The National Coal Council
Power for America from America

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Thoughts as I gaze across the alley…

Well, I guess it is really over. I will officially retire on May 31, 2013. It has been a truly incredible run, starting all the way back at The Cincinnati Gas & Electric Company on July 22, 1974 and going through a great opportunity at Edison Electric Institute and up until now. WOW! Had I known it was going to be that kind of run… No, I still would not have changed a thing! There are so many people who helped me find my way on this incredible journey, and so I will simply say, thank you to everyone who believed in me, supported me and trusted me.

I wish Janet the absolute best. She will do extremely well. The folks leading the Council made a great choice in selecting her to lead the Council staff forward. I know she is excited and energized as she comes into the job. I believe you saw that at last week's meetings.

And as regards the future work of the Council, the next study will be the best ever conducted. The issues are timely, ripe for a robust debate and with the expertise of the Council and those associated with it, great recommendations will be made to newly confirmed Secretary Moniz, a man the Council can definitely count on to implement them.

Good luck and may God bless. Thank you all.

Robert A. Beck

Climate Change

The Environmental Protection Agency is continuing to review the comments submitted on its proposed rule on greenhouse gas standards for new power plants, and has no timetable for completing the task, an agency spokeswoman said. This indicates that the agency will miss the one-year deadline for finalizing the issuance.

According to an article in *The Washington Post*, knowledgeable sources have forecast that "EPA is likely to alter the rule in some way in an effort to ensure that it can withstand a legal challenge."

"One possibility could include establishing a separate standard for coal-fired power plants, as opposed to gas-fired ones," *The Post* specified.

The proposal would require any new power plant to emit no more than 1,000 pounds of carbon dioxide per megawatt hour of electricity produced; *The Post* noted that an average U.S. natural gas plant emits 800-850 pounds of CO2 per megawatt, while coal plants emit an average of 1,768 pounds per megawatt.

Meanwhile, the newspaper added, acting EPA Administrator Robert Perciasepe told reporters that the agency would begin working on a rule for existing power plants "sometime in 2014," while not offering a specific timeframe in which that effort would be completed.

The article quoted an attorney who represents utilities affected by the proposed rule as saying he was not surprised by EPA's decision to delay the new-plant greenhouse gas standards rule. "The big problem they face," he suggested, "is that the Clean Air Act just wasn't designed to deal with greenhouse gas emissions."

Mining and Energy

A federal appeals court has upheld the Environmental Protection Agency's authority to retroactively veto portions of a permit that allowed a coal company to dispose of mining waste in streams.

Bloomberg BNA's *Daily Environment Report* said the decision by the U.S. Court of Appeals for the D.C. Circuit, which involved a Clean Water Act permit issued by the Army Corps of Engineers, reversed a lower court decision ruling that EPA lacked authority to retroactively withdraw approval of portions -- termed specifications -- of the dredge-and-fill permit.

In its decision, which involves West Virginia's Mingo Logan Coal Company, the appeals court said that Section 404 of the Clean Water Act "imposes no temporal limit" on EPA's authority to withdraw a Corps authorization "whenever" the agency determines that an unacceptable adverse effect would occur.

BNA quoted the appeals court as saying that by using "the expansive conjunction 'whenever,' the Congress made plain its intent to grant the Administrator authority to prohibit/deny/restrict/withdraw a specification at any time."

EPA had not objected when the Corps issued the Section 404 permit in January 2007, but later found problems, and withdrew its approval in January 2011, leading to Mingo's legal challenge, the publication reported.

Elsewhere, Congress is looking into energy policy tax issues, "but anyone hoping to see detailed plans soon may be disappointed," the Capitol Hill newspaper *POLITICO* reported.

"House and Senate tax writers have been digesting a massive amount of data and advice from Capitol Hill sources and are passing that along to lawmakers," the publication said.

Items under consideration by a House Ways and Means Committee working group on energy include allowing renewable energy companies to have greater access to tax-advantaged structures, balancing a reduction in tax rates with elimination of incentives widely used by oil and gas producers, and promoting new measures to spur energy efficiency, *POLITICO* indicated.

Meanwhile, it added, lawmakers in both chambers have sought to allow renewable energy projects to use master limited partnership tax structures to reduce their capital costs, a structure currently available only to companies involved in coal extraction and several other energy undertakings.

Across Capitol Hill, *POLITICO* reported, the Senate Finance Committee is expected to release potential energy, natural resources and infrastructure options submitted by committee staff from both parties and outside groups as part of a broader release of "so-called option papers."

Separately, the publication indicated that the Obama Administration wants to put an end to "an increasing problem for wind and solar power -- feuds with environmental groups that say the projects threaten endangered species or valuable habitat."

"The irony," the newspaper noted, "is that environmentalists are generally big fans of renewable energy," especially when compared with fossil fuels such as coal.

Efforts to dampen the friction include the Interior Department's attempts to speed up environmental reviews for large solar projects in several Western states through creation of solar energy zones. In these areas, developers can skip initial environmental reviews that take a broad look at regional concerns.

This initiative has failed to satisfy all critics, however, as some complain about the inclusion, at the "eleventh hour," of variance zones" -- more than 20 million aces, one told the newspaper -- where solar developers can site big projects that haven't been pre-cleared by Interior.

A second Interior Department initiative is the creation of voluntary guidelines to prevent wind turbines from killing birds. However, *POLITICO* reported, the American Bird Conservancy says that conflicts are continuing and that the guidelines are not helping. The group added that its request that Interior make the guidelines mandatory was rejected.

And, the newspaper quoted some environmental advocates as saying, the conflicts are bound to grow as renewable energy projects spread. Rather than working to avoid areas of conflict, wind project developers are "walking right into it, leading with their chin on some of these," a Conservancy official told the publication.

"The new battle" in the coal industry is taking place in the Northwest, *POLITICO* reported, and involves plans to open large ports that would allow producers to move trains through Washington State and Oregon carrying coal for export to markets such as China.

However, the producers are running into resistance from climate change activists and other green groups, along with some powerful politicians, the newspaper said.

Four coal ports projects are now under development, two in Washington State and two in Oregon, with three of them still facing lengthy environmental reviews, *POLITICO* said.

More than 50 companies supporting the projects have formed an organization to focus attention on the jobs and tax revenues they could bring. According to the Capitol Hill newspaper, members include Peabody Energy, Arch Coal, BNSF Railway and several engineering, mining, teamster, shipping and business groups.

The alliance contends that accounting for the full greenhouse gas effects of the export projects is "unprecedented, inappropriate and a hindrance to badly needed economic investment and international grade," *POLITICO* noted.

Opponents include local stakeholders concerned about everything from climate change, air and water pollution to train and barge traffic to housing prices, as well as the two states' governors and members of their congressional delegations.

Project foes are also aiming at the railroads that would transport coal from the Powder River Basin to coastal ports, threatening to sue them under the Clean Water Act for any coal that falls into waterways during westbound transit.

POLITICO quoted an energy industry attorney as saying these opponents are misusing zoning laws and revising "hundreds of years of activity" involving safe coal transport to attempt to undermine the coal industry. A BNSF spokeswoman made a similar point, telling the publication that millions of tons of coal have been transported across Washington State for more than a century.

Argus Coal Weekly also looked at coal exports. In a column titled "Export Downsides," the newsletter said that coal exporters may be forced to cope with lower shipments, "as Asian demand moderates and Europe's economy struggles."

"Production cutbacks, mine closures and project cancellations or delays are likely to continue in most coal exporting countries around the globe," *Argus* quoted Peabody CEO Greg Boyce as saying.

Even China's economic expansion has cooled, the newsletter noted, with that nation reporting its slowest four quarters of growth in more than a decade.

However, Boyce told *Coal Weekly*, "We are encouraged by the buildup of new coal generation, strong steel production out of China and record import demand in China and India."

Additionally, the newsletter indicated, "the impacts of a softer European economy may be partially offset by higher natural gas prices there, which could underpin coal consumption by the electric power sector."

Accordingly, *Argus* asserted, while U.S. coal export volumes are unlikely to return to recent record levels, "Asia and Europe still promise to be key growth markets for U.S. producers in coming years."

The utility sector's "stampede to gas" could come at a cost, with an overreliance on the fuel potentially hampering the industry's ability to respond to price signals, *Argus Coal Weekly* has indicated.

In a column titled "Eggs in One Basket," the publication quoted Duke Energy CEO Jim Rogers as saying that future volatility in gas markets "is as certain as 'death and taxes.'"

Argus used the Los Angeles Department of Water and Power as an example of the shift to gas. LADWP now uses coal-fired power for about 39 percent of its electricity supply, with natural gas accounting for 24 percent, it reported. But in the future, that mix will be 47 percent natural gas, with coal use zeroed out.

But moving nearly half of its generation portfolio into gas -- traditionally a very volatile fuel -- puts the department at risk if gas prices do not stay at recent lows, the newsletter noted.

"Utilities must pay greater attention to maintaining diversified generation portfolios," Argus concluded. "Keeping some coal-fired generation capacity in place may keep them from overpaying for power in years to come."

Miscellaneous

The Environmental Protection Agency's move toward final rules to regulate the storage and disposal of coal ash at power plants could change in line with the findings of new risk assessments, *Argus Coal Daily* reported.

The agency issued proposed effluent limitation guidelines under the Clean Water Act last month to regulate the discharge of coal ash into waterways. According to *Argus*, they would set four options to reduce pollutants released into waterways by coal ash and other power plant wastes.

Coal Daily reported that EPA stated that under the ELG proposal, more than 50 percent of U.S. coal-fired power plants already have the appropriate technology in place and would be able to comply without incurring additional costs.

According to the newsletter, EPA plans to align this rule with a related issuance for coal ash storage and disposal, proposed in 2010 under the Resource Conservation and Recovery Act. The agency said that its current thinking is that the revised risks, coupled with potential future effluent limitation guideline regulations and increased federal oversight they could bring about, could allow EPA to classify coal ash as non-hazardous.

Under this option, which is favored by industry, the agency could set standards for waste management facilities but leave enforcement to the states, *Argus* indicated.

EPA has not publicly announced a timeline for promulgating a proposed rule, *Coal Daily* said, and the agency is being sued by several environmental groups for not issuing a rule in a timely manner. Industry groups also are involved in the suit, as interveners for EPA, it added.