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LOOKING AHEAD TO 2021: BIDEN'S PROGRESSIVE ENERGY AND ENVIRONMENTAL POLICIES FACE BARRIERS IN THE U.S. SENATE

While President Trump's legal challenges to the election results remain ongoing, we fully expect that on Inauguration Day – January 20, 2021 – President-elect Joe Biden will take the oath of office. Broadly speaking, with Republicans expected to maintain a slim US Senate majority and a reduced Democratic House majority, President-elect Biden's policy agenda will face many obstacles. That said, the final Senate makeup will not be determined until January 5, 2021, when Georgia holds two Senate run-off elections for seats currently held by Republican incumbents. Neither party will have a 60-vote super-majority in the Senate no matter the outcomes in Georgia, meaning bipartisan support will be necessary to advance legislation in Congress. As such, the Biden campaign's bold climate and energy agenda will need to morph into modest proposals that can garner Republican support. Similarly, to secure the 51 Senate votes necessary to confirm cabinet positions, President-elect Biden may look to more moderate cabinet nominees.

On Wednesday, Senator John Barrasso (R-WY) announced his decision to serve as Chairman of the Senate Energy and Natural Resources (ENR) Committee. With Senator Joe Manchin (D-WV) as ENR Ranking Member, lawmakers from the two largest coal-producing states will lead the powerful committee. Combined with Senator Shelly Moore Capito's (R-WV) anticipated role atop the Senate Environment and Public Works Committee, a Republican-controlled Senate will present major barriers to President-elect Biden's more progressive energy and environmental policies.

Regardless of Senate control, President-elect Biden is expected to use his executive authority to rejoin the Paris climate agreement; attempt to significantly limit leasing of federal lands; and reverse many of the Trump Administration's regulatory rollbacks. As we look to 2021, it will be important to keep a close eye on the role states, and likely the US Judicial system, play in defining the future of energy policy.

California Governor Gavin Newsom's recent executive order sets a goal to ban the sale of new gasoline powered vehicles by 2035, and a goal of requiring medium- and heavy-duty trucks to be zero emission by 2045 "where feasible." To enact such stringent policies, California would need approval from the EPA. Even if the EPA grants approval via a Clean Air Act waiver or the like, the California approach will face legal challenges by automakers. Opponents will challenge the California restrictions on various legal grounds, which could include: the federal government's authority under the US Energy Policy and Conservation Act, the US Constitution's Commerce Clause, and additional federal pre-eminence arguments. Enforceability of the order will be decided in the courts and may merit review by the US Supreme Court's 6-3 conservative majority.

Meanwhile, President-elect Biden is on record in support of CAFE standards and the Biden Administration will likely seek an increase. The Trump Administration finalized a rollback of the standards to require a 1.5% annual increases in fuel efficiency through 2026, far below the Obama Administration's 5% requirement. California secured agreements with Ford, Honda, and Volkswagen for the companies to pursue a balance of the standards offered by Presidents Obama and Trump. The California approach could serve as a model for the Biden Administration.

On the RFS front, President-elect Biden strongly supports it and often criticized the Trump Administration's handling of the program. Biden is likely to grant less small refinery exemptions (SREs) compared to President Trump. Granting less SREs will likely keep the corn ethanol mandate intact which results in higher RIN values and an unlevel playing field in the motor fuels market. Biden is likely to pursue efforts to help the US achieve a 100% clean energy economy and net-zero emissions no later than 2050 including markets for GHG allowances, renewable energy certificates (RECs), and potentially (though unlikely) low-carbon fuel standard (LCFS) credits. Attempts to deploy a cap-and-trade like or a carbon-tax system is likely to face stiff GOP opposition. An argument can be made that GOP lawmakers in the Midwest could possibly try and cut a deal with Biden to protect corn-based ethanol interests in a LCFS world but that would likely cause an uproar with the environmental lobby who view ethanol as environmentally inferior. If Congress cannot agree on an RFS replacement, then EPA will take over, with authority to set RFS volumes at their own discretion starting in 2023 and future years.

IRS CONTINUES TO DISALLOW DEDUCTIONS FOR PPP LOANS; CONGRESS PUSHES BACK

The IRS reaffirmed its position this week indicating that employer expenses paid from Paycheck Protection Program (PPP) loan proceeds do not qualify as deductible expenses if the loan is forgiven. PPP loan forgiveness applies to payments of payroll, certain mortgage interest and rent, and utility costs incurred. Ordinarily these expenses are deductible. However, the IRS guidance will disallow the deduction if the expense originated from the proceeds of a forgiven PPP loan. There is no language in the CARES Act that specifically supports the IRS position on non-deductibility. However, Section 1106(i) provides that any amount from PPP loan forgiveness that would ordinarily be includible in a

taxpayer's gross income - is excluded. The IRS concluded that this language means expenses paid to qualify for loan forgiveness under a PPP loan are considered tax-exempt income and non-deductible under the Internal Revenue Code (IRC). Generally, the IRC prevents taxpayers from "double dipping" by taking a deduction for expenses incurred to generate tax-exempt income, specifically providing that taxpayers may not deduct amounts that are allocable to tax-exempt income.

Congress is already pushing back against the IRS guidance. Congress's top tax writers; Senate Finance Chairman Chuck Grassley (R-IA) and House Ways and Means Chairman Richard Neal (D-MA), urged the Treasury department to reconsider the IRS guidance. Lawmakers have also introduced legislation clarifying that businesses may deduct expenses paid with forgiven PPP loans and are pressing that it be include in a COVID-19 relief package.

EMA URGES CONGRESS TO MAKE IMPROVEMENTS TO THE PAYCHECK PROTECTION PROGRAM

EMA joined a large coalition of associations in sending another letter to Congress urging an immediate fix to the Paycheck Protection Program (PPP) loan forgiveness process before the end of the year. Bipartisan and bicameral legislation has been introduced in both chambers, The Paycheck Protection Program Small Business Forgiveness Act (S. 4117) (H.R. 7777), which would streamline the PPP forgiveness process and reduce compliance costs for small businesses. Click [here](#) to read the communication.

NEW LOBBYING GROUP TO PUSH FOR 100 PERCENT EV SALES BY 2030

A new lobbying group was formed this week to advocate for 100 percent electric vehicle sales by 2030. Made up of groups that include Tesla, Uber, ChargePoint, Piedmont Lithium, Con Edison, Pacific Gas and Electric, Duke Energy and Vistra, the new group, known as The Zero Emission Transportation Association (ZETA), plans to immediately push to extend and expand EV tax credits and include point-of-sale consumer incentives to buy EVs. The group wants "to be relevant" right away to move their agenda as fast as possible, although their efforts face an uphill battle in a likely Republican-controlled Senate and a slim Democrat House majority next year. For more on the Zero Emission Transportation Association, [click here](#).

Meanwhile, Quebec announced on Monday that it plans to join California's efforts to place a ban on new sales of internal combustion engines (ICE) by 2035. Reports indicate that the United Kingdom will soon announce a ban on sales of new ICE cars by 2030. For more information, [click here](#).

DEMOCRATS FACE UPHILL BATTLE TO OVERTURN LAST MINUTE TRUMP RULEMAKINGS

Democrats are looking to the Congressional Review Act (CRA) to overturn several last-minute rules finalized by the Trump Administration during the second half of 2020. The CRA empowers Congress to conduct an expedited review of new federal regulations issued by government agencies and overturn any they disapprove by joint resolution. Once a rule is repealed, the CRA prohibits reissuing of the rule in substantially the same form or the issuing of a new rule that is substantially similar. Democrats have a window of time lasting 60 legislative days (days Congress is actually in session) to overturn a rule by simple majority vote.

Whether the CRA will be an effective tool for the Democrats to roll back some Trump administration rules depends on the outcome of the two Senate runoff races in Georgia. If Republicans hold on to the two Georgia Senate seats, they will maintain a slim majority. If Republicans lose both seats, there will be a 50-50 tie requiring Democrats to pick off moderate Republican votes to overturn rules they do not support. The best hope for Democrats to flip a Republican vote would be to persuade Senators Susan Collins (R-ME), Mitt Romney (R-UT) or Lisa Murkowski (R-AK) to join with them. While these Senators have been known to join forces with the Democrats on major issues on occasion, it is less likely they will do so over an administrative rulemaking. As a result, the CRA is unlikely to be an effective tool for Democrats to overturn Trump era rules.

HEATING FUEL DEALERS: TELL CONGRESS TO FULLY FUND LIHEAP NOW

It is time for heating fuel dealers to contact their elected representatives in Congress and urge them to support increased funding for the Low-Income Home Energy Assistance Program (LIHEAP). Support for increased LIHEAP funding is critical this year due to the millions of newly unemployed families who are now eligible for heating assistance this winter. According to leading economists, a one-percent increase in the unemployment rate is associated with a 13 percent increase in the likelihood of experiencing bill hardship and a 16 percent increase in the probability of not having sufficient funds to pay for residential heating.

Without robust LIHEAP funding levels this year, millions of Americans will risk losing the ability to heat their homes and potentially their lives as we approach the height of the winter heating season.

EMA is asking Congress to include at least \$4.5 billion for LIHEAP funding as part of a new COVID-19 relief bill or year-end spending bill. Heating fuel dealers can help in this important effort by [clicking here](#) to send a letter to their members of Congress urging increased funding for LIHEAP now.

WPMA COVID-19 - CRITICAL REFERENCES FOR MEMBERS

Please visit our web site for up-to-date information related to your business and the COVID-19 pandemic. You will find the link on our home page at www.wpma.com.

MEMBERS AND ASSOCIATES - YOU CAN CONTRIBUTE!

WPMA welcomes industry-related articles for publication in the WPMA News magazine. All members and associate members of WPMA are eligible to submit items for publication. Articles will be included as space allows, and no self-promoting articles or editorials will be accepted. WPMA reserves the right to edit and make adaption of such contributions to accommodate the magazine's space and style. Please submit articles or content to Jan Roothoff, WPMA Administration/IT Director at janr@wpma.com, or mail to Jan Roothoff, Western Petroleum Marketers Association, PO Box 571500, Murray, UT 84157-1500. Submissions for the Winter edition of WPMA News magazine are due before November 1st. Later submissions will be considered for the Spring issue.

WPMA EXPO

February 16-18, 2021. The Mirage Las Vegas, Nevada.

MARK YOUR CALENDARS FOR UPCOMING EVENTS

December 15, 2020 – Oregon (OFA) Trap Shooting Event – Portland Gun Club – Portland, OR

February 16-18, 2021 – WPMA Convention & Expo – Mirage Hotel– Las Vegas, NV

March 15, 2021 – Hawaii (HPMA) Golf Tournament – Oahu Country Club – Honolulu, HI

May 6-7, 2021 - Nevada (NPM&CSA) Big Dogs - Red Rock Hotel & Casino - Las Vegas, NV

June 1-2, 2021 - Montana (MPMCSA) Convention -Fairmont Hot Springs Resort - Fairmont, MT

June 21-24, 2021 - Washington (WOMA) Convention - Suncadia Resort - Cle Elum, WA

July 17-19, 2021 - Oregon (OFA) Annual Conference - Sunriver Resort - Sunriver, OR

August 4-6, 2021 - Idaho (IPM&CSA) Convention - Sun Valley Resort - Sun Valley, ID

August 23-25, 2021 - New Mexico (NMPMA) Convention - Sandia Resort & Casino - Albuquerque, NM

September 15-17, 2021 - Utah (UPMRA) Convention - Sheraton Park City Hotel - Park City, UT

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Petro Pete: “Abstinence is a good thing if practiced in moderation.”

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