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ENERGY AND ENVIRONMENT UPDATE

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Energy and Climate Debate

The House will return to Washington this week, and the Senate, the following week. In the meantime, administration and Hill officials are preparing for the January 21 Inaugural festivities, filling vacated and new leadership roles and staff positions, and preparing legislation and rulemakings for the 113th Congress and 2013 as a whole.

Congress

Wyden Concerned About LNG Exports

Senator Ron Wyden (D-OR), incoming chair of the Senate Energy and Natural Resources Committee, sent a letter January 10 to Energy Secretary Steven Chu advising the agency to not grant export licenses for liquefied natural gas until the deficiencies of an agency-sponsored study are corrected. Senator Wyden, who has raised questions regarding the impact of LNG exports on natural gas supplies and domestic manufacturing, said that the export-supportive study is "seriously flawed." The agency is soliciting public comment on the NERA Economic Consulting study and an earlier Energy Information Administration study through January 24, with reply comments due by February 25. It will then consider applications to build LNG export terminals on a case by case basis. The senator's letter marks the beginning of a significant policy debate that will occur during the 113th Congress over how best to use the country's new natural gas resource base, which, in large part, is made possible by fracking.

Sanders' Carbon Fee Legislation Forthcoming

Senator Bernie Sanders (I-VT) will introduce legislation in February to impose a fee on greenhouse gas emissions from large sources at the point where fossil fuels are extracted or processed. Senator Sanders has not finalized the carbon pricing language, but he expects it to raise \$1 trillion over a 10-year period as well as an additional \$113 billion by ending fossil fuel subsidies. The legislation would invest the funds in energy efficiency and clean energy research and development, as well as advanced transportation infrastructure, and a substantial amount could be used to provide a significant rebate to offset price increases that the measure could create. Though few expect climate legislation to move forward in the divided Congress, the measure could lay the groundwork for future efforts by keeping the issue of climate change alive.

Revenue Sharing Legislation Forthcoming

Senators Lisa Murkowski (R-AK) and Mary Landrieu (D-LA) announced January 9 that they are crafting legislation to allow coastal states to expand revenue sharing on offshore oil and gas development to include renewable energy production. The measure would increase the number of coastal states eligible

to share in federal revenues from offshore energy production and broaden the types of eligible energy to include tidal, wind, hydro, and other renewable sources. Coastal states would receive 27.5 percent of revenues from conventional and renewable offshore energy production, and would be eligible to receive an additional 10 percent if they instituted a state-run program for renewable energy production, land conservation, or coastal restoration. The bill would expand revenue sharing from energy production on federal lands within a state's boundaries to include renewable and alternative energy production, which is not currently eligible for revenue sharing. Senator Ron Wyden (D-OR), incoming chair of the Senate Energy and Natural Resources Committee, has expressed willingness to examine an expansion of revenue sharing, something his predecessor, Senator Jeff Bingaman (D-NM), opposed when Senators Murkowski and Landrieu tried to add revenue sharing to an offshore drilling safety reform bill (S. 917) in 2011.

Chief Climate Counsel for EPW Announced

Senator Barbara Boxer (D-CA) announced January 10 that environmental attorney Joe Mendelson will serve as chief climate change counsel for the Environment and Public Works Committee. Mr. Mendelson previously served as policy director for the National Wildlife Federation's climate and energy program. Senator Boxer plans to hold an initial briefing with climate science experts in February.

Administration

Draft Climate Change Assessment Released

The National Climate Assessment Development Advisory Committee released a draft of its National Climate Assessment January 11. The report, required by the Global Change Research Act of 1990, is a climate change assessment that must be provided to Congress and the president every four years, and is coordinated by the U.S. Global Change Research Program. The report indicates that there is unambiguous evidence that temperatures are increasing because of human activity and that temperatures may rise by as much as 10 degrees. It also projected that climate change would result in coastal and river flooding in the northeastern United States. The final draft will be issued next February.

Department of Agriculture

Department of Agriculture Announces Grants for Bio-Based Products

Agriculture Secretary Tom Vilsack awarded \$25 million in research funding for high-value bio-based products to four recipients January 11. The recipients include Kansas State University, which will receive \$5.1 million for biofuels research; Ohio State University, which will receive \$6.5 million for an anaerobic digestion project; Ceramtec, Inc., which will receive \$6.5 million for a lignocellulosic biomass project; and the Agriculture Research Service, which will receive \$6.8 million to develop on-the-farm technology for biofuel production.

Department of Commerce

Warmest Year on Record

The National Oceanic and Atmospheric Administration released a climate overview, *State of the Climate: National Overview for Annual 2012*, January 8 concluding that 2012 was the warmest on record for the contiguous United States. The average annual temperature, 55.3 degrees Fahrenheit, was one degree higher than that of the previous warmest year in 1998, and marked the largest jump between record temperatures in the last 117 years. The agency will release a report next week on global temperature and precipitation trends in 2012.

Department of Energy

\$120 Million for Rare Earth Hub

The Department of Energy announced January 9 that it will award \$120 million to establish an energy innovation hub, the Critical Materials Institute, to address domestic shortages of rare earth materials. Funding will be provided over five years to address supply challenges for five rare earth metals – dysprosium, terbium, europium, neodymium, and yttrium – by finding new sources of the materials as well

as improving the economics of existing sources, hastening material development and deployment, improving manufacturing efficiency, and encouraging recycling and reuse.

Nuclear Waste Management Strategy

The Department of Energy released January 11 a nuclear waste management strategy proposing a consent-based, phased, and adaptive approach including a pilot interim storage facility, a full-scale interim storage facility, and a geologic repository. The pilot interim storage facility would begin operation in 2021; the full-scale interim facility would begin operation in 2025; and the identification of permanent geologic repositories would be made by 2048. Senator Lisa Murkowski (R-AK) described the plan as a “constructive step” and said she plans to release related legislation early this Congress.

ARPA-E Leadership

Cheryl Martin has been appointed to head the Advanced Research Projects Agency – Energy, the division of the Department of Energy responsible for funding promising, experimental clean energy technologies.

Environmental Protection Agency

No Court-Ordered Deadline

The U.S. Court of Appeals for the District of Columbia Circuit issued an order January 7 concluding that it will not set a deadline for the Environmental Protection Agency to finalize a rule revising mercury and air toxics standards for new coal fired power plants. The agency plans to issue the final rule by March.

Coal Ash Regs Deadline Uncertain

The Environmental Protection Agency said January 7 that it cannot provide a definitive time for promulgating final regulations on coal ash from power plant management. The agency needs to issue an additional notice of data availability prior to issuing final regulations because of new information that may influence the risk analysis and cost estimates.

RIN Fraud Prevention

The American Fuel and Petrochemical Manufacturers made a presentation to the White House Office of Management and Budget and the Environmental Protection Agency January 7 encouraging the agency to establish a program that verifies the validity of renewable fuel credits, and that the program is both cost-effective and protective of companies that act in good faith. The agency is proposing a rule to establish a third party verification system to ensure the validity of renewable identification numbers.

Lead Standards

Environmental Protection Agency staff released a preliminary policy assessment January 8 urging agency leadership to consider retaining the existing air quality standards for lead. Evidence of the health effects of lead exposure reaffirms agency conclusions in its 2008 review of the national ambient air quality standards. The Clean Air Act requires the agency to review and consider revising standards every five years, and it will issue a proposed rule based on its current review next February, with a final review expected in November 2014.

Support of EPA Regs Urged

The Clean Air Task Force sent a letter January 10 to the president calling on him to develop energy policies and support Environmental Protection Agency regulations to meet his greenhouse gas reduction goal of 17 percent from 2005 levels by 2020 and 80 percent by 2050. The administration is within striking distance, but much of the progress may be attributed to the economic downturn and a shift away from coal toward natural gas.

Third-Party Claim Denied in RIN Fraud Case

The U.S. District Court for the District of Kansas denied January 10 OceanConnect LLC’s motion to file a third-part claim against the Environmental Protection Agency in litigation over fraudulent renewable fuel credits. The judge concluded that allowing the claim would unnecessarily delay or complicate the trial, and the ruling is the second time a district court judge has blocked the energy broker from bringing the

claim against the agency in breach of a contract lawsuit related to the renewable identification numbers in question.

Tier 3 Standards Requested

Environmental groups, a labor union, and manufacturers of emissions control equipment urged President Obama last week to finalize Tier 3 vehicle and gasoline standards by the end of this year. The Environmental Protection Agency's 2013 Regulatory Agenda indicates that the agency intends to propose a rule by March and finalize it by December.

TX Drops EPA Fracking Standard Challenge

Texas filed a motion January 10 in the U.S. Court of Appeals for the District of Columbia Circuit dismissing its challenge to the Environmental Protection Agency's air pollution standards for fracking. Because the state's original petition was consolidated with those of other petitioners, the case will remain active despite Texas' decision to dismiss.

Government Accountability Office

New Compliance Initiative Plan Needed

The Government Accountability Office released a report January 9 concluding that the Environmental Protection Agency's failure to develop a strategic plan to implement a new enforcement and compliance initiative could prevent it from obtaining its long term goals. The report, *EPA Should Develop a Strategic Plan for its New Compliance Initiative*, finds that the agency has not developed a strategic plan to implement its FY2012 Next Generation Compliance Initiative, a program designed to measure pollution emissions electronically in order to increase enforcement action efficiency. The agency plans to prepare a plan for the initiative in FY2013.

Mileage-Based Pilot Program Encouraged

The Government Accountability Office released a report January 8 urging the federal government to implement a pilot program testing the viability of mileage-based user fees for electric and commercial vehicles. The office found that without a pilot program, Congress lacks the necessary information to assess whether mileage fees would be a viable or cost-effective method for addressing the country's surface transportation funding challenges. The Congressional Budget Office estimates that the Highway Trust Fund will need an additional \$110 billion in addition to anticipated revenue to maintain current spending levels through 2022, and Representative Earl Blumenauer (D-OR) plans to reintroduce legislation this Congress to establish such a pilot program.

Tax Expenditure Checklist

The Government Accountability Office released a report January 8 finding that Congressional efforts to evaluate the public value and effectiveness of the tax incentives in the Internal Revenue Code could benefit from a basic framework to help officials prioritize provisions. The report, *Tax Expenditures: Background and Evaluation Criteria and Questions*, concludes that the 2010 Government Performance and Results Modernization Act laid out a framework for evaluating government performance, and it produced a list of questions that members could use when deciding the fate of tax expenditures.

International

IPCC Land Use, Forestry Guidelines

The United Nations Intergovernmental Panel on Climate Change called January 7 for scientists to review a draft of updated methods for measuring emissions from land use, land use change, and forestry activities that can be used by countries reporting under the Kyoto Protocol. The *2013 Revised Supplementary Methods and Good Practice Guidance Arising from the Kyoto Protocol* will also provide guidance for reporting under the second commitment of the Protocol, from 2013 to 2020, to which parties agreed during the December climate negotiations in Doha. The final guidance will be released by the end of October after two more rounds of review.

Climate Issues Top Perceived Global Risks

The World Economic Forum released a report, *Global Risks 2013*, January 8 finding that rising greenhouse gas emissions and water supply crises are two of the top global risks likely to occur in the next decade. For its eighth version of the report, the forum asked more than 1,000 experts from academia, civil society, government, and industry to rate 50 global risks in terms of likelihood and impact; the report is intended to demonstrate how experts perceive risks the work is likely to face, raise awareness about those risks, and challenge world leaders to improve how they address them.

2013 Beijing Emissions Reductions Targets

Beijing announced January 9 that it plans to reduce concentrations of four major pollutants by two percent each in 2013 and is on track to meet 2012 clean air targets. The city will cut concentrations of SO₂, NO_x, chemical oxygen demand, and ammonia nitrogen in wastewater by 2 percent compared with 2012 levels. The city will suspend construction work, idle factories, and pull 30 percent of government vehicles off the road when air quality falls below a certain standard.

Additional Chinese RE

China's National Energy Administration announced January 8 that it plans to add 49 GW of renewable energy capacity in 2013 and develop an energy plan for gradually transitioning from an overreliance on fossil fuels to cleaner energy sources. The additional capacity will be 21 GW hydropower, 18 GW wind power, and 10 GW solar power.

Construction to Begin on Canadian Pipeline

Enhance Energy Inc. will begin pipeline construction this spring in Alberta to transport CO₂ from industrial sites to the Lacombe area where it will be injected into the ground to improve extraction of light oil from reservoirs. Enhance Energy and the governments of Alberta and Canada will split the cost of the project.

EU Committee to Vote on GHG ETS Rules

The European Union Climate Change Committee will vote January 23 on rules that will govern the EU Emissions Trading for greenhouse gases. The committee will vote on rules regarding the use of credits from reduction projects, aviation emissions allowance banking, and minor technical amendments.

States

Green Components of NY's State of the State

During his State of the State speech January 9, New York Governor Andrew Cuomo (D) called for a reduction in the Regional Greenhouse Gas Initiative's emissions cap. He proposed lowering the cap to below 91 million MT, the current level in the nine-state RGGI region. The initiative is conducting a comprehensive review of the cap and trade program, including whether to lower the cap beginning in 2014. Governor Cuomo also proposed establishing the New York Green Bank, a \$1 billion fund that would provide low-interest loans for clean energy projects, using public money funded by existing utility charges to leverage matching private investments. He also proposed a Charge NY program to encourage ownership of plug-in electric vehicles by installing 2,500 charging stations throughout the state over five years. The state's fleet would be used for pilot projects involving the vehicles.

NC Coal Ash Cleanup

The Southern Environmental Law Center filed a lawsuit in the North Carolina Superior Court for Wake County January 8 seeking cleanup of groundwater near coal ash lagoons in the state. The petition seeks to require pollution cleanup at 14 coal-fired power plants owned by Duke Energy and Progress Energy.

NY Fracking Comments

Democratic chairs of three New York State Assembly committees urged the state Department of Environmental Conservation in a letter January 8 to suspend the public comment period for its fracking regulations until all public health studies and analyses are released.

GA Power Plant Retirements

Georgia Power announced January 7 that it plans to seek regulatory approval to retire 15 of its coal- and oil-fired electricity generating units, which represent 2,061 MW of generating power, by April 16, 2015, the

effective date of the Environmental Protection Agency's mercury and air toxics rule. The utility will seek to switch fuel types at other generating units and is in the process of installing environmental controls at other facilities as well.

AK Fracking Rules

The Alaska Oil and Gas Conservation Commission is proposing regulations to govern the way fracking is used in extracting oil and natural gas from shale formations. The regulations will be considered at a February 5 meeting that will focus on establishing mandates for the disclosure of fracking plans as well as the chemicals used in the process.

VA Gas Tax Elimination Proposed

Virginia Governor Bob McDonnell (R) released a five-year plan January 8 to eliminate the state's 17.5 cents/gallon gas tax and use an additional 0.8 percent dedicated sales tax revenue to fund transportation programs. If approved, the state would be the first in the country to eliminate its gas tax. The state has not raised its gas tax in 25 years, and both states and the federal government are struggling with declining gas tax revenues and rising construction costs.

Supreme Court to Review CA Truck Program

The U.S. Supreme Court will hear the American Trucking Association's appeal of a 2011 U.S. Court of Appeals for the Ninth Circuit decision that upheld most of the Port of Los Angeles' clean truck program. The court will evaluate whether the Ninth Circuit was wrong in considering the city-owned and operated port to be a "market participant."

Miscellaneous

Concern Over LNG Exports

The Civil Society Institute and the Environmental Working Group released a survey January 10 concluding that most Americans oppose expanding the production of shale gas in order to export liquefied natural gas before conducting health research. A separate study released the same day by America's Energy Advantage shows that U.S. taxpayers believe domestic natural gas should be used within the country for economic gain and that the federal government should be cautious about allowing natural gas exports.

Sustainable Investments Mainstream

Calvert Investments announced January 9 that sustainable and responsible investing has become globally mainstream in the past six years. The biggest challenge for companies that make such investments is proving that they have a greater payoff than traditional investing, which is done without considering environmental, social, and governance factors. There are hundreds of billions of dollars in comprehensive sustainable and responsible investments in the United States; several trillions include some degree of screening for environmental and social responsibility, and investors are expected to continue to increase their sustainable investing activities.

Sustainable Investments Growing

JPMorgan Chase & Company and the Global Impact Investing Network released a report January 7 finding that impact investments are expected to grow to \$9 billion in 2013, up from \$8 billion in 2012. The report, *Perspectives on Progress*, considered investments made by 99 fund managers, development finance institutions, foundations, diversified financial institutions, and others with at least \$10 million committed to impact investment.