

## Energy and Environmental Law Update for March 26, 2015

Article By:

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### ENERGY AND CLIMATE DEBATE

The House and Senate face a full schedule the next several days before departing Friday for the Easter and Passover two-week recess.

The House will begin consideration this week of its fiscal year 2016 budget resolution. The Senate will follow suit, spending much of the week focusing on the legislation and offering numerous amendments, including several energy and climate related measures. Senator Brian Schatz (D-HI) said March 23 that he is working with some of his colleagues, including Senators Sheldon Whitehouse (D-RI), Barbara Boxer (D-CA), and Ed Markey (D-MA), to craft a package of climate amendments to the budget resolution. It is likely that both chambers will pass their competing budgets this week, opening the door to using the filibuster-proof reconciliation process to move other top agenda items, including energy measures.

President Obama issued an executive order, "Planning for Federal Sustainability in the Next Decade," March 19. The order is designed to reduce the federal government's greenhouse gas emissions by 40 percent from 2008 levels by 2025, about 26 MMT, which is estimated to save \$18 billion in avoided energy costs. The order will also increase the amount of electricity the federal government obtains from renewable sources to 30 percent over that period.

The order directs the government to ensure that 25 percent of total electric and thermal energy consumption comes from clean energy sources by 2025; to reduce Federal building energy use by 2.5 percent per year over the next ten years; to reduce per-mile GHG emissions from Federal vehicle fleets by 30 percent from 2014 levels by 2025 and increase the percentage of zero emission and plug-in hybrid vehicles in those fleets; and to reduce Federal building water intensity by two percent per year through 2025. Currently, renewable energy accounts for about nine percent of Federal electricity consumption.

The goals are consistent with President Obama's November commitment to reduce overall American emissions 26 to 28 percent below 2005 levels by 2025, but federal agency contribution to total domestic emissions is modest, representing less than one percent in 2013.

At the same time, the White House announced a series of agreements with federal suppliers to reduce their emissions; those federal suppliers account collectively for about \$45 billion in federal

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contract spending. During the announcement, Christy Goldfuss, new managing director of the White House Council on Environmental Quality, said that with a footprint that includes 360,000 buildings, 650,000 fleet vehicles, and \$445 billion spent annually on goods and services, the Federal government influence on private sector investment is substantial as well. The administration also released a new scorecard to track federal suppliers' voluntary efforts to reduce their emissions.

Senate Majority Leader Mitch McConnell (R-KY) called on governors March 19 to consider ignoring the Environmental Protection Agency's Clean Power Plan. In his letter to the National Governors Association, Senator McConnell said that he had "serious legal and policy concerns" regarding the proposed plan. The letter follows a March 3 op-ed in the Lexington Herald-Leader in which he urged states to withhold their compliance plans until related litigation concludes. Senior Adviser to President Obama for Climate and Energy Policy Brian Deese rebuked the majority leader the following day, telling a Christian Science Monitor breakfast that the administration will aggressively continue to pursue the plan, as well as additional rules on methane and energy efficiency.

Senate Energy and Natural Resources Committee Chair Lisa Murkowski (R-AK) and Ranking Member Maria Cantwell (D-WA) will draft a comprehensive energy bill in the coming week or two. The pair is running ahead of schedule to produce the bipartisan energy measure.

## **CONGRESS**

Coal Ash Delay Concern Senate Environment and Public Works Committee Chair James Inhofe (R-OK) said March 16 that he is concerned that the Environmental Protection Agency is more than three months late in publishing its final coal ash rule. Significant modifications to the proposed rule, released December 19 under a court order, are unlikely.

EPA SAB Legislation The House passed legislation (H.R. 1029) March 17 modifying the operations, scope, and selection process for members of the Environmental Protection Agency's Science Advisory Board. Senator John Boozman (R-AR) introduced companion legislation (S. 543) in the Senate, but the White House has threatened to veto the measure.

House Budget House Republicans introduced a budget resolution March 17 that targets the economic impacts of the Environmental Protection Agency's proposed Clean Power Plan and criticizes national security agency spending on climate change research.

CPP Constitutionality Constitutional scholars, including Laurence Tribe, Richard Revesz, and Allison Wood, debated legal concerns over the Environmental Protection Agency's proposed Clean Power Plan during a House Energy and Commerce Subcommittee on Energy and Power hearing March 17.

House Budget House Republicans introduced a budget resolution March 17 that targets the economic impacts of the Environmental Protection Agency's proposed Clean Power Plan and criticizes national security agency spending on climate change research. The budget would increase domestic energy production, reform or eliminate several Department of Energy programs, and assumes that the tax extenders will not be renewed, contradicting bipartisan efforts to extend or make permanent some of the provisions.

Shimkus' Agenda House Energy and Commerce Subcommittee on the Environment and the Economy John Shimkus (R-IL) said March 18 that he plans to move legislation on coal ash management and Toxic Substances Control Act reform before the summer recess. He plans to visit Yucca Mountain April 9 with some of his colleagues and move nuclear waste management legislation

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this session. He is also interested in legislation that would delay the enforcement of Environmental Protection Agency Clean Power Plan regulations until legal challenges are exhausted, but has no immediate plans for related language.

Senate Budget Senate Republicans led by Senator Mike Enzi (R-WY) proposed March 18 a proposed budget resolution for fiscal year 2016 that contains specific measures on energy exploration, water resources management, and environmental statute overhaul, but far fewer than the House resolution.

Secret Science Legislation The House passed legislation (H.R. 1030) March 19 requiring Environmental Protection Agency actions to be based on public data that is available for independent analysis. Senator John Barrasso (R-WY) introduced companion legislation in the Senate. The White House has threatened to veto the measure.

### **Legislation Introduced**

Senators John Thune (R-SD) and Joe Manchin (D-WV) introduced legislation (S. 751) March 17 to block the Environmental Protection Agency from lowering the national ambient air quality standard for ozone until 85 percent of counties that currently do not meet the 2008 standard are in compliance. The Clean Air, Strong Economies Act

would also require the agency to consider the costs and feasibility of meeting the standard. Representatives Pete Olson (R-TX) and Bob Latta (R-OH) introduced companion legislation (H.R. 1388) in the House.

Senators Rob Portman (R-OH) and Cory Gardner (R-CO) introduced legislation (S. 765) March 17 to determine the budgetary impacts of energy savings performance contracts and utility energy service contracts.

Senators Martin Heinrich (D-NM) and Cory Gardner (R-CO) introduced legislation (S. 784) March 18 to direct the Secretary of Energy to establish microlabs to improve regional engagement with national laboratories.

Senator Bob Casey (D-PA) introduced legislation (S. 785) March 18 to amend the Safe Drinking Water Act to repeal a fracking exemption.

Senator Ted Cruz (R-TX) introduced legislation (S. 791) March 18 to free the private sector to harness domestic energy resources to create jobs and generate economic growth by removing statutory and administrative barriers. The measure would phase out the renewable fuel standard over five years; open the Arctic National Wildlife for oil and gas exploration; expedite the permitting process for liquefied natural gas exports; approve the Keystone XL pipeline; repeal the ban on the export of most domestic crude oil; stop the federal government from regulating fracking; and stop the Environmental Protection Agency from regulating greenhouse gas emissions and other measures that would negatively impact coal and electricity plants. Representative Jim Bridenstine (R-OK) released a companion measure (H.R. 1487) in the House.

Senator Ron Wyden (D-OR) introduced legislation (S. 822) March 19 to expand and encourage geothermal production.

Senator James Inhofe (R-OK) introduced legislation (S. 828) March 19 to clarify that a state has the

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sole authority to regulate fracking on Federal land within the state.

**Upcoming Hearings** The Senate Environment and Public Works Committee will hold a field hearing March 23 in Beckley, West Virginia, titled “Regional Impacts of EPA Carbon Regulations: The Case of West Virginia.” Senator Shelley Moore Capito will chair.

The House Appropriations Subcommittee on Energy and Water will hold a hearing March 24 to review the Nuclear Regulatory Commission’s fiscal year 2016 budget request. The four sitting commissioners will testify.

The Senate Appropriations Subcommittee on Energy and Water will hold a hearing March 25 on the Energy Department’s fiscal year 2016 budget request. Energy Secretary Ernest Moniz and Energy Undersecretary for Science and Energy Franklin Orr will testify.

The Senate Energy and Natural Resources Committee will hold a hearing March 26 on the Quadrennial Energy Review. Energy Secretary Ernest Moniz will testify.

## **ADMINISTRATION**

**Ralls Corp. Challenge** The U.S. District Court for the District of Columbia released a scheduling order March 13 saying that President Obama’s order barring Ralls Corp. from proceeding with plans to acquire interests in Oregon wind farms close to a naval facility will remain in place until at least May. Ralls Corp. has until April 3 to rebut the Committee on foreign Investments in the United States’ unclassified evidence.

**Republican Climate Approach** President Obama said March 16 that too many Republicans are “shills” for fossil fuel interests and that he thinks it “disturbing” that Senator James Inhofe (R-OK), noted climate skeptic, chairs the Senate Environment and Public Works Committee. President Obama said that Republicans will have to change their approach to addressing climate change eventually because voters will insist upon it.

**TPP Environment World Animal Protection, International Fund for Animal Welfare, and The Nature Conservancy** sent a letter March 16 to President Obama praising the environment chapter of the Trans Pacific Partnership as going in the right direction and the U.S. Trade Representative for setting ambitious environmental standard goals within the agreement. The previous day, the Presidential Task Force on Illegal, Unreported, and Unregulated Fishing and Seafood Fraud, led by the Departments of Commerce and State, directed the Trade Representative to use trade and trade agreements to combat the ecological and commercial impacts of such practices.

**RCRA Rule Reviews** The White House Office of Management and Budget began reviewing March 20 two proposed rules from the Environmental Protection Agency concerning hazardous waste management under the Resource Conservation and Recovery Act.

## **DEPARTMENT OF COMMERCE**

**Chinese Trade Mission** Secretary of Commerce Penny Pritzker and Secretary of Energy Ernest Moniz announced March 20 that they will lead a delegation of 25 American companies on a Business Development Trade Mission to Beijing, Shanghai, and Guangzhou, China, in April. The trade mission will help American companies launch or increase their business operations in China for Smart Cities-Smart Growth products and services, including smart buildings, green data centers, carbon capture

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utilization and storage, energy efficiency technologies, clean air and water technologies, waste treatment technologies, smart grid, and green transportation.

## **DEPARTMENT OF ENERGY**

CCS Projects at Risk Current and former Energy Department officials include Energy Secretary Ernest Moniz have said recently that two carbon capture and sequestration projects are at risk having hundreds of millions of Recovery Act dollars revoked by the agency if they cannot meet spending deadlines that require funding to be committed by July 1 and spent by September 30. The agency suspended in February \$1 billion in Recovery Act funding for the premiere CCS FutureGen project. The Hydrogen Energy California project, which received over \$400 million federal funding, and the Texas Clean Energy Project, which received \$450 million, are both behind schedule and have yet to begin construction.

## **DEPARTMENT OF INTERIOR**

Fracking Rule The Bureau of Land Management issued March 20 a final rule to govern the use of fracking on public and tribal lands. The rule includes requirements to protect groundwater supply through enhanced well-integrity testing; listing of fracking chemicals; increased water quality standards for recovered waste fluids; and more reporting on the geology, depth, and location of preexisting wells to reduce risks.

## **DEPARTMENT OF JUSTICE**

State Incentive Cases The Supreme Court asked the Justice Department March 23 to weigh in on four connected lawsuits regarding two state programs intended to increase the construction of power plants within their borders. The cases address subsidy programs in New Jersey and Maryland. The Third and Fourth Circuit Courts of Appeal ruled last year that their respective state's program impacted wholesale markets, which are federal territories. The Justice Department and Federal Energy Regulatory Commission argued in the Third Circuit case last year that the Federal Power Act preempts New Jersey's program and noted that Maryland's program is similar to New Jersey's.

## **ENVIRONMENTAL PROTECTION AGENCY**

Startup Suits in Abeyance The U.S. Court of Appeals for the District of Columbia Circuit issued an order March 13 holding in abeyance lawsuits challenging Environmental Protection Agency mercury and air toxics standards for power plants during periods of startup pending a Supreme Court decision. Petitioners will file motions to govern the case 30 days after the upper court resolves the challenges to the agency's underlying mercury and air toxics standards. The Supreme Court will hear oral arguments in the case March 25.

Truck Standards Forthcoming The Environmental Protection Agency updated its regulatory review tracker March 16 to indicate that it would propose its second phase of greenhouse gas emissions standards for medium- and heavy-duty trucks in June. President Obama had ordered the agency and the National Highway Traffic Safety Administration to propose the combined greenhouse gas and corporate average fuel economy standards for model year 2018 and later trucks in March, but the agencies have not sent the proposal to the White House Office of Management and Budget for review. The standards will build upon similar requirements the agencies issued in 2011 for model year 2014-2017 heavy-duty trucks, delivery vehicles, and tractor trailers.

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CPP Implementation Grants Environmental Protection Agency Acting Assistant Administrator for Air and Radiation Janet McCabe told the Environmental Council of the States March 16 that Federal grants to support state and local air quality management programs will be available for implementing the Clean Power Plan even if Congress does not provide additional funding that President Obama has requested in his fiscal year 2016 budget, which included \$268.2 million for state and local air quality management grants, a \$40 million increase from the fiscal year 2015 enacted level, and specified that \$25 million of that funding be dedicated to implanting the Clean Power Plan within the states.

SO<sub>2</sub> Attainment Environmental Protection Agency Acting Assistant Administrator for Air and Radiation Janet McCabe told the Environmental Council of the States March 16 that the agency will send letters to about half of the nation's state air agencies identifying areas of nonattainment concern over the 2010 SO<sub>2</sub> standards. States will be able to provide the agency with additional information on the areas ahead of attainment designations. The agency has until next July to make designations for areas that demonstrate violations based on monitoring data or have high levels of SO<sub>2</sub> pollution from stationary sources.

Wood Stove Litigation The Hearth, Patio, and Barbecue Association filed a petition for review March 16 in the U.S. Court of Appeals for the District of Columbia Circuit challenging the Environmental Protection Agency's recently updated air pollution standards for residential wood heaters. State laws prohibiting the enforcement of the standards are unlikely to impact compliance because the agency would retain enforcement authority, leading to sanctions and negatively affecting state permitting.

MATS Extensions The National Association of Clean Air Agencies released results of a survey March 17 finding that state environmental agencies have granted 165 power plants an extended compliance period for the Environmental Protection Agency's 2012 mercury and air toxics standards. Only eight requests have not been granted, though four of those requests are still under consideration. Plants that received an extension will not have to meet standards by the April 16 deadline. The Supreme Court will hear oral arguments on the standards March 25.

Ozone Standard Questioned Industry and environmental organizations used the public comment period, which closed March 17, to question the legality of the Environmental Protection Agency's proposal to set the national ambient air quality standard for ozone in the range of 65 parts per billion to 70 ppb. The comments provide insight into the legal issues that may be used as the basis for challenging the agency's final decision in federal appeals court. The agency proposed the revision in November and must issue its final decision by October 1.

RFS Suit The American Fuel and Petrochemical Manufacturers and the American Petroleum Institute filed suit March 18 in U.S. District Court for the District of Columbia against the Environmental Protection Agency over its failure to issue the renewable fuel standard volumes for 2014 and 2015 by the statutory deadlines. The refiners contend that the delays impact their ability to prepare to meet their blending obligations.

CPP Litigation Judges The U.S. Court of Appeals for the District of Columbia Circuit announced March 18 that Judges Thomas Griffith, Karen LeCraft Henderson, and Brett Kavanaugh, three conservative judges, will hear oral arguments April 16 in Murray Energy Company's and West Virginia's challenge to the Environmental Protection Agency's Clean Power Plan.

Environmental Justice The National Environmental Justice Advisory Council did not agree March 19 on final advice to provide the Environmental Protection Agency regarding the agency's refinery and

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Clean Power Plan proposals. The council approved letters to send Administrator Gina McCarthy on its stance regarding farmworker protections and chemical safety issues. The agency will work with stakeholders starting next month on a five-year environmental justice plan.

CPP Compliance The National Governors Association selected March 19 Michigan, Missouri, Pennsylvania, and Utah to help model their power sectors and identify potential compliance options with the Environmental Protection Agency's Clean Power Plan. The group will help agencies within the states coordinate actions on the compliance plan and share best practices from other states.

## **GENERAL SERVICES ADMINISTRATION**

GHG Reporting Pilot Program The General Services Administration will invite the week of March 23 about 120 of its largest vendors and contractors to report their corporate-wide emissions using a CDP standardized supply chain questionnaire and to set targets for reducing them as part of a pilot program. The program will be voluntary and participation will not influence the award of government contracts. Roughly 90 percent of federal agencies' carbon footprint comes from the products and services they purchase.

## **INTERNATIONAL**

CO2 Emissions Down, Economy Up The International Energy Agency released a report March 13 finding that the fact that global emissions were unchanged last year demonstrates that economic growth is possible while also addressing climate change. CO2 emissions were stable at 32.3 billion MT, even as the global economy grew three percent.

Carbon Price Support World Bank Group President Jim Yong Kim told Georgetown University March 18 that garnering global support for carbon pricing is the most important thing nations need to accomplish at the United Nations Framework Convention on Climate Change negotiations in Paris at the end of the year. He also urged countries to take other steps to reduce greenhouse gas emissions, including by reducing fossil fuel subsidies.

UNFCCC Draft Text The United Nations formally communicated March 19 the official negotiating text for this year's United Nations Framework Convention on Climate Change negotiations in Paris to 196 parties in all six official United Nations languages. The release comes almost six weeks ahead of the official April 30 deadline and five weeks after parties negotiated the text in Geneva. Formal negotiations will begin in Bonn June 1, but information discussions will take place using the text before then.

Costa Rican Renewable Energy The Costa Rican Electricity Institute announced March 20 that Costa Rica has obtained 100 percent of its electricity from renewable energy thus far in 2015. The country has relied on strong hydro electricity production due to heavy rains as well as wind, solar, biomass, and geothermal energy. The nation announced a goal in 2009 of becoming carbon neutral by 2021.

## **STATES**

PA Budget Pennsylvania Governor Tom Wolf released March 3 his fiscal year 2015 budget request, which includes \$30 million for competitive grants to businesses that install combined heat and power equipment; \$20 million for competitive grants to projects intended to make state farms more self reliant, including through efficiency upgrades, biodigesters, and distributed wind generation; \$30

million to the Pennsylvania Energy Development Authority for market development for clean and renewable energy technology; \$25 million for matching grants under the Last Mile Natural Gas Distribution Line Fund; and \$50 million in competitive grants for energy efficient projects at small businesses, local government units, schools, and non-profits.

WV Net Metering West Virginia Governor Earl Ray Tomblin (D) signed legislation (H.B. 2201) March 16 restricting net metering rules in the state that would have allowed solar installation owners to sell clean energy back to the grid. The measure calls for studies of net metering rules in other states and caps the solar power generated from net metering at no more than three percent of the total state's peak demand. He vetoed virtually identical legislation two weeks prior.

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