposed early this year by Sen. Jeff Bingaman (D-NM), the chair of the Senate Committee on Energy and Natural Resources. Sen. Bingaman's bill, the American Clean Energy Leadership Act of 2009, would require electric utilities to meet a threshold of 15% of electricity sales from renewable sources by 2021. The bill also calls for an overhaul of the country's transmission system, promotion of distributed generation, protection of the electrical power grid, and investment in energy innovation and technology.

Amendments to the Loan Guarantee Program. Sen. Bingaman also plans to propose amendments to the loan guarantee provisions of the Energy Policy Act of 2005 to streamline the Department of Energy (“DOE”) loan guarantee program. Sen. Bingaman is striving to make loan guarantees more accessible to smaller projects developing less mature technologies.

Renewable Energy Research & Education Legislation. The House passed an \$84 billion research and education bill to authorize multiple energy technology programs, including a re-authorization of the Advanced Research Projects-Agency Energy (ARPA-E) for five more years for approximately \$3.15 billion. The bill now moves to the Senate where Sens. Bingaman and Lamar Alexander (R-TN) have been working for months on companion legislation.

Tax Extender Bill. The House also narrowly passed a \$115 billion tax extender package before the Memorial Day recess. The bill proposes to extend renewable energy tax credits by one year, retroactive to January 1, for renewable and alternative fuels such as the \$1-per-gallon production tax credit for biodiesel which expired in December as well as other alternative fuels, steel industry fuel, and energy efficiency measures. The bill also extends a research and development credit of \$6.6 billion over ten years. Finally, the bill increases an oil industry tax of 8 cents per barrel to 34 cents per barrel to raise funds in the Oil Spill Liability Trust Fund and raises the per-incident liability cap to \$5 billion. Sen. Maria Cantwell (D-WA) plans to introduce a two year extension to the popular, if somewhat controversial, 1603 Grant program that allows renewable project owners to receive a grant from the Treasury in lieu of tax credits.

Sen. Lugar's Practical Energy and Climate Plan. Sen. Richard Lugar (R-IN) plans to introduce another energy and climate legislative option this week. While the bill will not propose a cap-and-trade system to regulate greenhouse gases, Sen. Lugar, long a champion of clean vehicles and renewable fuels, aims to cut emissions through increased fuel and energy efficiency and closing aging coal-fired power plants.

The bill also plans to expand loan guarantees for nuclear power.

Looking Ahead

While the departure of Sen. Graham was seen as a stumbling block for the passage of Sens. Kerry and Lieberman's American Power Act, Obama administration officials have speculated that rising gas prices during the summer travel season and the continuing concerns over the oil spill in the Gulf could increase public support for an energy and climate bill. The President has accordingly increased the public focus on energy over the past few weeks, and in a June 2nd speech, the President reiterated his support for passing energy legislation this year and pledged to work on corraling votes. Sen. Reid has made building a coalition on energy a priority despite an extremely difficult election looming during the late summer and fall.

While the climb to 60 votes will likely be a challenge for Sens. Kerry and Lieberman, they have expressed confidence in being able to secure enough votes. The June 10th vote on the Murkowski resolution could be an indicator of the level of opposition that Sens. Kerry and Lieberman will face in gathering those votes.

These next few weeks leading into the 4th of July recess will provide real clarity on this year's energy legislation landscape, and may be a bellwether for the future of energy and climate policy. By mid-June, Sen. Reid and the Senate Democrats should have a better sense of whether the passage of comprehensive climate regulated legislation is possible, and whether the next steps in the greenhouse gas process will be a legislative compromise or a regulatory mandate. Positions on offshore drilling, and in some cases the role of hydrocarbons in our energy future, will be refined based on what is learned in the Gulf. For anyone in, or dependent on, the energy industry, these are events worth following.

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