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ENERGY AND ENVIRONMENT UPDATE

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Energy and Climate Debate

Please note that this is the final 2011 edition of ML Strategies' Energy and Environment Update. We look forward to keeping you informed on the latest energy and environment news in 2012, and will return with our next update on January 8.

The House easily approved a \$1 trillion omnibus spending bill December 16, sending the bill to the Senate for a weekend vote. Senate passage sent the legislation to the White House and averted a government shutdown, as it was operating on a continuing resolution through Friday evening.

House and Senate conferees signed off Thursday night on the measure, cutting the Environmental Protection Agency's budget but adding some to the Department of Energy. Though the bill does not include many of the contentious environmental riders House Republicans were hoping to pass, it does block enforcement of federal light bulb efficiency standards and prevent the White House from hiring more climate change staff. The bill also blocks the Environmental Protection Agency from regulating greenhouse gas emissions from livestock operations and manure management systems and transfers EPA's air quality permitting authority to the Department of the Interior. The Interior, Environment, and Related Agencies funding totals about \$29.2 billion, or 1 percent lower than fiscal 2011 funding levels, and falls between the Senate's proposed level of \$29.3 billion and the \$27.5 billion proposed by the House. The bill also provides \$32 billion for energy and water programs, a \$328 million increase. Despite frictions between the two parties throughout the week, the House approved the bill 296-121, with 35 Democrats and 86 Republicans voting against it.

The House voted 234-193 to pass legislation (H.R. 3630) December 13 that would extend the existing two percentage point payroll tax cut through 2012. Their version of the measure includes provisions requiring the Obama administration to make a decision within 60 days on whether to approve a permit to build an oil pipeline, Keystone XL, from Canada to Texas, as well as a boiler MACT rider. Senate leaders announced Friday evening a deal to extend the payroll tax holiday and unemployment benefits for two months, putting Congress on course to adjourn for the year in time for the holidays. Despite threats from the White House to veto any legislation that included such language, the deal includes the House-passed provision to expedite construction of the Keystone XL pipeline, but the compromise measure drops a House-passed provision to block the Environmental Protection Agency from strengthening air pollution standards for industrial boilers and incinerators. The Senate passed the bill December 17, at which point House Speaker John Boehner (R-OH) supported House passage of the bill. The Speaker later changed his position on the bill after encountering overwhelming opposition from rank-and-file members and the

extension remains in limbo. Democrats refuse to budge, while House Republicans, and now Senate Republican leadership, are calling for a conference to reconcile the two chamber's significant differences.

After a week of back and forth debate over what energy tax extenders might be included in the end of the year tax extenders package, it appears that none will be included because there is not a way to pay for them. Senators and Representatives were joined by numerous industry groups last week in urging the inclusion of about 10 energy tax credits that expire at the end of the year, with another five expiring at the end of 2012 into the payroll tax cut measure. For example, Senator Bob Casey (D-PA) urged Congress December 15 to extend legislation that would offer tax credits for converting residential property to natural gas or other energy efficient sources. The Residential Efficiency Tax Credit, which provides up to \$500 for taxpayers who convert their homes, will expire at the end of the year if Congress does not extend the provision along with a variety of other expiring tax provisions.

Some lawmakers in both chambers have argued that the annual tax extenders bill is more likely to move in the spring. It remains to be seen whether programs such as the 1603 grant in lieu of tax credits, the 48C advanced energy manufacturing tax credit, or several production tax credits might be extended at that time.

Congress

Pipeline Safety Bill Approved

The House unanimously approved legislation (H.R. 2845) December 12 that would reauthorize federal pipeline safety programs through fiscal year 2015. The Pipeline Safety, Regulatory Certainty, and Job Creation Act, which the Senate passed the following day, also includes language mandating the use of automatic shutoff valves on all new and replaced gas transmission lines and an increase in maximum fine for violations. After a long debate over the measure, the two chambers accidentally passed the wrong draft of the legislation, and at the end of the week, both houses approved resolutions correcting the legislation's texts, sending the real pipeline safety bill to the president.

PTC Extension Urged

Senator Chuck Grassley (R-IA) was joined by 14 of his Democratic colleagues in sending a letter December 9 to Senate leaders calling for an extension of the wind energy production tax credit as part of any tax legislative vehicle as soon as possible. Though the wind industry's 2.2 cent per kWh PTC does not expire until the end of 2012, uncertainty over the credit's future is already affecting the wind energy industry.

Utility MACT Safety Valve

Senator Lisa Murkowski (R-AK) announced December 12 that she is drafting legislation that would create a safety valve to help power plants comply with the Environmental Protection Agency's utility MACT rule without jeopardizing electricity reliability. The agency is scheduled to unveil the final rule, aimed at reducing emissions of mercury and other air toxics, early this week. On a related note, Representative Darrell Issa (R-CA) reiterated his call last week for further analysis of how a rule to control air toxics from power plants would impact electricity reliability, based on internal emails from Federal Energy Regulatory Commission officials.

House Efficiency Legislation Forthcoming

Congressmen Charlie Bass (R-NH) and Jim Matheson (D-UT) are crafting bipartisan legislation that could serve as a companion to Senate energy efficiency legislation from Senators Jeanne Shaheen (D-NH) and Rob Portman (R-OH). The building and manufacturing energy efficiency measure (S. 1000) easily cleared the Senate Energy and Natural Resources Committee this year and is seen as a possible path forward on energy legislation in the second session of the 112th Congress.

NRC Hearings

With Nuclear Regulatory Commission member resentment over NRC Chairman Gregory Jaczko's leadership and management style, Representative Darrell Issa (R-CA), chairman of the House Oversight and Government Reform Committee, conducted a hearing December 14 to focus on the commission's

infighting over the past 19 months. Four commissioners sent a letter October 13 to White House Chief of Staff William Daley criticizing Chairman Jaczko's actions and behavior at the NRC, and regulators are at odds over the pace of nuclear safety reforms and closing down Yucca Mountain. The Senate Environment and Public Works Committee also conducted a hearing December 15 to focus on the commission's task force recommendations that have been developed following Japan's nuclear crisis, to improve safety at U.S. nuclear power plants.

Four ENR Bills Move

The Senate Energy and Natural Resources Committee held its sixth business meeting of the year on December 14, reporting four more measures to add to over 60 that have already cleared the committee. The committee approved the 10 Million Solar Roofs Act (S. 1108), the Geothermal Exploration and Technology Act (S. 1142), the Geothermal Production Expansion Act (S. 1149), and the Department of Energy Administrative Improvement Act (S. 1160).

Ethanol Credits Should Expire

Representative Jeff Flake (R-AZ) and 72 of his House colleagues sent a letter December 9 to House Speaker John Boehner (R-OH) and Minority Leader Nancy Pelosi (R-CA) asking them to allow ethanol tax subsidies to expire on December 31 as scheduled. The congressmen called for allowing the 45 cent per gallon Volumetric Ethanol Excise Tax Credit, or blenders credit, as well as a 54 cent per gallon tariff to expire. They noted that the industry is instead seeking an extension of the Cellulosic Biofuels Producer Tax Credit and the Special Depreciation Allowance for Cellulosic Biofuel Plant Property, both of which expire at the end of next year.

House Anti-Environmental

Representatives Henry Waxman (D-CA), Ed Markey (D-MA), and Howard Berman (D-CA), ranking members of the House Committees on Energy and Commerce, Natural Resources, and Foreign Affairs, released a report December 15 in which they stated that the 2011 House of Representatives is the most anti-environmental House in the history of Congress. The report, *The Anti-Environmental Record of the U.S. House of Representatives*, detailed 191 times the chamber has voted to undermine protection of the environment.

NDAA Passed

The Senate and House passed the fiscal year 2012 National Defense Authorization Act December 14, which included the long-term reauthorization of the Small Business Innovation Research and Small Business Technology Transfer programs. The programs direct federal research and development dollars to small businesses to assist them in commercializing innovative technologies. A 2008 report by the National Research Council found that the SBIR program at the Department of Energy has provided significant support for small business, frequently acting as the impetus for project deployment, commercialization, and the foundation of new firms in the energy sector. House and Senate negotiators achieved a six year reauthorization of these programs and included provisions that will allow firms that are majority owned by venture capital concerns to assess up to 25 percent of the funds at the agency.

Legislation Introduced

Congressman Lee Terry (R-NE) introduced Nuclear Emergency Re-Establishment of Obligations Act (H.R. 3657) December 13. The legislation will alter the authority currently held by the Chairman of the Nuclear Regulatory Commission and enforce new guidelines for the Chairman's interactions with the Nuclear Regulatory Commission Officers and Congress.

Senator Roy Blunt (R-MO) introduced the Supporting Home Owner Rights Enforcement Act (S. 1988) December 14 to require the Federal Energy Regulatory Commission to take into consideration private property and the private use and enjoyment of land when issuing a license or enforcement action. Representative Robert Hurt (R-VA) introduced companion legislation (H.R. 3663) in the House.

Representatives Cathy McMorris Rodgers (R-WA) and Diana DeGette (D-CO) introduced legislation (H.R. 3680) December 15 to advance hydropower projects. The Hydropower Regulatory Efficiency Act of 2011 would ease permitting requirements for small hydropower projects and allow the Federal Energy

Regulatory Commission to extend the term of a preliminary permit once up to two additional years if the company is carrying out its current permit in good faith.

The same day, Congressmen Brian Bilbray (R-CA) and Steve Cohen (D-TN) introduced legislation (H.R. 3664) to standardize local permitting requirements for solar power systems and lower the installation costs for solar energy systems.

Administration

SOTU Date Set

Speaker of the House John Boehner (R-OH) extended an invitation December 14 to President Barack Obama to deliver his 2012 State of the Union address to a joint session of Congress January 24, and the White House accepted.

OMB Reviewing Fracking Reporting Requirements

The White House Office of Management and Budget began reviewing a notice from the Environmental Protection Agency December 14 that would solicit public comment on the possible design and scope of reporting requirements for chemicals used in hydraulic fracturing. The agency submitted the notice in response to a petition it received in August from a coalition of 120 environmental and public health groups.

Department of Energy

600,000 Homes Weatherized

Energy Secretary Steven Chu announced December 15 that states and territories across the nation have reached the goal of weatherizing more than 600,000 low-income homes, including more than 125,000 multi-family homes like apartment buildings, more than three months ahead of schedule.

\$7 Million for Hydrogen Storage

The Department of Energy announced more than \$7 million for innovative hydrogen storage technologies in fuel cell electric vehicles December 12. Four three-year projects in California, Washington, and Oregon will help lower the costs and increase the performance of hydrogen storage systems by developing innovative materials and advanced tanks for efficient and safe transportation.

Light Bulb Efficiency Standards

Beginning January 1, standards making 100-watt incandescent light bulbs about 30 percent more efficient will take effect, despite a policy rider in the omnibus spending legislation (H.R. 2055) that blocks DOE's ability to enforce the measure in the year 2012. The standard, passed as part of the Energy Independence and Security Act of 2007, was not altered in any way however.

Department of Interior

Mandatory Wind Turbine Rule Requested

The American Bird Conservancy said in a December 14 petition that the Department of Interior's Fish and Wildlife Service should issue regulations establishing a mandatory permitting system for wind energy projects to address their impacts on migratory birds. The Conservancy said that voluntary siting guidelines do not go far enough to address the industry's impact on birds protected by the Migratory Bird Treaty Act and other laws that prohibit the killing of certain birds. The guidelines are expected to be finalized by the Service in early 2012.

Secretary To Make Announcement on Renewable Permitting

Secretary of the Interior Ken Salazar announced a news media teleconference on December 20 with Deputy Secretary David J. Hayes; Director of the Bureau of Land Management Bob Abbey; and Director of the Bureau of Ocean Energy Management Tommy P. Beaudreau where the secretary will make several announcements regarding Interior's onshore and offshore renewable energy programs as well as this administration's progress in facilitating utility-scale renewable energy facilities.

Environmental Protection Agency

Utility MACT Finalized

The Environmental Protection Agency finalized the utility MACT rule December 16, setting mercury and air toxics emissions rules for power plants. Details of the rule will be released December 19.

Degraded Border Land for Renewable Energy

The Good Neighbor Environmental Board released a report December 14 concluding that all renewable energy planning and land-use projects along the U.S.-Mexico border should optimize the use of rooftops, brownfields, greyfields, and under-used federal properties. The Potential Environmental and Economic Benefits of Renewable Energy Development in the U.S.-Mexico Border Region report found that these projects should provide adequate incentives and assurances to encourage developers and landowners to take full advantage of opportunities to site renewable energy facilities at environmentally preferable locations.

State Enforcement Don't Meet Goals

The Environmental Protection Agency's inspector general released a report December 12 that found that state environmental enforcement programs do not meet the national goals set by the agency. For example, the agency set a goal for states to inspect 100 percent of major air pollution emitters every two years, but only eight states did, and the average inspection rate was 89 percent. The inspector general called for a centralized national enforcement program instead of the current 10 regional programs, and said that the agency's Office of Enforcement and Compliance Assurance should have the authority to administer all national enforcement resources.

Pulp and Paper Emissions Rule

On December 15, the Environmental Protection Agency is proposed a rule requiring 94% control of toxic emissions from pulp or paper production facilities. The rule, covering 171 facilities, will reduce emissions, including methanol and formaldehyde, by 4,000 tons a year at a cost of \$6.2 million annually for emissions controls, testing, and monitoring. The rule would also require emissions testing every five years.

Federal Trade Commission

Ethanol Report

The Federal Trade Commission's Bureaus of Competition and Economics released their 7th annual report on the state of U.S. ethanol production December 13. According to the report, competition among industry participants in the sector remains satisfactory and is likely to avoid price setting and other anticompetitive behavior. The report concluded that there are 164 firms nationwide either producing or soon to be producing ethanol, four more than last year.

General Services Administration

Zero Footprint Program

Presenting to the Environmental Change and Security Program December 14, General Services Administrator Martha Johnson said that the agency will move greener under a new Zero Environmental Footprint Program. The agency, owner and lessor of buildings that are already 22 percent more efficient than their commercial counterparts, takes its environmental stewardship role seriously, is attempting to lead other areas of government in that direction, and is focusing on nine major areas: space reduction, the changing nature of work, data centers, LEED standards, building management, energy savings performance contracts, return on investment, greening the fleet, and e-waste.

Personnel

Federal Energy Regulatory Commission member Marc Spitzer announced December 12 that he would leave the commission effective December 14. Mr. Spitzer's five year term expired June 30, but he was permitted to continue serving until the end of the year under commission procedures.

On December 14, the Senate Environment and Public Works Committee approved by voice vote, along party lines, the nomination of Rebecca Wodder to be assistant interior secretary for fish, wildlife, and parks. Ms. Wodder is a former president of American Rivers.

The Senate Energy and Natural Resources Committee unanimously reported the nomination of Arunava Majumdar to be Undersecretary of Energy December 14. Dr. Majumdar currently serves as director of the Advanced Research Projects Agency-Energy and has been serving as acting undersecretary since February, following the departure of acting undersecretary Cathy Zoi.

Miscellaneous

Wind Needs PTC

The American Wind Energy Association released a report December 12 that concluded that failure to extend the wind production tax credit will depress wind installations and project investments and cost almost half of the industry's jobs. Investment is predicted to drop from \$15.6 billion in 2012 to \$5.5 billion in 2013 and jobs will drop to 41,000 from 78,000. Additionally, new installations will total 2GW, down from a projected 8 GW. The report also suggested that a four-year extension of the PTC would grow investments to \$16.3 billion and jobs to 95,000 in 2016.

Japanese EV Tax Breaks

Japan announced last week that it will extend tax breaks for low-polluting vehicles for another three years as demand for green cars has reinvigorated the country's nearly stagnant auto market in part due to tax breaks and increasing interest in fuel efficiency. The government program was scheduled to end in April, but will now continue until April 2015.

Kyoto Loses Canada

Canadian Environment Minister Peter Kent said December 12 that Canada plans to withdraw from the Kyoto Protocol because it does not provide a realistic framework to address climate change, only covering 13 percent of global emitters and not including the United States or China. Canada will continue to meet its commitment through the Copenhagen Accord to reduce emissions by 17 percent from 2005 levels by 2020.

Solar Market Thrives

The Solar Energy Industries Association unveiled a report December 14 that found that the solar market continued to flourish in the third quarter of 2011, but that upcoming uncertainties over tax incentives and an international trade complaint could cause problems in the near future. New grid-connected photovoltaic solar power totaled 449.2 MW, a 39 percent increase over Q2, and a 140 percent increase over the third quarter of 2010.

WV Passes Shale Bill

The West Virginia legislature passed legislation (H.B. 401) December 14 to control drilling for natural gas in the Marcellus Shale. The Natural Gas Horizontal Wells Control Act sets minimum buffer zones for wells, requires drillers to have a management plan for waste fracking fluids, calls for study of potential air and soil pollution, and raises permit fees for initial wells to \$10,000. Officials estimate the mile-deep formation contains between two and six times as much natural gas as the entire domestic industry produced for market in 2009.

CA Admin Law Office Approves Cap and Trade

The California Office of Administrative Law approved rules for the state's multisector greenhouse gas emissions cap and trade program December 13, clearing the way for it to begin in January. The California Air Resources Board submitted the rulemaking package to the office following its October 20 adoption of the final set of measures needed to establish the trading program. The trading program will apply to 360

businesses representing 600 facilities. The first phase, beginning in 2013, will include major industrial sources and electricity utilities and retailers, and the second phase, beginning in 2015, will include distributors of transportation fuels, natural gas, and other fuels.

Chinese Tariffs on US Cars

The Chinese government increased trade tensions with the U.S. government December 14 by unexpectedly imposing antidumping and antisubsidy tariffs on imports of sport utility vehicles and midsize and large cars from the United States. The new tariffs, nearly 22 percent of the import prices, are largely symbolic, as sales of such vehicles are already low in China.

EU Renewable Energy Targets

The European Commission insisted December 15 that the European Union should adopt new renewable energy targets by 2014 in order to enhance energy independence and eliminate CO2 emissions from the electricity sector by 2050. In an energy road map, released to meet a goal of reducing emissions to 80 to 85 percent below 1990 levels, the Commission also found that new targets beyond the 20 percent goal for 2020 were vital for investors. The road map identified five decarbonization scenarios, including high energy efficiency, particularly in the building sector; diversified energy supply; high renewable energy sources; delayed carbon capture and storage technologies; and low nuclear production.

CO Launches Energy Smart

The Colorado Energy Smart Transportation initiative said December 14 that they recently completed the first phase of an initiative to promote energy efficiency and reduce greenhouse gas emissions in transportation. The Energy Smart Initiative is directed to retain more dollars and jobs in the state economy; address air quality issues, such as ozone and GHG emissions; improve the environment and health of Coloradans; demonstrate that the state is a national leader in transportation innovation; and enhance the quality of life for the state's citizens.

VT Energy Plan

Vermont Governor Peter Shumlin (D) announced December 15 a comprehensive energy plan for the state to satisfy 90 percent of its energy needs from renewable sources by 2050. The plan lifts a moratorium on construction of renewable energy projects on state land; calls for more use of electric vehicles coupled with energy efficiency in the electric sector; identifies large-scale hydroelectric power like that imported from Canada as renewable; and calls for expansion of piped natural gas in the state.

CA Green Chemistry Implementation Slow

California's Department of Toxic Substances Control warned December 13 that the state's chronic budget woes may hamper implementation of its green chemistry initiative. The law, enacted in 2008 to require the agency to develop regulations that rid consumer products of harmful chemicals, did not come with a funding commitment. As currently drafted, the proposed regulation would immediately establish a list of 3,000 chemicals of concern, based on the work already completed by several authoritative bodies, and the list would be revised every three years.

TX Fracking Disclosure

The Texas Railroad Commission gave final approval December 13 to chemical disclosure rules for drilling fluids used in hydraulic fracturing. The new rules, which will allow the public to have data on the chemicals used in fracking, will take effect January 2, 2012, and will require companies to upload a list of the chemical ingredients they are using the fracking process to the national chemical disclosure registry beginning February 1.

NC Expands Drilling, Fracking Impact Study

The North Carolina Department of Natural Resources announced December 13 that it is expanding the scope of a study on the potential environmental and economic impacts of various types of oil and gas exploration and extraction. The study, prompted by public comments, includes a review of existing regulations and the potential economic and environmental impact of any changes.

Investor Groups Seek Safe Fracking

The Investor Environmental Health Network and the Interfaith Center on Corporate Responsibility released a guide December 13 to help increase disclosure and mitigate the environmental and health impacts of fracking. The guide, *Extracting the Facts: An Investor Guide to Disclosing Risks from Hydraulic Fracturing Operations*, calls on oil and gas companies to be more transparent about the steps they take to minimize risks associated with fracking.

States Should Boost Gas Taxes

The Institute on Taxation and Economic Policy released a report December 14 that urges state to increase their gas tax rates and take other actions to address the inadequate, unsustainable, and regressive nature of the taxes. The report found that 36 states have fixed-rate taxes in places that do not account for inflation while the federal gas tax, 18.4 cents per gallon, has not changed since 1993 and has lost more than one-third of its purchasing power since then.

Mapping Tool Launched

The European Environment Agency launched an online tool December 13 to bring together vast amounts of data about the global environment in a user-friendly visual format. The Eye on Earth service provides geographical data on all the earth's lands and seas that can be tailored to suit individual preferences. Data can be added on topics such as maritime pollution, noise pollution, air quality, land use, and agricultural emissions.

Phosphorus Restricted

The European Parliament voted December 14 to require laundry detergents sold in the European Union to be almost phosphate-free by mid-2013. The legislation would restrict phosphorus in laundry detergent to 0.5 grams or less per standard wash beginning June 30, 2013, and to 0.3 grams beginning in 2017.

Canadian Cap-and-Trade System

On December 14, the Quebec government has finalized a cap-and-trade system for greenhouse gas emissions from industrial facilities emitting 25,000 metric tons or more of carbon dioxide-equivalent annually, modeled after the Western Climate Initiative. Until 2012, the system will be entirely voluntary, with pilot auctions and trading but no limits for the approximately seventy-five facilities in the industrial and electricity generating sectors that will be participating.

EU Releases Environmental Plan

On December 15, the European Commission released an action plan setting seven energy and environment areas in which the Commission plans to introduce measures in 2012, including regulation, research, standard setting, and demonstration projects. The plan is designed to replace the 2004 EU Environmental Technologies Action Plan and will now be sent to the European Parliament and EU Council for approval.