

Anticipated Energy Policy Issues in the 114th US Congress

As Republicans prepare to assume control of both the US House and Senate in January, energy issues will be at the top of the agenda. In a number of areas, Republican energy priorities are set to clash with the goals of the Obama administration and the Democratic minority. Legislative action early in the next Congress to achieve the Republican's energy priorities could create conflicts with the administration, forcing it to identify the energy issues it is willing to protect through veto. However, on several other energy matters, as detailed below, the potential for significant compromise between congressional Republicans and the Obama administration exists.

In this legislative update, we focus on some of these critical energy policy issues. We have omitted policy issues that have been widely discussed in the news (the Keystone XL pipeline and crude oil exports, for example), and instead have focused on less-obvious areas in which we expect to see congressional activity.

Commodity Trading Issues

Even during the lame duck Congress, the Senate Permanent Subcommittee on Investigations issued a 400-page report, and held two days of hearings, surrounding the involvement of big banks in commodities markets. Senators from both parties, including retiring Chairman Carl Levin (D-MI) and Ranking Member (and potentially the subcommittee's next Chairman) John McCain (R-AZ), sharply criticized Wall Street banks' involvement in the commodities

markets, even as the Federal Reserve announced it is preparing new rules to tighten the ability of banks to participate in these markets.

Regardless of whether Sen. McCain becomes the next Chairman of the subcommittee, we expect the debate over bank involvement with commodity trading to continue throughout the 114th Congress. Furthermore, as the Senate Banking Committee, the House Financial Services Committee and others prepare reforms to the Dodd-Frank Wall Street Reform and Consumer Protection Act, the debate over commodity trading is likely only to be amplified. The Fed's involvement is also likely to result in increased action in Congress, whether through hearings at the relevant committees or proactive legislation to define whether financial institutions should be allowed back into physical markets and, if so, to what degree. While not directly related to energy, the scope of Dodd-Frank regulation became a critical issue in the continuing funding resolution.

Tax Reforms

Most in Washington believe that comprehensive tax reform has at least a decent chance of passing in 2015, and there is even speculation that President Obama threatened a veto of proposed language extending many tax cuts for two years because he hopes to work with Congress on a broader package in the spring. At a minimum, we believe that the new Republican leadership will make a good-faith attempt at

crafting such a package once they take over control of Congress.

Such a tax reform package would have significant implications for the energy sector. Undoubtedly, there will be pressure from the left to strip existing tax breaks for the oil and gas industry, while the other side of the aisle will seek to defend those tax breaks and perhaps push for new incentives.

The tax “extenders” package passed by Congress in December extends the production tax credit for wind energy projects through the end of 2014, allowing any projects that “begin construction” by that date to qualify for the credit. The short extension essentially serves as a “punt” on the issue until next year; the ongoing debate in Congress about whether to continue the credit will be high on the agenda for the 114th Congress. Though the credit enjoys bipartisan support and counts a number of Republican Senators among its allies (Sen. Charles Grassley, R-IA, for example), a significant number of Republicans are also in favor of phasing out the credit over time.

Congress may also include the renewable energy investment tax credit in its corporate tax reforms. Adjustments to this credit, which provides incentives to solar, geothermal, fuel cell and other energy projects placed in service on or before December 31, 2016, could be wrapped into a comprehensive overhaul of the tax code. The renewable sector will, of course, push for a permanent or longer term extension to provide greater certainty.

Any legislation may expand the range of Master Limited Partnerships (MLPs). Presently, publicly traded entities deriving 90 percent or more of their income from “depletable” resources may be taxed as partnerships rather than corporations, providing significant incentives to investors. Sen. Chris Coons (D-DE) has already introduced legislation, the Master Limited Partnerships Parity Act, to expand the definition of “qualified” sources under the tax

code to include renewable resources and infrastructure-related projects. In short, this legislation would allow more projects to qualify as MLPs. The proposal has the support of a number of important Republicans. Sen. Lisa Murkowski (R-AK), the incoming Chairman of the Senate Energy and Natural Resources Committee, is a cosponsor of the legislation and has supported expanding the definition of MLPs for some time. We believe that action on this legislation is likely in the new Congress, especially if broader tax reform is addressed.

Streamlining the Federal Permitting Process

The 113th Congress has seen repeated calls, largely from Republicans but sometimes with significant bipartisan support, to streamline the federal permitting process for a range of energy projects. We believe that these calls are likely to be amplified in the 114th Congress. There are significant areas of potential compromise that could result in the imposition of deadlines on federal agency action on energy projects.

House Republicans have advanced several bills intended to streamline the federal agency approval process for energy projects and to make the process more efficient. The Natural Gas Pipeline Permitting Reform Act, for instance, passed the House easily about one year ago, with bipartisan support. The bill, which would require that Federal Energy Regulatory Commission (FERC) decide on the issuance of a permit for a proposed natural gas pipeline within 12 months of the receipt of a complete application, has languished in the Senate. With the Republican takeover of the chamber in 2015, fortunes for this type of legislation could change. There are significant areas of potential compromise, especially if Senate Democrats and President Obama negotiate language that they feel adequately accounts for environmental concerns. Both parties could claim public victories in such a bill by focusing on cutting

government waste and accelerating the country's domestic energy production.

In fact, there is precedent for this type of streamlining legislation in a law passed by Congress and enacted in 2013: the Hydropower Regulatory Efficiency Act. This law expanded the exemption from FERC licensing requirements to allow many more small hydropower projects to proceed without a need to undergo the full permitting process, and directed FERC to explore the creation of a shorter, two-year permitting timeline for certain projects. The bill enjoyed significant bipartisan support and passed easily. Such a bill could be a model for legislation to streamline the permitting process, whether for hydropower projects or other energy projects.

Furthermore, the new leadership of the Senate Energy Committee bodes well for such legislation. Sen. Murkowski has already called for faster permitting timelines in a number of instances, and we believe that her Democratic Ranking Member, Sen. Maria Cantwell (D-WA), would be supportive of such legislation if shaped in the right manner. Sen. Cantwell is also a strong supporter of hydropower, and we believe that she could also support faster permitting of natural gas projects based on a potential increase in economic activity in her state.

Access to Federal Lands

Opening up more federally owned lands to oil and gas drilling will almost certainly be a top priority for the GOP-led Congress in the next two years. According to [recent polling figures](#), this priority is very much in-line with what Republican voters want—nearly 75 percent support more drilling on the nation's federally owned lands.

Sen. Murkowski, a long-time advocate for opening up more federal lands to drilling, has already stated that this will be one of her top priorities when she assumes the chairmanship of the Senate Energy and Natural Resources

Committee in the next Congress. Sen. Murkowski has repeatedly called, including in her "Energy 20/20" plan, for the opening of the coastal plain of the Arctic National Wildlife Refuge (ANWR) to oil and gas development as well as for plans for development of Outer Continental Shelf (OCS) resources.

She will run into strong opposition from her counterpart on the committee, Sen. Cantwell, who has been a leading opponent of allowing oil and gas drilling in ANWR as well as other federal lands. Even Sen. Murkowski admits that successful passage of an ANWR package is not a given, but that she will push very hard for it in 2015. While ANWR has been and will continue to be a flash point between the parties, there may be room for compromise on access to other federal lands, likely in Western states and through offshore drilling.

Given the boom in domestic onshore oil and gas production, we anticipate a push to expand offshore drilling as well. Such efforts could be modeled on H.R. 4899, the Lowering Gasoline Prices to Fuel an America That Works Act, which passed the House in June. The bill, which expands offshore drilling on federal lands, ultimately stalled in the Senate, but could serve as a model for legislation in the 114th Congress.

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