

New Congress digs in its heels

Leaders of the incoming Republican House majority take aim at the Obama administration's planned oil and gas regulations.

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Republicans made historic congressional gains in the 2010 US elections. In the House of Representatives, they gained 63 seats—the largest turnover since 1948. Republicans also made gains in the Senate, although the Democrats still control it 53 to 47. The GOP would have done better had it not nominated weak “Tea Party” Senate candidates in several states.

Nevertheless, the big news for the oil and gas industry is GOP control of the House: Most of the new Republican members ran on anti-spending, anti-tax and anti-regulation platforms. Many of the new members have never before held elective office, but they will eventually have to learn the art of politics.

They are learning already. The Republican “Pledge to America” promised to cut spending in fiscal year 2011 by \$100 billion, excluding defense, security and veterans’ programs. However, a continuing resolution funds the federal government through March 4—nearly half the fiscal year, and Republicans had to reduce their goal to cuts of \$50 billion or less. The continuing resolution provides \$1.2 billion more than in fiscal year 2010 for offshore drilling inspection. After the Macondo fiasco, it will be interesting to see if Congress really wants to reduce this funding.

KEY MEMBERS

Key members include the new Republican House energy and environment committee chairs: Fred Upton (Mich.), Energy and Commerce Committee; Doc Hastings (Wash.), Natural Resources Committee; and Ralph Hall (Texas), Science and Technology Committee. Two other key Republicans are Darrell Issa (Calif.), chair of the House Oversight and Government Reform Committee, and Hal Rogers (Ky.), chair of the House Appropriations Committee. They oppose most of President Barack Obama’s energy and environmental policies.

Issa opposes the Environmental Protection Agency’s effort to regulate greenhouse gases from power plants and oil refineries under the Clean Air Act, following a positive endangerment finding for GHGs by the agency in 2009. In December, an Issa spokesman responded to the EPA decision in a statement: “There are serious questions about EPA’s decision to move forward with these job-killing regulations that will usurp power from states, violating the principles of federalism that are the backbone of the Clean Air Act.” Issa has indicated that he wants to subpoena climate scientists—especially those involved in the “Climategate” email scandal at the University of East Anglia.

Fred Upton (Michigan) was chosen as the chair of the House Energy and Commerce Committee, over Joe Barton (Texas), whose bid for the chairmanship may have been derailed by his tone-deaf apology last year to then-BP chief Tony Hayward for the Obama administration’s “shakedown” of the company. (At the administration’s urging, the company had agreed to set up a \$20 billion claims fund in relation to the Macondo oil spill.) Upton has strong views on energy: He contends that EPA is “smothering the

economy,” he is pro-nuclear, in favor of subsidies for “clean coal” technologies, and skeptical about global warming. Upton favors opening the Arctic National Wildlife Refuge to oil and gas drilling and reducing funding for renewable energy, and he opposes renewable energy quotas for electric utilities. He has called for EPA to “stand down altogether” from tightening ozone restrictions.” He has also quipped that EPA Administrator Lisa Jackson would soon be testifying at oversight hearings so often that she should reserve a personal parking place on Capitol Hill. This indicates how acrimonious the relationship between Congress and EPA may become.

CONGRESS VS. EPA

Cap and trade is dead, but EPA is attempting to impose GHG regulations independent of legislation, and is facing strong opposition from Congress. The agency announced that it will propose GHG limits for power plants this July and for oil refineries in December; final rules will be issued in 2012. EPA added fuel to the fire by waiting until Dec. 23—the day after Congress adjourned for the year—to make the announcement.



New House Speaker John Boehner (left), House Oversight and Government Reform Committee chair Darrell Issa (center) and House Energy and Commerce Committee chair Fred Upton (right) will be leading the charge against the administration’s oil and gas regulatory efforts.

Rep. Upton has vowed that the House won't "let this administration regulate what they've been unable to legislate." The GOP wasted no time: On Jan. 6, three House Republicans—Marsha Blackburn (Tenn.), Shelley Capito (W.Va.) and Ted Poe (Texas)—introduced bills to block EPA from regulating GHGs. Blackburn's bill seeks to "amend the Clean Air Act to provide that greenhouse gases are not subject to the Act"; Capito's would delay EPA from regulating GHGs for two years; and Poe's would prohibit agency funding "to be used to implement or enforce a cap-and-trade program for greenhouse gases." House Republicans also eliminated the Select Committee on Energy Independence and Global Warming created in 2007, with House Speaker John Boehner (Ohio) telling reporters, "The global warming committee doesn't need to be a separate committee. We believe the Science Committee is more than capable of handling this issue, and in the process we'll save several million dollars."

House Republicans will likely use the 1996 Congressional Review Act, which gives Congress an expedited means to overturn EPA regulations by passing a joint resolution.

The sleeper is that House Democrats may provide less resistance here than expected. Those who voted for the Waxman-Markey bill in 2009 lost heavily on election day, and two dozen moderate Democrats who voted for the bill were defeated. Senate inaction left House members exposed, and Republicans trounced the Democrats at the polls.

In the Senate, Jay Rockefeller (D-W.Va.) believes the new Congress will be "much more likely" to approve legislation he introduced to restrict EPA's GHG rules. Rockefeller wants to delay the rules, but never got a vote in the last Congress, and he plans to reintroduce his bill this year.

Sen. Lisa Murkowski (R-Alaska) also wants to block the EPA regs. "I do think we will have an opportunity in the brand-new Congress," she told congressional newspaper *The Hill* in December. "I know that there are an awful lot of folks on the House side that are looking at this. They don't want the EPA moving either." Murkowski last year sponsored a "resolution of disapproval" that would have nullified any GHG regs by the EPA. She lost the floor vote in June by 47–53. But the new Congress has six more Republican senators, and her resolution may pass.

However, whether Congress can block EPA policies is uncertain. A presidential veto is likely to meet any such bill lucky enough to pass both houses. Legal challenges against the pending GHG regulations are also unlikely to prevail; the courts usually let federal agencies interpret and implement their own policies.

CONGRESS VS. DOI

The federal Bureau of Land Management announced on Nov. 30 that it

may write new drilling permit rules for hydraulic fracturing on BLM-administered lands, including a possible requirement for companies to disclose frac fluid components in order to drill. This is a highly contentious issue, especially with respect to the rapidly developing shale gas industry.

Congressional Republicans are concerned over new federal regulation of fracking. Reps. Upton and Barton quickly responded to the announcement; they sent a letter to the Interior Secretary Ken

Salazar stating, “We fear a rush to regulate by DOI and the Administration will chill domestic oil and gas development and would negatively impact our efforts to increase energy security and to provide for a reliable and affordable energy supply.” BLM is an agency within the Department of the Interior (DOI).

Sen. John Barrasso (R-Wyo.) also opposes new federal fracing regulations, and sent a letter urging Salazar to consult with Congress before writing new rules. He requested a list of specific changes to oil and gas policies DOI might be considering. He also wants the department to conduct an economic analysis prior to finalizing any fracing rule changes.

On Dec. 23, DOI issued Secretarial Order 3310, reversing a 2003 decision and giving itself the authority to designate public lands as “wild lands.” The order directs BLM to survey its Western land holdings in search of unspoiled backcountry. The agency can then designate these tracts—millions of acres—as “wild lands” that can be shielded from activities that disrupt habitat or destroy the solitude of the wild, including oil and gas drilling. The order reasserts a power BLM used in the past to designate lands as wild and to limit human intrusion. The agency relinquished this practice in 2003 to settle a lawsuit by the governor of Utah; however, DOI’s order overrides the 2003 agreement.

The order upset Congressional Republicans. “This harms economic growth,” Rep. Rob Bishop (R-Utah), chair of the House Subcommittee on Public Lands, told *The Wall Street Journal*. “The West is being abused.” House Republicans plan hearings on the policy and may reduce BLM funding for the program.

CONGRESS VS. TAX EXPENDITURES?

Republicans pledged to reduce federal budget deficit, and last year both federal deficit commissions (Bowles-Simpson and Domenici-Rivlin) recommended reducing tax expenditures and simplifying the tax code. It will be interesting to see how Congress—especially the Republican House—addresses this issue.

The implications for the oil and gas industries are significant, for the major oil and gas tax provisions in President Obama’s 2011 budget total \$32 billion over the coming decade. These revenues would come from the repeal of several tax incentives enjoyed by the industry, some of them very long-standing. These in-

clude (2010–2019 estimates): intangible drilling and development costs, \$3.5 billion; percentage depletion, \$8.3 billion; geological and geophysical amortization, \$1.2 billion; manufacturing tax deduction, \$13.3 billion; and excise tax on Gulf of Mexico production, \$5.3 billion.

PROSPECTS FOR COMPROMISE

In the aftermath of the elections, Congress is even more polarized than it was last year. Many Democrats who lost were “Blue Dog” centrists, and most of the new Republican House members are doctrinaire conservatives. Thus, the 112th Congress is split between more liberal Democrats and more conservative Republicans. Can a bipartisan energy policy succeed in overcoming crippling congressional gridlock?

Perhaps. The day after the election, President Obama told reporters, “I don’t think there’s anybody in America who thinks that we’ve got an energy policy that works the way it needs to, that thinks that we shouldn’t be working on energy independence. And that gives opportunities for Democrats and Republicans to come together and think about ... how we move forward on that agenda.” In a press conference a month later, Obama said energy policy should be a major priority for the 112th Congress, and that he will begin engaging Republicans on energy “immediately,” although he offered few details on what a compromise energy bill might contain.

The president’s remarks echo earlier remarks by administration officials and others that a “clean” energy standard (CES) could form the basis of bipartisan energy legislation. Republicans want a CES to include nuclear power, gas, clean coal and renewables. The White House has been supportive of nuclear power and is working to reform the Energy Department’s nuclear loan guarantee program. It is supporting a major initiative to build the first zero-emission coal plant, FutureGen, and is also evaluating the potential of shale gas.

Senator Majority Leader Mitch McConnell (R-Ky.) agreed, telling *The Wall Street Journal* in November, “I think energy is an area where there is potential for a bipartisan accomplishment of some consequence.” Obama and McConnell both cited electric vehicles and nuclear power as areas for compromise. However, these are only two pieces of a much larger agenda.

The American Energy Innovation Council, a bipartisan group of business

leaders that includes Microsoft founder Bill Gates, advocates an ambitious and cohesive federal policy. It has recommended \$16 billion annual investments in clean energy innovation, and argues that Congress should supplement these investments with subsidies that lower the price of new energy sources. The plan also includes federal support for energy science and engineering education, similar to the National Energy Education Act proposed in 2008.

Compromise is always easier when it involves increased spending; however, the foreseeable future will be dominated by an anti-tax, anti-spending and deficit-centric House majority that will make meaningful compromise difficult. This is especially true for issues related to oil and gas, such as EPA regulation of GHGs, offshore and Arctic drilling, access to public lands, fracing and tax incentives.

One area where Republicans and Democrats may be able to come together is in reducing ethanol subsidies—currently \$7 billion annually (twice as large as *all* oil and gas tax incentives), and growing rapidly. Ethanol is questionable on energy and environmental grounds, and subsidies of this magnitude represent a good target for spending reductions. Nevertheless, the first presidential caucus is in Iowa every four years, so congressional Republicans hoping to challenge Obama in 2012 will approach these subsidies with caution.

On the first day of the new Congress, Speaker Boehner said he wants to work with the Democrats, to be more open, transparent and inclusive. However, that is the same thing that Nancy Pelosi said in January 2007 when the Democrats gained control of Congress. So do not hold your breath waiting for meaningful congressional compromise, especially on hot-button oil and gas issues. **WO**

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