

Congressional Outlook 2016: Energy

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Mary Landrieu



I am pleased to have the opportunity to share my thoughts regarding the energy legislation that the 114th Congress could enact during 2016. This opportunity comes at a promising moment as major energy legislation developed by Sens. Lisa Murkowski, R-Alaska, and Maria Cantwell, D-Wash., chairwoman and ranking member of the Committee on Energy and Natural Resources, respectively, is pending in the United States Senate.

A half-century of dependence on foreign sources of fossil fuels, specifically crude oil, with all of the negative public policy implications of that situation, has come to an end. In the last decade, we have developed vast new domestic supplies of both crude oil and natural gas. We now have an abundant long-term supply of natural gas that allows us to begin substituting natural gas for other fossil fuels as needed to meet federal environmental goals and requirements. The 40-year ban on crude oil exports has been lifted through a bipartisan vote of Congress in December. Our substantial long-term supplies of fossil fuels are supporting a growing economy through significant job growth and lower energy prices to homeowners, businesses and manufacturers.

Our nation finds itself at a unique and historic moment in our energy history. A robust American economy, particularly in this era of smartphones, computers and a wide range of electronic equipment that makes each of us so productive, depends on an inexpensive and reliable source of energy. Our mobility depends on readily available and affordable transportation fuel. Today and for the foreseeable future, at least, a significant portion of the energy upon which we rely, and which so many of us take for granted, will come from fossil fuels. And, we will continue to use fossil fuels as a feedstock for the manufacture of all of those smartphones, iPads and automobiles. This is a simple statement of fact. While we are increasingly efficient in our use of energy and are rapidly diversifying our energy sources, fossil

fuels will continue to be an important and necessary portion of our energy mix for decades to come.

Just as we are experiencing this “renaissance” in our fossil fuel supply — such a renaissance that the fossil fuel industry faces low prices for its product — it has become obvious to most observers that all of us around the globe must take seriously the challenge of climate change and must take meaningful steps to reduce the emissions of greenhouse gases into the atmosphere. These twin realities of abundant domestic fossil fuels and the need for carbon constraints require the development of thoughtful public policies that will secure the energy required for our growing economy while addressing the problems being caused by carbon emissions.

Unfortunately, our nation and its public officials are divided on the path forward. One strongly held view by some is that we must maximize our use of fossil fuels and can ignore the carbon emissions, the negative effect of which is overstated. An opposite but strongly held view is that we should cease using fossil fuels altogether to avoid the carbon emission problem. I believe strongly that our nation needs to adopt policies that follow a middle path: Develop our fossil fuels resources in an efficient and environmentally sound manner while addressing the issue of greenhouse gas emissions from fossil fuels.

Into this difficult division of views have stepped Chairwoman Murkowski and Sen. Cantwell with thoughtful legislation aptly titled the Energy Policy Modernization Act of 2015. During the first six months of last year, Chairwoman Murkowski and Sen. Cantwell worked closely together to develop balanced, bipartisan legislation that addresses a wide range of needed federal policy improvements. Their legislation — when joined in conference with energy legislation passed by the House late last year — could well be the first major energy legislation that Congress will have enacted since 2007 — after also passing major energy legislation in 2005.

As I write this column, the short-term prospects for this important legislation are not promising. After two weeks of debate on the floor of the Senate, during which amendments were both accepted and rejected, the Senate ran into the difficulty of the Flint, Michigan, drinking water crisis. My former Democratic colleagues are pressing to amend the energy bill with a Flint drinking water provision that is not acceptable to my former Republican colleagues — and threatening to withhold support for the energy bill unless the Flint provision is accepted. This disagreement prevented the legislation from passing the Senate before the President’s Day recess and could delay the Senate from returning to the legislation soon after the recess.

The Energy Policy Modernization Act of 2015 contains a number of important improvements in federal policy, some of which are focused on improving policies from the 2005 and 2007 acts that have not worked as intended. For example, S. 2012 includes aspects of the Shaheen-Portman energy efficiency legislation, which would allow for increased use of renewable energy sources and promote energy efficiency in schools, encourage the federal government to adopt more efficient energy technologies, strengthen outdated model building codes, and encourage efficiency in the industrial sector; expedite the permitting process for LNG export projects; designate hydropower as a renewable resource and contains substantial hydro permitting reforms that includes (1) designating the Federal Energy Regulatory Commission as the lead agency for development of hydroelectric projects; (2) extends the term of preliminary permits for certain projects from three to four years and allows FERC to extend the initial permit by an additional four years; and (3) extends the start of construction date for new projects for up to eight additional years beyond the time set in the license. In addition, the bill includes provisions to promote vehicle innovation and modernize grid security, establishes an interagency rapid response team for transmission projects located on both federal and nonfederal land and directs the secretaries of energy and the interior to collaborate on developing federal policies regarding the energy/water nexus

that is important for so many energy projects.

I believe that the commitment of both Chairwoman Murkowski and Sen. Cantwell to produce bipartisan legislation will result in this legislation ultimately passing the Senate later this year and, hopefully, emerging successfully from a conference with the House with content that can be signed into law by the president.

Two natural resource issues contained in the Energy Policy Modernization Act are the permanent reauthorization of both the Land and Water Conservation Fund and the Historic Preservation Fund. Federal revenues derived from producing oil and natural gas from federal lands fund these two important conservation programs. Chairwoman Murkowski and Sens. Bill Cassidy, R-La., and David Vitter, R-La., of my home state, and other senators, have raised in this Congress the issue of sharing with Alaska and Atlantic seaboard states a portion of the revenue from oil and gas development from federal offshore areas and increasing the portion shared with the Gulf of Mexico states. The proper disposition of revenues derived from federal oil and gas development is likely to be a source of conversation and hearings throughout 2016, although no final action is likely to occur in this Congress. Congress could, however, as part of the Energy Policy Modernization Act, or otherwise in 2016, reauthorize the Land and Water Conservation Fund and the Historic Preservation Fund.

Energy and climate policy are both highly politicized subjects. Observers can expect congressional hearings, staff white papers, studies, the introduction of legislation and other congressional actions on a wide range of specific issues in these two policy areas throughout 2016. These congressional initiatives will be for the purpose of scoring political points with various segments of the electorate for the forthcoming national elections or for the purpose of laying the ground work for legislative action in the next Congress — or both. One thing is certain, as has been true since the first oil embargo that rocked our nation in 1973, energy — and the associated environmental issues — will remain a hot political topic and the focus of substantial congressional attention, for good or ill, through 2016. Reaping the national rewards of our fossil fuels renaissance and our energy supply independence is an important national goal in my opinion.

Modernizing our national energy and environmental policies will continue to be a high priority as our nation faces the need to modernize our aging energy infrastructure, continues to experience an abundance of fossil fuel supply, and carbon emissions continue to be a major concern. The nation's energy and climate policy will be developed not only by this Congress but certainly by the next couple of Congresses and the administration that is elected in November. Congress will need to work in a bipartisan and open-minded manner to develop the policies our nation needs going forward. The task will be difficult, but I hope Congress and the executive branch will prove to be up to the task in 2016 and beyond.

—By Mary Landrieu, Van Ness Feldman LLP

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