

Message

From: Maisano, Frank [frank.maisano@bracewell.com]
Sent: 7/23/2018 4:17:07 PM
To: Maisano, Frank [frank.maisano@bracewell.com]
Subject: Jul 23 PRG Energy Update: Tariffs, RFS, Carbon Capture Road Map

Friends,

The British Open was exciting with Tiger Woods reemerging as a challenger. His Saturday round put him on top of a major tournament for the first time since 2010. In the end, it was Italian [Francisco Molinari](#), who played alongside Tiger on Sunday and remains red hot, who pulled away to win the famed *Claret Jug*. And with this being the final week of the *Tour de France*, we should see some [fireworks](#) as riders head to the decisive stages in the Pyrenees starting tomorrow. Overall leader Geraint Thomas maintained his advantage of 1:39 over four-time champion and teammate Chris Froome. Tom Dumoulin, the world time trial champion, remained third at 1:50 back. What to do Team Sky? Thomas or Froome? We shall see...

This week is the last for the House before August Recess. There is a lot going on with budget and farm bill issues, with Interior-EPA Approps headed for votes. Senate Energy is also expected tomorrow to vote out DOE nominees including Dan Simmons and IG Teri Donaldson. This is also a big week for tariff issues with [steel importers Friday asking](#) the U.S. Court of International Trade for a summary judgment to immediately halt the steel duty. Bracewell's trade policy experts Josh Zive (202-828-5838) and Paul Nathanson (202-828-1715) are all over the issue and can help.

The RFS is again in the news with Friday's court decision hitting EPA for denying waivers to small refiners. As you know this has been a contentious issue with the ethanol activists hammering the waivers despite the fact that there has been no demand loss. Friday's decision is the second in favor of small refiners. The news will be followed by a presser tomorrow hosted by former House Energy Chair Henry Waxman and his environmental group Mighty Earth, who will attack the RFS as bad policy. Finally, on Wednesday at 9:15 a.m., the House Energy Enviro Subpanel looks at RINs and the problems they are causing with the RFS. Also, the Senate Energy Committee will look at global oil price issues tomorrow in a hearing.

In another major event Wednesday at Noon, the Carbon Utilization Research Council, ClearPath Foundation and the Electric Power Research Institute will be on Capitol Hill to officially unveil two studies that underscore the promise and benefits of aggressively developing and commercializing U.S.-based carbon capture, storage and utilization technologies. CURC and EPRI will release the 5th Advanced Fossil Energy Technology Roadmap that identifies technologies that can be available by the 2025-2035 timeframe that generate electricity from fossil fuels with significantly reduced carbon dioxide emissions that could be cost competitive with other sources of electricity generation. A companion analysis conducted by CURC and ClearPath will also include modeling provided by NERA Economic Consulting and Advanced Resources International to show that there are significant economic benefits to the U.S. if the technology development outlined in the Roadmap is undertaken under a wide range of scenarios.

Today at 2:00 pm, MIT's Jeremy Gregory will speak at the Business Council for Sustainable Energy (BCSE) for its Energy Thought Leader Speaker Series – a strategic effort to stimulate the development of resilient buildings and infrastructure that will continue through December of this year. Gregory will focus on MIT's resilience-related research, with a special focus on our quantitative analyses, as well as address ways these ideas can be extended to energy networks. The meeting is closed to BCSE members but check in with me at [@fvmaisano](#) or [MIT's CS Hub](#) if you are interested in updates. (You should follow MIT's CS Hub anyway).

Finally this morning – despite House passing a non-binding resolution stating that a nationwide carbon emissions tax would be "detrimental" to the economy – Rep. Carlos Curbelo (R-Fla.) will [discuss his legislation to tax on carbon emissions at a forum this morning sponsored by the Columbia Center on Global Energy Policy](#). The bill calls for the elimination of the federal gas tax and the reinstatement of federal climate regulations if the carbon tax, which would

start out at \$23 per ton, fails to curb a certain amount of greenhouse gases. Americans for Tax Reform will hold its own discussion today on what it calls "a giant job-crushing carbon tax," with Grover Norquist and CEI's Marlo Lewis.

Bottomline: In reality, with Congress firmly on record against a carbon tax, the questions remains if a carbon tax is a no go, then what might be a solution that shows meaningful action on advancing innovation and reducing emissions? Perhaps, we can help find that answer soon...

Call with questions...Best,

Frank Maisano

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FRANKLY SPOKEN

"Importantly, the court rejected EPA's "industry-wide" conclusion that refiners can pass through their RIN costs, recognizing that the ability of a refinery to pass through its RIN costs is a refinery-specific and fact specific determination."

LeAnn Johnson, counsel to Ergon-WV on Friday's court Decision on Small Refiner Waivers.

"Section 232 of the Trade Expansion Act allows the President nearly unfettered discretion to impose tariffs and create other trade barriers if he simply decides that imports threaten to impair U.S. national security. At the same time, the law allows tremendous latitude to the President in determining what constitutes a threat. The United States Constitution provides important checks on the President's power, and the Section 232 trade provision stands in clear violation of that balance."

AllS President Richard Chriss, announcing they are asking the International Trade court to stop Section 232 tariffs imposed by President Trump

ON THE POD

Bracewell Podcasts Looks at Trade, New EPA Head – The latest episode of the Bracewell Podcast, *The Lobby Shop* is now live on [Stitcher](#), [iTunes](#), [SoundCloud](#), and [Google Play Music](#). This week we are joined by Kyle Kondik, Managing Editor of Larry Sabato's Crystal Ball out of the UVA Center for Politics. Kyle talks mid-terms, key swing states, the current political climate's impact on voting in 2018 and more.

FUN OPINIONS

Banks Calls for State Parity on GHG Impacts – In an [op-ed in The Hill](#), former White House climate/energy advisor David Banks says the disparity between poorer and richer states on GHG emissions. Banks wrote "any national compromise must recognize the wealth gap between the states. It should also reflect the fact that richer states generally industrialized earlier and account for the majority of U.S. historical emissions."

Kerrigan: Small Businesses Innovated on Keeping America Working – Karen Kerrigan, head of the Small Business & Entrepreneur Council, [recently wrote](#) the White House Workforce Development Initiative is vital to small businesses. She highlighted the July 19th event where President Trump announced his "Pledge to American Workers" and signed an Executive Order (EO) on workforce development. The EO establishes the National Council for the American Worker, which will "convene voices from the private, education, labor, and not-for-profit sectors to enhance employment opportunities for Americans of all ages." Kerrigan added that small businesses are at the cutting edge of training. Entrepreneurs and their teams are implementing innovative and creative approaches that aim to keep their employees fully trained, engaged, and ready for career opportunities that may come their way.

IN THE NEWS

Court Rules in Favor of Small Refiners on RFS Waiver – Late Friday, the US Court of Appeals for the Fourth Circuit handed down an important decision in *Ergon-WV v EPA* arguing that the EPA’s denial of a small-refiner exemption (SRE) under the federal renewable fuel standard (RFS) was arbitrary and capricious.

The Case is Significant Given Battle over SREs – The Fueling American Jobs Coalition says the Court agreed with Ergon that the application of the Department of Energy’s (DOE) matrix constituted an “error-riddled analysis” of Ergon’s petition. The Court noted that DOE’s failure to score certain factors were arbitrary and capricious. Most importantly, the Court held that EPA’s failure to consider the adverse impacts of high renewable identification number (RINs) prices by simply reiterating the view of one of its staffers that RINs prices were passed through to consumers was insufficient and flawed. The Court said that each refinery faces specific circumstances with respect to their markets that can constrain pass-through of RINs costs and any EPA generic assertion to the contrary was an insufficient basis upon which to deny an SRE. The Court took note that “the dramatic rise in RIN prices has amplified RFS compliance and competitive disparities, especially where unique regional factors exist, including high diesel demand, no export access, and limited biodiesel infrastructure and production.”

Full decision – <http://www.ca4.uscourts.gov/opinions/171839.P.pdf>

Company Counsel Decision Reminder of Hardship Faced from RFS – LeAnn Johnson Koch, Perkins Coie, counsel to Ergon-West Virginia said the 4th Circuit’s decision is a reminder to opponents of small refinery hardship that the harm to small refineries is real and that the Clean Air Act requires EPA to relieve it. “The “error-riddled” DOE scoring grossly underestimated the disproportionate economic hardship experienced by Ergon and consequently, impacts on the company’s viability. We’re grateful to the Court for recognizing it.” Johnson also said the decision is also an important reminder to opponents of small refinery hardship that the goal of the RFS is not to expand ethanol consumption, but to increase energy independence and security. “The biofuels industry has doubled down on structural flaws in the rule that discourage blending and harm merchant and small refineries. It wouldn’t be so troubling if they weren’t at the same time pounding the table about “demand destruction” and urging EPA to violate the Clean Air Act and deny hardship relief to small refineries. Demand destruction and small refinery hardship are the consequences of not fixing the rule to restore a level playing field in the transportation fuels market.”

Company: Significant, Disproportionate Hardship from RFS – Ergon-WV [said they were pleased](#) to see the 4th Circuit Court ruling which recognizes the significant and disproportionate hardship that RFS places on small refineries. Company President Kris Patrick said a 2011 DOE study predicted that this disproportionate economic hardship would occur, and this is precisely what they witnessed at EWW. Patrick: “Like other small refineries, we operate in rural geographic areas, supplying critical fuel supplies and supporting the local economies with jobs and tax revenue. It is vital that Congress, the EPA, and the DOE continue to protect the important role of small refineries in the U.S. economy.”

Case Turns Misleading Ethanol on Head – Ethanol Interests and their Congressional supporters have been so misleading, it’s important to remind you of the facts surrounding the program. Congress created the RFS as part of the 2005 Energy Policy Act in an effort to reduce greenhouse gas emissions and expand the nation’s renewable fuels sector. Their understanding of the detrimental impact the program could have on small refineries prompted Congress to direct the EPA to grant waivers from the mandate to small refineries that would suffer a “disproportionate economic hardship” in complying with the program. Small refineries are defined as those processing less than 75,000 barrels per day of crude oil. Unlike large integrated refiners which primarily produce gasoline, many small refineries produce diesel fuel in higher proportions. All refiners are required to purchase renewable identification numbers (RINs), which the EPA describes as “credits used for compliance and the ‘currency’ of the RFS program.” This mandate has resulted in an artificial, government-created market for blend requirements beyond what the market will accept, primarily due to diesel-to-gasoline production ratio or “diesel disparity.” Fundamentally, this program unfairly disadvantages small refineries, particularly those with higher than average production of diesel.

Obama EPA Abandoned Help to Small Refiners – During the Obama administration, the EPA abandoned the original intent of Congress when establishing small refinery hardship waiver requests by interpreting that the hardship exemption must pose a threat to a refinery’s survival as an ongoing operation. In EWV’s case, costs directly attributable to the RFS were the refinery’s third highest operating expense in 2016, following raw materials and labor.

More on Ergon – Ergon-WV operates a small refinery (23,500 barrels per day) in Newell, West Virginia that primarily produces highly refined paraffinic specialty products and fuels from local Appalachian grade crude. In addition to two small refineries, Ergon also operates an ethanol production facility which Patrick says provides them with a unique vantage point regarding RFS. “The argument touted by ethanol advocates of demand destruction as a result of hardship waivers is simply not based in logic or facts, Patrick said. “EWV blends 10% ethanol with 99% of the gasoline it produces and will continue to do so, even without a mandate. However, EWV cannot pass through its RIN costs and the detrimental impact imposed by the RFS on EWV’s high diesel production is unacceptable and counter to the intent of the RFS program.” EWV has made significant investments in environmentally friendly processes and technologies over the past three decades.”

Steel Importers Ask For End to Tariffs – The American Institute for International Steel (AIIS) and two of its member companies, SIM-TEX, LP and KURT ORBAN PARTNERS, LLC, [filed a motion for summary judgment with the US Court of International Trade](#) in an effort to halt enforcement of the law under which tariffs are currently being collected on steel imported to the U.S. The motion follows on a lawsuit filed by the parties in late June in the same court challenging the constitutionality of the statute under which President Trump imposed a 25% tariff on imported steel. Since tariffs were imposed on steel imports earlier this year, the U.S. steel supply chain has experienced significant disruption, with American ports experiencing a sharp drop in throughput and steel-using manufacturers hit with price increases of 50% or more on steel product, coupled with newfound difficulty in obtaining specific types of steel, whether imported or sourced domestically. To date, U.S. Customs and Border Protection has collected in excess of \$582 million in tariffs—amounting to a tax imposed on the U.S. economy. AIIS is America’s leading voice for the steel supply chain, and the only voice in Washington, D.C. for free and responsible trade in steel. AIIS members, which include railroads and other transportation companies, port authorities, union locals, traders and logistics companies depend on imported steel for their economic well-being. As the tariff reduces the amount of imported steel, it also reduces the revenue of AIIS members, harming their businesses and putting their employees’ jobs at risk.

Report: Oil Demand to Peak? – The Consulting firm Wood Mackenzie forecasts global oil demand will peak around 2036 in a new report out this week. According to WM, the peak is due to fuel efficiency gains and the anticipated rise of both autonomous and non-autonomous electric vehicles. Others have suggested a slower glide path which may undercut the WM date.

DOE: US Crude Booming, US Moves to #2 producer – The Energy Department said U.S. crude production reached 11 million barrels per day [for the first time](#), which would place the United States as the second-biggest producer of crude, after Russia, which sources say was producing 11.2 million bpd in early July.

ON THE SCHEDULE THIS WEEK

Heritage Hosts Johnson on Trade Discussion – The Heritage Foundation hosts a [discussion tomorrow](#) at 8:00 a.m. on the real impacts of the tariffs, and what the retaliation means for Americans. Sen Johnson will join a panel of experts including the railroad assn’s John Gray Maria Zieba of the pork producers and API’s Aaron Padilla. The discussion will be moderated by our friend Tori Whiting.

NREL to Look at Caron Economy – Tomorrow and Wednesday, the National Renewable Energy Laboratory holds a [summit](#) in Denver on realizing a Circular Carbon Economy. NREL, in collaboration with the USDA and DOE will consider the challenges, opportunities, and needs involved in realizing the CCE. The summit will focus on defining and valuing ecosystem services in the context of a carbon-based economy; renewable fuels and energy; agricultural technology and innovation; land management; carbon cycles and sequestration (both engineered and natural); and lifecycle, sustainability and technoeconomic analyses. Positioning the United States as a major architect of a sustainable and resilient CCE is critical for maintaining economic competitiveness in the future.

Senate Energy Looks at Global Oil Price – The Senate Energy and Natural Resources Committee holds a hearing tomorrow at 10:00 a.m. on factors that impact global oil prices. Witnesses include Columbia University Center on Global Energy Policy’s Jason Bordoff, oil market expert Rusty Brazier, former White House Advisor Bob McNally and IEA’s Keisuke Sadamori. Prior to the hearing, the Committee will vote out DOE nominees.

House Energy Subpanel to Discuss SPR – The House Energy Committee’s Energy panel will hold a hearing tomorrow at 10:15 a.m. on the Strategic Petroleum Reserve. Witnesses will include DOE’s Steven Winberg, GAO’s Frank Russo and our friend Kevin Book, among others.

House Resources Looks at Coal Use – The House Natural Resources Energy and Mineral Resources Subcommittee holds a hearing tomorrow at 10:00 a.m. on assessing innovative and alternative uses of coal. Witnesses include Michael Klein of Utah’s Lighthouse Resources, Arg CEO Julian McIntyre, Wyoming’s Ramaco Carbon CEO Randall Atkins and Vernon Haltom of Coal River Mountain Watch.

CSIS To Host EIA Outlook – The CSIS Energy & National Security Program is hosting EIA Administrator Linda Capuano tomorrow for a presentation and discussion of the EIA’s International Energy Outlook 2018 (IEO2018). The IEO2018 builds on the IEO2017 reference case, which presented long-term projections of world energy demand by region and primary energy source; electricity generation by energy source; and energy-related carbon dioxide emissions. In particular, this year’s outlook offers a macroeconomic perspective regarding the uncertainty in economic growth in India, China, and Africa.

USEA To Discuss Africa Energy – The US Energy Assn will host a forum tomorrow at 10:00 a.m. discuss specific generation and transmission projects currently underway and in the pipeline for development within the region. Please join us in a discussion regarding investment opportunities in various hydropower and wind power projects, as well as a transmission line and interconnection project. N Representatives of West African Power Pool (WAPP) and the Economic Community of West African States (ECOWAS) Regional Electricity Regulatory Authority (ERERA) will speak.

Waxman, Enviro Groups Attack RFS – Tomorrow at 11:00 a.m., former House Energy Chair Henry Waxman and his group Mighty Earth hold a forum on the RFS. It’s been more than 10 years since the Renewable Fuel Standard became law. Once touted as a ‘green’ policy, many in the environmental, conservation, and scientific communities believe the opposite: that the RFS may have been a net-negative – even a disaster -- for the environment. Speaker will include Waxman, NWF’s David DeGennaro, and others.

ACORE State of Industry Webinar Set – ACORE Hosts State of the Industry Webinar Focus on International Investments – ACORE and Bloomberg New Energy Finance (BNEF), hold their quarterly State of the Industry webinar on Wednesday at 12:00 p.m. The forum offers the latest intelligence and analysis on renewable energy markets, finance and policy. This quarter’s webinar will focus on the increasing trend of financial institutions around the globe who are expanding their renewable energy strategies and providing new capital for North American markets. Speakers will discuss foreign investor strategies for expansion in North American markets, fueled by sustainability targets, ESG scoring and attractive business opportunities; the characteristics of these new market entrants; and U.S. attractiveness in an uncertain policy environment: challenges posed by trade wars, the new tax law and CFIUS. Speakers include ACORE’s Rob Gramlich, BNEF’s Amy Grace, among others.

Forum to Look at Taiwan Energy – The Global Taiwan Institute and co-sponsor, The Sigur Center for Asian Studies at George Washington University, will hold a forum tomorrow at 12:30 p.m. to explore the future of Taiwan’s energy. This event is the third installment of the Civil Society and Democracy Series, which is partially funded by the Taiwan Foundation for Democracy. The panelists will discuss Taiwan’s policy and opportunities in sustainable energy, how it will impact the Asia-Pacific region, and what it means for US interests.

House Energy to Look at RINs – With Friday’s Court decision, the House Energy and Commerce Environment Subcommittee holds a hearing on Wednesday at 9:15 a.m. on background on Renewable Identification Numbers under

the RFS. Witnesses include CRS Energy and Minerals Manager Brent Yacobucci, Gabriel Lade of Iowa State, Paul Niznik of Argus and energy compliance expert Sandra Dunphy.

Technology Roadmap to be Released – On Wednesday at Noon in the Capitol Visitors Center, the Carbon Utilization Research Council, ClearPath Foundation and the Electric Power Research Institute will host an event Wednesday on Capitol Hill to officially unveil two studies that underscore the promise and benefits of aggressively developing and commercializing U.S.-based carbon capture, storage and utilization technologies. CURC and EPRI will release the 5th Advanced Fossil Energy Technology Roadmap that identifies technologies that can be available by the 2025-2035 timeframe that generate electricity from fossil fuels with significantly reduced carbon dioxide emissions that could be cost competitive with other sources of electricity generation. A companion analysis conducted by CURC and ClearPath will also include modeling provided by NERA Economic Consulting and Advanced Resources International to show that there are significant economic benefits to the U.S. if the technology development outlined in the Roadmap is undertaken under a wide range of scenarios. The event is sponsored by Southern Company, GE, Battelle and others.

House Resources Looks at Puerto Rico Recovery – The House Natural Resources Committee holds a hearing on Wednesday at 2:00 p.m. on the management crisis at the Puerto Rico Electric Power Authority and implications for recovery.

Forum to Look at NET CCS Plant – The US Energy Assn Hosts a [discussion](#) on Thursday at 10:00 a.m. to look at NET Power's 50-MW demonstration emissions-free natural gas power plant. NET Power is commercializing a novel power system that produces emissions-free electricity from natural gas for the same cost as conventional power plants. The system, which uses the supercritical CO2 Allam Cycle, is currently being demonstrated at a 50MWth power plant in La Porte, Texas, that is now in operation. A review of the technology will be provided, and an update will be given on the status of demonstration plant testing and operations, as well as commercial facility development.

Wilson Forum to Look at China Green Innovation – On Thursday at 2:00 p.m., the Wilson Center's China Environment Forum is [hosting](#) four experts to discuss ways to facilitate financing that will stimulate the market of green and energy-efficient buildings and technologies that China needs to reach its low carbon goals. Xiao Sun, chairman of the Ma'anshan Rural Commercial Bank (MRCB), will discuss how MRCB is promoting green building development as part of their effort to become the world's first completely green bank. Carolyn Szum, program manager at Lawrence Berkeley National Laboratory (LBNL), will discuss their partnership with Citibank and MRCB to create new financing tools for energy-efficient buildings in China. Joe Indvik, the leader of the Department of Energy's Better Buildings Initiative, will discuss how he collaborates with finance executives on expanding access for building owners to attract capital for energy projects in the US. Lastly, Yunhan Mao, from International Finance Corporation (IFC), will briefly introduce IFC's China Climate Finance Advisory program, and the role it plays in greening urban development.

Grid Forum Set for Iowa – The [TransGrid-X 2030 Symposium](#) will be held on Thursday in Ames, Iowa. The event will showcase the long-awaited NREL Seam Study—a concept featuring bi-directional high-voltage transmission; 600 GW of wind, solar and gas-fired generation; and a trillion-dollar economic event, if fully built. Our friends Rob Gramlich and former FERC Chair Jim Hoecker will be among the speakers.

IN THE FUTURE

August Congressional Recess – While the Senate will remain in Session, the House will be in recess starting next week.

Senate Environment to Host Wheeler – The Senate Environment Committee will host new acting EPA head Andy Wheeler on Wednesday August 1st.

WCEE Monthly Happy Hour – The Women's Council on Energy and Environment hosts its August Happy Hour on Wednesday, August 1st at 5:30 p.m. at MASA 14 (1825 14th Street, NW)

Tesla Book Discussion Set – [Politics and Prose Bookstore](#) hosts Author Richard Munson on Wednesday at 7:00 p.m. to discuss and sign copies of "Tesla: Inventor of the Modern". Drawing on his new book, Richard Munson shines a light on

the man behind the legend and how his unique way of doing things meant some of his most advanced ideas would go unrecognized for decades. Tesla felt inventing required the linking of science and the humanities. Unlike his better-known rival, Thomas Edison, he was not motivated by profit and preferred working in isolation.

Science-Policy Discussion Set – On Thursday, August 2nd, the Women’s Council on Energy and the Environment hosts a conversation at Honeywell at Noon featuring two scientists working to shape policy at the federal level. They will discuss the role of science in shaping public policy and offer solutions for a more collaborative relationship between the scientific and policy realms.

EPRI Hosts Electrification Conference – The Electric Power Research Institute (EPRI) hosts the inaugural Electrification 2018 International Conference and Exposition on August 20th to 23rd in Long Beach CA. Hosted by the and sponsored by more than 20 major utilities and organizations, this annual conference will bring together utility leaders, regulators, researchers, academia, vendors, economic development groups, and energy users from diverse manufacturing, transportation, industrial, and agriculture sectors around the globe. SoCo CEO Tom Fanning is among the many speakers.

FRANK MAISANO

Senior Principal

Ex. 6

Policy Resolution Group