

## **ELCON INFO MEMO**

**Date:** January 14, 2009

**To:** Member Representatives, Technical Committee, Federal Relations Committee & Affiliates

**cc:** Rick Bidstrup

**From:** Marc Yacker ([myacker@elcon.org](mailto:myacker@elcon.org))

**Subject:** Update on Legislative Activities

### Introduction

The new Congress (minus, for the moment, a Senator from Minnesota) has been sworn in, the President-elect is in Washington (though temporarily housed in a hotel, rather than on Pennsylvania Avenue), and the legislative agenda for the 111<sup>th</sup> Congress is beginning to take shape. And it appears that energy issues will be on both the front and back burners.

But if history is a guide, we may find that what is expected to happen doesn't necessarily happen, especially right away. And while pundits talk about a Democratic agenda and one-party rule, in fact it has yet to be proven that the Senate, House and White House components of the Democratic Party can even speak with one voice, no less act in unison on a number of issues that may prove to be more driven by regional divides or simple "turf" battles than by party differences.

House Speaker Nancy Pelosi (D-CA) and Senate Majority Leader Harry Reid (D-NV) are used to being viewed as the national spokespeople for the Party. Now, with a Democratic President, they are being forced to re-think their respective positions. Sen. Reid was already quoted as stating, regarding the President-elect, "I don't work for him."

For those who focus on energy issues, the prospect of a proposal to reduce greenhouse gas emissions is on everybody's radar screen. But an interesting aspect of this Administration is that it views energy as sub-features of two other clearly top tier issues – economic recovery and national security. But until there is precise legislative language – and until votes are taken – there is much more conjecture about how energy issues will be addressed than there are facts.

### In the Senate

Although some, including Sen. Reid, had hoped to have an economic stimulus package ready to be signed on Inauguration Day, several things happened to slow that effort down.

First, it's technical, but the Senate has not yet passed the requisite "Organizing Resolution" establishing party ratios on the various committees (and it reportedly may not pass that resolution until the Minnesota Senate race is positively determined and a Senator sworn in). Without party ratios, new Members cannot be given Committee

assignments, old Members cannot switch Committees, and the legislative process cannot really begin.

Second, and probably more important, Senators (and Representatives) are coming to the realization that the new Administration expects to have significant input into the development of a recovery package, and, while such input has been coming sporadically, it has not been in the form that could start the legislative process moving forward.

Majority Leader Reid has asked all Senate Committee Chairmen for their recommendations on what should be included in an economic stimulus bill. On energy issues, according to staff, Senator Jeff Bingaman (D-NM), chairman of the Energy and Natural Resources Committee, “has finished his homework” and provided Leader Reid with a series of energy-related recommendations. Chairman Bingaman has also prepared a “Green Stimulus Source Book”

([http://energy.senate.gov/public/index.cfm?FuseAction=IssueItems.View&IssueItem\\_ID=ce27babd-d579-40ce-91e9-7b41510d97d3](http://energy.senate.gov/public/index.cfm?FuseAction=IssueItems.View&IssueItem_ID=ce27babd-d579-40ce-91e9-7b41510d97d3)) which is basically a compilation of “green” proposals from recent hearings and publications.

In addition Chairman Bingaman has tasked his staff with providing a list of recommendations that, if not included in the economic stimulus package, can alternatively be packaged in a subsequent energy efficiency bill. He is also putting out feelers to Senate Republicans about a multi-fuels bill that would encourage the use of renewable fuels but – somehow – do no or minimal damage to the use of conventional fossil fuels.

It is becoming more clear that the stimulus package will not face entirely smooth sailing in the Senate, and that may hold true for a subsequent energy efficiency bill. Senate Minority Leader Mitch McConnell (R-KY) has cautioned against speedy action on a stimulus bill, particularly if the spending items might include some questionable projects. The Republican leader called for hearings as well as full public disclosure on the contents of the bill. If hearings are to be held, it is difficult to see consideration by the full Senate until well after the Inauguration. That pushes the energy efficiency bill even farther back on the Senate calendar.

Although formal Committee assignments cannot be made until the Organizing Resolution is approved, preliminary reports have three Democratic Senators leaving the Energy Committee (Sen. Salazar, CO, to become Secretary of Interior, and Sens. Tester MT, and Akaka, HI, for other Committee assignments) being replaced by four new members (Sens. Mark Udall, CO, Jeanne Shaheen, NH, Debbie Stabenow, MI, and Evan Bayh, IN). Of special interest, Sen. Udall was the primary author of the renewable energy standard adopted by the House last year, and he is expected to continue his work in support of renewables. Sens. Shaheen, Stabenow and Bayh are all from east of the Mississippi (unusual on the Energy Committee where Westerners have long been predominant) and they hail from states in organized wholesale electricity markets (though Indiana is still bundled) and might take an interest in oversight hearings promised by Sen. Bingaman.

The new senior Republican on the Energy Committee will be Sen. Lisa Murkowski (R-AK).

-

#### In the House

This will not be your father's Energy and Commerce Committee

As is well known, at an early organization meeting last month, Rep. Henry Waxman (D-CA) challenged and defeated Rep. John Dingell (D-MI), the incumbent Chairman of the Committee and the longest serving Member of the House (in fact, next month Rep. Dingell will become the longest serving Member of the House in history). In doing so, Rep. Waxman, who has long been viewed as a liberal activist and staunch environmentalist, will likely change the focus, direction and pace of the Committee in a way that will have an overarching impact on almost all aspects of energy and environmental policy.

In an early move, Chairman Waxman combined two subcommittees into one – the newly named Subcommittee on Energy and the Environment – and named the equally liberal and environmental Rep. Ed Markey (D-MA) as chair, “convincing” the more moderate Rep. Rick Boucher (D-VA), who had chaired the Subcommittee on Energy and Air Quality, to take the helm of Rep. Markey's Subcommittee on Telecommunications. Soon after being named as chairman, Rep. Markey proclaimed that he will propose legislation “with the maximum level of greenhouse gas reduction.” The full Committee will hold a hearing on climate change before the Inauguration.

Rep. Waxman also set a one-year target for his Committee to approve a greenhouse gas reduction bill. The bill Rep. Markey introduced last year (HR 6186), which Rep. Waxman cosponsored, may prove to be the starting point for debate.

In addition, Chairman Waxman has recommended to the Obama Administration that the economic stimulus package include provisions on both “Smart Grid” and energy efficiency.

-

#### In the Administration

The new Administration's top legislative priority is clearly the development and enactment of an economic stimulus package – tentatively called the American Recovery and Reinvestment Act – with estimates of the bill's scope ranging from \$700 billion to \$1.3 trillion.

However, since the package – at least the publicly known package – is still more rhetorical than real, the exact components are uncertain, but clearly a significant part will deal with energy, much of it focusing on energy efficiency and renewable energy.

A major emphasis in the plan is job creation – one report cited at least 3 million jobs by the end of 2010 – and many of those jobs would be “green jobs” in the energy sector. A common buzzword is that these jobs will be in public works projects that are “shovel ready” and of a relatively short duration. Alternative energy projects (wind, solar, etc.) and an enhanced transmission grid – including a variety of improvements collectively termed “smart grid” – also enjoy support in the Administration, and will be supported either in the stimulus package (though many fail the “shovel ready” test) or at a later time. Building efficiency – new energy efficiency standards – is often discussed as providing new jobs as well as energy and environmental benefits. But some congressional Democrats in both houses have criticized drafts of the stimulus package as containing too little on energy, and they will try to up the ante during the legislative process.

### In the Opposition

Environmentalists and utilities continue to combine forces in an effort to somehow promote Revenue Decoupling as part of the recovery package. Among their suggestions is a proposal that only States that have adopted Decoupling be eligible for the public works projects in the economic recovery plan. Facing strong opposition from a number of sources, including ELCON, compromise language is being developed to provide language in the package giving some sort of incentives to States which have, in one way or another, encouraged energy efficiency and/or conservation.

Renewable energy groups are also viewing the stimulus package as an opportunity to secure several provisions they have long sought but never achieved. Specifically they are hoping to make the Production Tax Credit (PTC) for renewable energy permanent or, at the very least, extended for a considerable period of time. And, some in the wind and solar energy communities have proposed that the PTC be refundable for companies not showing a profit.

### In the Coalitions

ELCON continues to be an active participant in the Campaign for Fair Electric Rates, coordinated by the American Public Power Association, designed to increase attention in Congress and in the public generally about dysfunctional wholesale electricity markets.

The Campaign sent a letter, endorsed by numerous consumer groups, to the President-elect and held a teleconference call with the energy Transition Team. Future meetings with Administration and Capitol Hill leaders are anticipated.

ELCON is also participating in an informal group of manufacturers and selected environmental groups on energy efficiency issues in an effort to craft a proposal that recognizes the energy efficiency improvements made by manufacturers through the years.

### In the Commission

FERC Chairman Joe Kelliher, a Republican appointed by President Bush, basically stated the obvious by announcing that he was resigning his position as of January 20. Since the Chairman serves strictly at the pleasure of the President, it was all but certain that President Obama would appoint a new Democratic Chairman within a day or so of taking office (until there is a FERC vacancy, it is assumed that the President would appoint one of the two Democrats now serving on FERC, Jon Wellinghoff or Suedeen Kelly). Chairman Kelliher also announced that he would recuse himself from future FERC cases that might provide a conflict of interest with jobs he might be pursuing. But he is under no legal obligation to resign his FERC seat, and President Obama cannot name a new Commissioner (who might or might not be designated Chairman) until a vacancy occurs. Any new Commissioner would be subject to Senate confirmation.

### In the Future

A month or so ago, both congressional Democrats and President-elect Obama's staff were talking about an economic stimulus package to be completed and ready for implementation by or shortly after Inauguration Day, followed by a stream of other legislative initiatives such as health care, energy efficiency and, perhaps, climate change. But, as so often happens, delays occur, and even congressional optimists are not sure that work on a stimulus package can be completed by February 13, when Congress takes a week off for Presidents' Day.

Conventional wisdom generally – but not unanimously – holds that, given the economy, issues such as energy efficiency and climate change will not be considered unless they can be demonstrated to promote jobs (possible for energy efficiency; less likely for climate change). But, at the same time, the new activist leadership on the House Energy and Commerce Committee may not ascribe to the same assumptions. And, for legislation to be enacted, leadership in the House and Senate have to come to agreement with each other and then with the Administration. That may be easy – or it may not.

### In Conclusion

Almost every new Administration comes into power with high hopes of passing a legislative program early in its tenure. The Obama Administration, which is coming into office facing, arguably, the worst economy in many years, may find the necessity of working on economic issues supersedes its ability to tackle any (or many) others.

That said, as stated earlier, the Administration and many Members of Congress view energy issues as part and parcel of an economic recovery program, as well as part of the effort to achieve energy independence. The new President campaigned on a theme of “change.” And some “change” – no one is quite certain what “change,” but probably including some energy provisions – will likely occur relatively early in the year. Top

prospects include tax credits for renewable energy, some improvements to the transmission grid, and something on energy efficiency.