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ENERGY AND ENVIRONMENT UPDATE

January 18, 2009

Energy and Climate Legislation

Though Senator Lisa Murkowski (R-AK) decided last week that she would not introduce her amendment to delay EPA regulation of GHGs on January 20 as a part of the Debt Limit Bill, it is possible that she will offer a resolution later that would disapprove of EPA's efforts to curb emissions from power plants and other major facilities. If she chooses to go that route, she will do so before early February.

The twelve Senate Democrats from the Environment and Public Works Committee released a letter last week exhorting their colleagues to oppose any Republican effort to cast aside the EPA's endangerment finding.

Some environmentalists say that a vote on Senator Murkowski's attempt to block the EPA's regulation of GHG's could provide an opening to effectively codify the agency's "tailoring" proposal to set a threshold for regulating stationary source GHG emissions. The tailoring proposal itself is not without controversy, as environmental groups are at odds even amongst themselves over whether or not the EPA has the legal authority to tailor such regulations, and there is quite a bit of opposition to it from industry groups.

A number of states, including Kansas, Pennsylvania, Florida, California, and South Carolina, are joining in the calls of concern voiced by industry groups such as the American Petroleum Institute, the National Association of Manufacturers, over the speed at which the EPA moves forward on GHG regulation. The American Farm Bureau Federation passed a resolution in opposition to any cap-and-trade legislation and in support of legislation suspending EPA's authority to regulate greenhouse gases under the Clean Air Act on January 11, and the U.S. Chamber of Commerce is even considering suing the EPA to challenge their endangerment finding.

The Obama Administration has repeatedly said it would prefer that Congress pass legislation that would use a so-called cap-and-trade system to curb greenhouse-gas emissions than have the EPA regulate emissions directly, but the Administration, including President Obama and EPA Administrator Lisa Jackson, have begun pushing to set a price on carbon, rather than for Congress to pass cap-and-trade legislation. Many industry officials second a preference for Congressional over Executive action.

Congressman Earl Pomeroy (D-ND) continues to lead efforts to strip EPA of its GHG regulatory authority. In December, he introduced the Save Our Energy Jobs Act (H.R. 4396), and he began seeking a number of cosponsors this week. Congressman Collin Peterson (D-MN), chairman of the House Agriculture Committee, said January 11 that he will vote against a conference report of the climate bill if it is similar to the House-passed version.

A number of other issues, as well as the upcoming election season, is sure to make moving forward with a comprehensive climate bill more difficult. Once the Senate finishes with health care, it will turn its attention

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to a jobs bill, financial services reform, and maybe even immigration reform. Facing tough economic numbers and additional support from the Administration, the first order of business will be the jobs bill.

It is possible that the fiscal 2011 budget submission by the Obama Administration may be delayed at least a week. Though there are no penalties for a late submission, the deadline for the budget submission is the first Monday in February, and Congressional Democrats are expected to do everything they can to expedite the appropriations process in order to have all twelve appropriations bills enacted before October 1.

A coalition of fifty-three environmental, industry, and public health groups are calling on the Senate to include \$1 billion for the Diesel Emissions Reduction Act, which provides grants to retrofit heavy-duty diesel vehicles and engines, in the jobs bill.

The Senate Finance Committee is planning to mark up its portion of the jobs bill, which includes clean energy and small business incentives such as bonus depreciation, increasing the ITC, expanding the 48C, and extending the financing authority of the Clean Energy Renewable Bond Program, the first week of February. The Senate is hoping to have a jobs bill in the works by the time President Obama gives his State of the Union, which could be around February 9, and to pass legislation before the late February Presidents Day recess.

Providing more evidence that the Senate will move on an energy bill rather than a comprehensive climate bill this year, Senate Majority Leader Harry Reid (D-NV) said last week that the Senate will have a number of very important measures to deal with before elections in November. Though he is still pushing for climate legislation in the spring, his office mentioned clean energy legislation, financial regulatory reform, and immigration among priorities for the first half of the year. It is very possible that the Senate will move forward with an energy bill aimed at creating jobs and improving energy infrastructure without a cap-and-trade provision.

Senators John Kerry (D-MA), Lindsey Graham (R-SC) and Joe Lieberman (I-CT) are expected to begin daily meetings this week to draft their compromise climate legislation. As cap-and-trade legislation waits for its turn, Senator Tom Carper (D-DE) is planning to introduce a bipartisan bill later this month to reduce other harmful emissions from power plants. The legislation will closely resemble an amendment he introduced in November with Senator Amy Klobuchar (D-MN). The Senators are also working with Senators Lamar Alexander (R-TN) and Susan Collins (R-ME) on the bill.

On Thursday, January 14, U.S. Climate Envoy Todd Stern urged nations that signed the Copenhagen Accord to submit their GHG emissions-reduction targets and hammer out details critical to implementing the broad agreement. Stern said that he believed that the nonbinding agreement was a good step, and that the Obama Administration plans to press ahead with energy and climate legislation designed to reduce domestic emissions. He suggested that a small group process would help to rescue a final deal. Environmental ministers from China, India, Brazil, and South Africa will meet later this month to finalize their positions ahead of the January 31 deadline for Copenhagen Accord countries to submit emission targets and climate change action plans.

Senate

Though Senate is in recess until January 20, there are a number of things to note from last week and to look for this week.

On Thursday, January 21, the Energy Committee will receive testimony from Energy Secretary Stephen Chu on the research and development priorities needed to meet the medium and long term challenges associated with climate change.

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The Energy Committee released a discussion draft of a bill January 14 that would create an energy efficiency improvement rebate program. The program, for which President Obama has advocated, would authorize up to \$10 billion in incentives for homeowners to upgrade inefficient appliances, insulate attics, and make other building efficiency improvements. The two tiered "Home Star" program, a possible inclusion in a jobs bill, includes a "Silver Star" program that provides up to \$3000 in homeowner rebates, or 50% percent of the total cost of a given retrofit, and a "Gold Star" program that would provide rebates of up to \$12,000, or 50% of the total retrofit cost for homeowners who hire a certified contractor or installer to carry out an energy efficiency retrofit. The program, often called Cash for Caulkers, has the potential to create roughly 630,000 jobs.

House

The House returned from recess last week and hit the ground running. House Democrats held their annual issues conference January 14-15 and focused on infrastructure, manufacturing, and technology as means to increase job creation. They also discussed health, energy, and education, as means to put people back to work.

Van Hollen on Green Bank

Congressman Chris Van Hollen (D-MD) sent a letter to President Obama on January 14 outlining his belief that forthcoming jobs legislation should include the development of a Green Bank to leverage large amounts of private investment in the clean energy sector, and requested that the President launch a Green Bank Initiative in his State of the Union address, which is expected the last week of January or second week of February.

Energy Efficiency Legislation Introduced

Congressman Mike Thompson (D-CA) introduced the Expanding Industrial Energy Efficiency Initiatives Act of 2009 (H.R. 4455) on January 13. The legislation improves and extends certain energy-related tax provisions, including incentives for combined heat and power systems, efficient advanced motor systems, CFC chiller replacement, and efficient water use projects. The bill is a companion to legislation Senator Bingaman (D-NM) introduced last year.

Science and Technology Committee to Focus on DOE Research

House Science and Technology Chairman Bart Gordon (D-TN), who is serving his final year as chairman, said last week that he plans to focus the committee on energy research programs this year. High on his list is the reauthorization of a broad 2007 research and education law that first established ARPA-E. This week, the committee will have a hearing on the 2007 America COMPETES Act, which authorizes the program's funding through this year. Other committee priorities include a nuclear research and development bill and NASA funding.

Administration

The President's Council of Economic Advisers released a report January 13 that shows that the stimulus package has raised employment by between 1.5 million and 2 million jobs and boosted gross domestic product by 2 percent relative to what it would have been last year. At the end of the fourth quarter, federal agencies had distributed \$263 billion of the \$787 billion American Recovery and Reinvestment Act the President signed into law last February. Roughly \$90 billion of the stimulus is earmarked for renewable energy and energy efficiency spending, and the clean energy sector accounts already for many of the jobs created or saved.

The White House Council on Environmental Quality found no basis for excluding greenhouse gas emissions from the National Environmental Policy Act (NEPA) reviews January 15. Responding to Republican enquiries, CEQ Chairwoman Nancy Sutley said that while NEPA cannot be used to regulate GHGs, NEPA

compels Federal agencies to consider environmental effects before undertaking significant actions or policies, and that consideration must include an examination of the GHG emissions involved.

Department of Energy

\$187 Million for Vehicle Efficiency

Secretary Chu announced \$187 million in stimulus funding to improve vehicle efficiency for heavy-duty trucks and passenger vehicles January 11. Currently, the transportation sector accounts for 28% of total U.S. energy use. As vehicle technologies are improved and adopted across the country, they could save more than 100 million gallons of gasoline per day and reduce mobile CO₂ emissions by 20% by 2030. Three projects will focus on cost-effective measures to improve the efficiency of Class 8 Trucks (SuperTrucks) by 50%. The remaining six projects will support efforts to increase the fuel economy for passenger vehicles engines and powertrain systems.

Energy Efficiency Reporting Up

The Department of Energy announced January 12 that it has received certifications for over 600,000 residential appliances in fifteen different product categories in response to the Department's enhanced energy efficiency enforcement efforts. The Department recently announced that manufacturers had until January 8 to submit correct energy use data so that DOE could ensure that the products comply with minimum energy efficiency standards.

\$78 Million for Advanced Biofuels Research and Fueling Infrastructure

Secretary Chu announced last week the investment of \$78 million in stimulus funding for advanced biofuels research and fueling infrastructure that will help support the development of a clean sustainable transportation sector. Two biofuels consortia will research algae-based fuels and other advanced biofuels in an effort to spur the creation of the domestic bio-industry while creating jobs.

\$37 Million for Next Generation Lighting

Secretary Chu announced more than \$37 million in stimulus dollars for next generation lighting January 15. The funding will support seventeen high-efficiency solid-state lighting projects in research, product development, and domestic manufacturing. The SSL awards will be leveraged with nearly \$28.5 million in private industry cost share.

Secretary Hopes Congress Will Authorize More Federal Loan Guarantees

Energy Secretary Chu said January 15 that he hopes Congress will authorize more federal loan guarantees in 2010 in order to jump start the building of a fleet of new nuclear power plants, though he declined to offer details on when DOE will award its first loan guarantee to build a new nuclear plant. Congress authorized \$18.5 billion in loan guarantees which will support 3-4 plants last year, and though the first plant is expected to be licensed in the second half of 2011, Secretary Chu believes an expansion of the program paramount to its success.

Department of the Interior

Salazar Seeks Offshore Wind Project Meeting

Interior Secretary Ken Salazar has invited the governors of Atlantic coastal states considering development of offshore wind projects to discuss with him February 19 how to support and coordinate the development of the offshore wind industry. The Obama Administration is currently promoting the development of offshore wind energy, including roughly 1,000 GW of wind potential in the waters off the Atlantic coast, and the Interior Department has established a federal-state offshore renewable energy task force to support renewable energy development on the Outer Continental Shelf.

Department of the Navy

Navy and Agriculture Officials to Sign Biofuel Deal

Navy Secretary Ray Mabus announced January 13 that he and Agriculture Secretary Vilsack will sign an agreement this week to coordinate their programs to develop biofuels. The Navy is committed to convert half of Navy and Marine Corps equipment and installations to alternative fuels by 2020 and deploy an aircraft carrier battle group using no fossil fleets by 2016.

Environmental Protection Agency

GHG Rules to Minimize Job Losses

Responding to Republican concerns that pending EPA greenhouse gas emissions regulations would result in devastating economic losses, EPA's Gina McCarthy pledged January 15 that the Agency's proposals will minimize job losses and enhance the U.S. economy's potential for job growth.

Draft Plan for Using Climate Data in Land-Use Decisions Revealed

EPA is seeking comment on a recently released draft document for how to best incorporate data on climate change into land preservation decisions. The National Center for Environmental Assessment announced the document on December 31, and the agency will take public comment through February 1.

EPA to Remove Obstacles to Renewable Energy at Brownfields

The EPA is exploring ways to remove hurdles that prevent renewable energy projects from locating at brownfields sites, including concerns over the costs, risks, and feasibility of these projects. The agency is in the midst of a series of discussions, the fourth of which is scheduled for January 26, as a part of the RE-Powering America's Land Initiative, which was launched last year with the National Renewable Energy Lab. The agencies have identified roughly 490,000 brownfields and Superfund sites that have potential for renewable energy projects, or brightfields.

Republican Lawmakers Oppose Pending GHG Standards

Four Republican lawmakers opposed to the EPA's climate rules sent a letter January 13 asking the agency to stall pending GHG regulations until a full analysis of the possible impacts on small businesses has been completed. Senators John Barrasso (R-WY) and David Vitter (R-LA) and Congressmen Darrell Issa (R-CA) and Jim Sensenbrenner (R-WI) requested that Administrator Jackson withdraw its pending tailpipe standards and tailoring rule, which are expected to be finalized in March, until said assessment has been completed.

CA Regulators Concerned EPA Rules May Harm Renewable Energy Industry

California regulators sent letters in late December to the EPA urging the agency to slow down its proposal to regulate large stationary sources of GHG emissions, arguing that it threatens to block the expansion of renewable energy in the state by holding up approvals for natural gas-fired power plants that are considered crucial for establishing new wind and solar power projects. At 33%, California has the most aggressive RES in the nation.

Food and Drug Administration

Officials Launch Website with Information on Bisphenol A

Federal health officials at the Food and Drug Administration and National Institutes of Health announced January 15 a new website with information for parents on the chemical bisphenol A and outlined ongoing federal efforts to determine whether the chemical poses a health risk, particularly to children. Bisphenol A is a chemical used to make plastics such as food and beverage packages, water and infant bottles, compact discs, and medical devices.

Personnel

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EPA Administrator Lisa Jackson announced January 13 President Obama's selections to fill the Agency's remaining Regional Administrator vacancies. Karl Brooks will head Region VII, which covers Iowa, Kansas, Missouri, Nebraska, and nine tribal nations, and Dennis McLerran will head Region X, which covers Alaska, Idaho, Oregon, Washington, and Pacific Northwest Indian Country. Brooks teaches history and environmental studies at the University of Kansas, and McLerran is Executive Director of the Puget Sound Clean Air Agency. The EPA has yet to name permanent RAs for Regions IV, V, and VIII.

The California EPA promoted Michael Gibbs to replace Eileen Wenger Tutt as Deputy Secretary for Climate Change January 13. Gibbs, who is currently the Assistant Secretary for Regional Climate Initiatives, is expected to work directly on greenhouse gas reduction targets and manage the California EPA's climate change programs. Wenger Tutt left her position to become the Executive Director of the California Electric Transportation Coalition.

Miscellaneous

California Advisers Call for Sale of Permits

The Economic and Allocation Advisory Committee, a state-appointed advisory panel, said January 11 that nearly all of the GHG emissions permits issued under a state cap-and-trade program should be sold rather than freely allocated, and the monetary value should be returned to households. According to their report, Allocating Emissions Allowances under California's Cap-and-Trade Program, California could raise over \$20 billion a year through the sale of permits in 2020, depending on the price of the credits.

Environment Canada to Study Impacts of Biofuel Production

Environment Canada issued a request for proposals January 8 for a study of the environmental and health impacts of biofuel production facilities in Canada. The study aims to determine whether questions about biofuels environmental benefits raised by recent US studies apply to Canadian facilities as well.

Demand for Electric Cars in New York May Outstrip Supply

McKinsey & Co. released an analysis January 11 that demonstrates that the potential pool of New York City residents willing to switch to electric vehicles is large enough that demand could outstrip supply by 2015. The city-commissioned study projected that by 2015, up to 16% of all new vehicles purchased by city residents could be electric.

CA Commission Approves Building Code

A California state commission approved Calgreen January 13. The program will be the nation's strictest environmental standards for new buildings, and will take effect next January. It includes regulations that cut indoor water use, divert construction waste from landfills to recycling, require builders to use low-pollutant materials and install separate water meters, and mandates inspections of energy systems by local officials. Local jurisdictions with stricter codes can choose to retain current standards or adopt state regulations.