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ENERGY AND ENVIRONMENT UPDATE
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Energy and Climate Legislation

Continuing their months of conversations and meetings to develop a compromise climate plan that might get 60 votes, Senators John Kerry (D-MA), Lindsey Graham (R-SC), and Joseph Lieberman (I-CT) floated a draft plan late last week. The legislation would require the United States to reduce greenhouse gas emissions by 17% below 2005 levels by 2020. The three Senators have chosen a sectoral approach to addressing emissions of CO₂ and other greenhouse gases, with a cap and trade or a cap and dividend for electric utilities beginning in 2012 and a phase-in, delayed by three to five years, of manufacturers such as chemical plants and pulp and paper mills, in subsequent years, and a carbon tax for the transportation sector. Ultimately, the plan would require 60 percent of emissions allowances to be auctioned, and revenues from the carbon tax would be used for investments in alternative transportation technologies, the Highway Trust Fund, or a carbon-linked fee, on which Senator Landrieu is currently working. The plan also includes financial assistance and incentives for nuclear power, carbon capture and storage projects, and oil and gas drilling on the Outer Continental Shelf, which Obama Administration officials, including Carol Browner, have praised. Agreements are still underway on how to incorporate agriculture and forestry offsets and other cost-containment mechanisms. When they release legislative text later this month, the trio expects to combine their climate provisions with the Bingaman energy bill that cleared the Energy and Natural Resources Committee last summer, but to make some alterations to some sections of the bill, including the RES provisions.

At the request of Senator Graham, Senator Lisa Murkowski (R-AK), Ranking Member of the Energy and Natural Resources Committee, floated a draft bill last week designed to expand U.S. offshore oil and gas production as part of an effort to gain votes for a joint energy and climate package. Senator Murkowski's bill includes four main provisions: to extend drilling in the Eastern Gulf of Mexico, to authorize drilling in ANWR, to establish revenue sharing for all coastal states that consent to leasing of their shores, and to streamline the Department of Interior's permitting, environmental review, and leasing process for onshore and offshore public lands. The ANWR provisions have already been rejected by Senators Kerry and Lieberman.

Moderate Republicans and Democrats from coal, oil, and Rust Belt states are receiving the sector by sector model with cautious support. Republican Senators including Judd Gregg (NH) and moderate Democrats including Senate Finance Committee Chairman Max Baucus (MT) have expressed approval and interest in the trio's new compromise approach to the climate legislation, and are looking forward to continuing to work with them on tweaking specific legislative language in the weeks to come.

Senators George Voinovich (R-OH), Sherrod Brown (D-OH), Carl Levin (D-MI), Debbie Stabenow (D-MI), Mary Landrieu (D-LA), Baucus, Jeff Bingaman (D-NM), and Tom Carper (D-DE) met with the U.S. Chamber of Commerce last week and concluded that while the initial discussion was short on details, they believe that the bill presents an opportunity to delve into a bipartisan effort to address a climate package later this year.

Majority Leader Reid is planning on bringing the measure up later in the spring, and the trio of Senators is currently eyeing a late spring vote following passage of financial reform legislation.

Last week, thirteen Senate Democrats called on Senator Reid to ensure that any Senate climate bill that does go forward preserves the EPA's Clean Air Act authority to limit GHGs from power plants. Signatories to the March 2 letter led by Senator Bob Menendez (D-NJ) included Chris Dodd (D-CT), Barbara Boxer (D-CA), Frank Lautenberg (D-NJ), Jeff Merkley (D-OR), Ron Wyden (D-OR), Patrick Leahy (D-VT), Sheldon Whitehouse (D-TI), Jack Reed (D-RI), Ben Cardin (D-MD), Kristen Gillibrand (D-NY), Al Franken (D-MN), and Bernie Sanders (I-VT), and they also addressed Senators Kerry, Lieberman, and Graham as they continue ironing out the details of their compromise climate plan.

While Senator Murkowski is planning on moving forward with her resolution in mid-March, Senator Jay Rockefeller (D-WV) introduced legislation last Thursday to delay the EPA from issuing greenhouse gas regulations for two years, instead of banning the Agency from issuing regulations, so that Congress would have more time to legislate on the issue. Congressmen Nick Rahall (D-WV), Alan Mollohan (D-WV), and Rick Boucher (D-VA) offered an identical House bill last week as well.

The U.S. Conference of Mayors became the most recent group to oppose the Murkowski resolution last week. Nearly 80 House Republicans led by House Minority Leader John Boehner (OH) launched another effort early last week to prevent the EPA from regulating greenhouse gases under the Clean Air Act by issuing a resolution of disapproval.

While Congress continues to iron out details on a four pollutant bill, Senators Tom Carper (D-DE) and Lamar Alexander (R-TN) are moving forward with their three pollutant bill. Last week a Senate Environment and Public Works subcommittee held a hearing on S. 2995, legislation that sets a strict maximum achievable control technology limit to reduce mercury emissions from power plants and establishes a cap and trade program for SO₂ and NO_x. Some Senators are concerned that moving forward with climate legislation that includes a cap on carbon is taking too long or is still not politically viable, but there is already great bipartisan support for moving forward with strict limits on these three other harmful gases. Though Senator Carper's legislation may ultimately be merged with a larger climate bill, it is currently viable as a stand alone bill.

From the EPA's perspective, Administrator Lisa Jackson said March 3 that initial greenhouse gas emission requirements will apply only to new and modified stationary sources with emissions of more than 75,000 tons. Clean Air Act requirements for stationary source GHG regulations will be triggered by a proposed rule set for final action later this month to reduce emissions from cars and light trucks.

Investors in 82 companies filed a record 95 climate change related shareholder resolutions with the Securities and Exchange Commission last week. The resolutions addressed a variety of actions related to forestry, finances, transportation, energy efficiency, coal production, electric power, and oil and gas.

After the Senate was unable to move forward on a tax extenders package over a week ago, a number of transportation projects were put on hold and workers were sent home on furlough the early part of last week. On Tuesday night, however, Senate Democrat leaders were able to negotiate a deal with Senator Jim Bunning (R-KY) that allowed the Senate to sign off (78-19) on legislation that includes a one-month extension of the highway law, and a number of unemployment benefits. The Senate will return this week to continue consideration of the Tax Extenders Act of 2009 (H.R. 4213) that would extend about \$150 billion in jobs and tax provisions. The legislation includes tax credits for alternative fuels and large hybrid vehicles. The House cleared the \$15 billion jobs bill (217-201) last week and sent it back to the Senate for a sign-off. If they are able to complete work on the tax extenders legislation this week, the Senate may begin consideration of a green jobs bill.

Senate

Building STAR Legislation Introduced

Senators Jeff Merkley (D-OR) and Mary Pryor (D-AR) introduced legislation last week that would authorize \$6 billion in rebates for energy efficiency improvement projects in commercial and multifamily residences March 4. The Building STAR Energy Efficiency Act of 2010 (S. 3079) would provide consumer rebates and low-interest loans for projects such as the installation of high-efficiency heating systems and building retrofits. The legislation, cosponsored by Senators Debbie Stabenow (D-MI), Sherrod Brown (D-OH), Bernie Sanders (I-VT), and Ben Cardin (D-MD), parallels the Home Star Act of 2010, which was unveiled as a draft by Senator Jeff Bingaman (D-NM) last week.

Home Star Draft Unveiled

Senators Jeff Bingaman (D-NM), Mark Warner (D-VA), Bernie Sanders (I-VT), and Jeff Merkley (D-OR) announced plans early last week to introduce legislation that would establish a \$6 billion homeowner energy efficiency rebate program. The Home Star Act of 2010, for which President Obama has advocated, will be the subject of a March 11 Energy and Natural Resources Committee hearing as the Senators work to craft legislation that would offer \$3000 rebates for energy efficiency upgrades as well as another \$3000 to consumers who conduct whole-home energy audits and make subsequent retrofits.

Buy America Provisions Encouraged

A study by the Investigative Reporting Workshop recently found that 79% of the \$2 billion in clean-energy grants allocated under the Recovery Act since September 1, 2009, have gone to foreign firms. The announcement prompted Senators Chuck Schumer (D-NY), Bob Casey (D-PA), Sherrod Brown (D-OH), and Jon Tester (D-MT) to announce a new initiative to require the Buy America provision of the stimulus to apply to all programs; they said in a letter to Treasury Secretary Tim Geithner on March 4 that the government should suspend all clean energy programs under the stimulus package until the law can be fixed so that funds can only flow to projects that will create jobs in the US. Senators Schumer, Casey, Brown, and Tester are planning on introducing legislation soon to amend ARRA to ensure that grant money is used only in the US.

Legislation Introduced

Senators introduced a number of energy and environment related pieces of legislation last week.

On March 1, Senator Bob Menendez (D-NJ) introduced a bill (S. 3054) to amend the Energy Policy and Conservation Act to establish efficiency standards for bottle-type water dispensers, commercial hot food holding cabinets, and portable electric spas.

The same day, Senator Bob Casey (D-PA) introduced a bill (S. 3055) to require the Secretary of Commerce to award grants to municipalities to carry out community greening initiatives.

On March 2, Senator Ron Wyden (D-OR) introduced S. 3056 to amend the Energy Policy Act of 2005 to repeal a section that relates to exportation and importation of natural gas. Senators Maria Cantwell (D-WA), Barbara Mikulski (D-MD), Ben Cardin (D-MD), Chris Dodd (D-CT), and Jeff Merkley (D-OR) are cosponsors to the bill.

Senators Jeff Bingaman (D-NM), Lisa Murkowski (R-AK), and Bob Menendez (D-NJ) introduced S. 3059 later that day to improve the energy efficiency of appliances, lighting, and buildings.

On March 3, Senator Orrin Hatch (R-UT) and Majority Leader Harry Reid (D-NV) introduced S. 3060 to amend the Atomic Energy Act of 1954 to provide for thorium fuel cycle nuclear power generation.

Senator Tom Carper (D-DE) was joined by Senators Olympia Snowe (R-ME), Sherrod Brown (D-OH), and Susan Collins (R-ME) in introducing S. 3062 to extend tax credits related to the production of electricity from offshore wind until January 2020. The next day, Senator Snowe introduced the Deepwater Offshore Wind Incentive Act (S. 3064) that would offer a tax credit to deepwater offshore wind projects, in which turbines are located in water more than 60 feet deep. Senators Carper and Collins cosponsored the bill.

On the third, Senator Chuck Schumer (D-NY) introduced a bill (S. 3069) to amend the American Recovery and Reinvestment Act of 2009 to provide for the preservation and creation of jobs in the United States for projects receiving grants for specified energy property. Senators Casey, Sherrod Brown, Jon Tester (D-MT), and Arlen Specter (D-PA) cosponsored the measure.

Upcoming Hearings

The Senate Energy and Natural Resources Committee will hold a number of relevant energy and environment hearings this week.

On Tuesday, March 9, the Committee will hold a hearing to examine financial transmission rights and other electricity market mechanisms, and FERC Chairman Jon Wellinghoff will testify.

The following day, the Committee will consider four bills designed to promote energy efficiency: S. 3059, the National Energy Efficiency Enhancement Act of 2010; S. 2908, the Water Heater Rating Improvement Act of 2009; S. 1696, the Green Gaming Act of 2009; and S. 3054, a bill to establish efficiency standards for bottle-type water dispensers, commercial hot food holding cabinets, and portable electric spas.

On Thursday, the Committee will review legislative proposals designed to create jobs related to energy efficiency, including S. 1320, S. 3079, and a Home Star draft bill.

The Senate Commerce, Science, and Transportation Committee will hold a hearing March 10 on Advancing American Innovation and Competitiveness.

The Interior, Environment, and Related Agencies Subcommittee of the Senate Appropriations Committee will hold hearings on proposed fiscal year 2011 appropriations on March 9.

The Energy and Water Development Subcommittee of the Senate Appropriations Committee will hold hearings on proposed fiscal year 2011 appropriations on March 9 and 10.

The Senate Environment and Public Works Committee will hold a hearing on federal, state, and local partnerships to accelerate transportation benefits on March 10.

The Superfund, Toxics, and Environmental Health Subcommittee of the Senate Environment and Public Works Committee will hold a hearing on business perspectives on proposals to overhaul chemical safety laws on March 9.

House

Legislation Introduced

Congressmen introduced a number of energy and environment related bills last Wednesday, March 3.

Congressman Charlie Wilson (D-OH) introduced H.R. 4736 to amend the Higher Education Act of 1965 to authorize student loan forgiveness for certain individuals employed in advanced energy professions.

Congressman Chaka Fattah (D-PA) introduced H.R. to amend the Energy Policy Act of 2005 to create the right business environment for doubling production of clean nuclear energy and other clean energy and to create mini-Manhattan projects for clean energy research and development.

Congressman Paul Tonko (D-NY) introduced H.R. 4751 to amend the Internal Revenue Code of 1986 to encourage the deployment of highly efficient combined heat and power property. His legislation is cosponsored by Congressman Danny Davis (D-IL) and Congresswoman Shelley Berkley (D-NV).

Upcoming Hearings

The Interior, Environment, and Related Agencies Subcommittee of the House Appropriations Committee will hold hearings on proposed fiscal year 2011 appropriations March 8 and 9.

The Energy and Water Development Subcommittee of the House Appropriations Committee will hold hearings on proposed fiscal year 2011 appropriations on March 9.

The House Science and Technology Committee will hold a hearing on the fiscal year 2011 budget request for the research and development activities of the EPA and NOAA on March 9.

Administration

On Thursday, President Obama will address the Export-Import Bank's Annual Conference, speaking about export policy. In his State of the Union address, Obama said he wanted the United States to double its exports in five years.

Department of Energy

Former FERC Chair Urges Cooperation with EPA

Former Federal Energy Regulatory Commission Chairman Joseph Kelliher called on FERC last week to formalize a working relationship with the Environmental Protection Agency to ensure that electric system reliability issues will be properly addressed in the event the agency moves forward with regulations to reduce greenhouse gas emissions. Kelliher, who preceded Jon Wellinghoff as FERC Chairman, said that the Senate should first take up an energy bill and then either address climate change in additional legislation or allow the EPA to proceed with GHG regulation under the Clean Air Act.

ARPA-E Projects Receive \$100 Million

Secretary of Energy Steven Chu announced a third round of stimulus funding for the Advanced Research Projects Agency-Energy (ARPA-E) last Tuesday for projects tackling projects related to grid-scale energy storage, electrical power technology, and energy-efficient cooling technologies and air conditioners. Created in 2007 and funded in 2009 with \$10 million in an omnibus bill and \$400 million in the Recovery Act, ARPA-E is designed to help identify and spur development of high-risk, high-reward transformational energy technologies.

Administration Proposes Program for Energy Efficient Installations

On March 2, President Obama proposed a new \$6 billion program to increase energy efficiency and reduce greenhouse gas emissions while saving homeowners money and creating jobs in construction and manufacturing. The Department of Energy will administer the new HomeStar program, which is based on the Energy Star appliance program. Customers in the program are expected to save between \$200 and \$500 per year in energy costs, and two to three million households are expected to participate in the short-term program.

DOE Issues Loan Guarantees

The Department of Energy issued two conditional loan guarantees March 5 totaling almost \$200 million. Kahuku Wind Power will receive \$117 million to install twelve 12.5 MW turbine generators and a battery energy storage system for electricity load stability on the Hawaiian island of Oahu. SAGE Electrochomics Inc., received \$72 million to construct a manufacturing facility for electronically tintable energy efficient windows in Minnesota. Thus far, the Department's Loan Guarantee Program has offered or closed twelve loans or loan guarantees worth more than \$19 billion combined.

Department of the Interior

Interior Secretary Ken Salazar announced March 4 the first of eight regional Climate Science Centers. The effort at the University of Alaska in Anchorage is part of a larger effort to use climate change data to respond most effectively to the effects of climate change while engaging in regional education initiatives. The Department plans to seek grant proposals for the next four centers, including locations in the Northwest, Southeast, Southwest, and North Central regions of the country, very soon.

Department of the Navy

Last Tuesday the Navy announced a \$200 million agreement to develop solar power projects at Navy and Marine Corps installations in the Southwest. The agreement calls for give solar developers to build arrays that will generate as much as 40MW; the developers will own, operate, and maintain the solar arrays but will sell the power back to the bases. Navy Secretary Ray Mabus set a goal last October to meet 50% of its on-land energy needs with renewable sources by 2020.

Environmental Protection Agency

Jackson to Discuss Agency's Progress

EPA Administrator Lisa Jackson will deliver remarks Monday, March 8, at the National Press Club on the progress the Agency made in 2009 and its environmental priorities for 2010. Those priorities include, among other things, taking action on climate change, addressing toxic chemicals and air and water quality, and expanding the conversation about environmentalism in the United States.

EPA Seeks Advice on Addressing Climate Forcers

The Environmental Protection Agency held a workshop last week to seek advice on scientific and policy efforts to quickly address climate change as it continues to develop more long term plans to address greenhouse gas emissions. The workshop focused identifying opportunities to reducing black carbon and ozone in light of available policy options such as tightening existing rules for diesel engines and stoves and controlling biomass burning under the Clean Air Act or the Clean Water Act. Black carbon and ozone are among a group of pollutants called short lived climate forcers, as they remain in the atmosphere for days or weeks as opposed to hundreds of years like some other greenhouse gases. Reducing these pollutants can quickly mitigate the effects of climate change.

Increasing CAFE Standards without GHG Limits Forgoes Emission Savings

Gina McCarthy, EPA Assistant Administrator for Air and Radiation, said last week that forgoing regulation of greenhouse gases from mobile sources would undermine a joint EPA-Transportation Department initiative to increase fuel economy and address climate change under the soon-to-be-released increased CAFE standards.

EPA Sends Final Rule to White House

The Environmental Protection Agency submitted to the White House a draft final rule clarifying when stationary sources must comply with a Clean Air Act permitting program with regard to greenhouse gases. When the rule is finalized, it will provide additional EPA interpretation of a memo from former EPA Administrator Stephen Johnson that said that requirements under the prevention of significant deterioration program did not apply to greenhouse gas emissions from new and modified stationary sources because GHGs were not regulated pollutants. The EPA is expected to release a final rule at the end of March to regulate mobile source GHGs; this step will trigger the PSD requirements for stationary sources.

Federal Communications Commission

The Federal Communications Commission will release a plan March 16 to speed up the national adoption of broadband in the United States that will include recommendations for using broadband in the smart grid. Detailed proposals will promote open standards and commercial networks and enable utility and public safety agencies to work together to construct and operate networks, among other things. The Progressive States Network, Communications Workers of America, Sierra Club, and Blue Green Alliance issued a report called "Networking the Green Economy: How Broadband and Related Technologies Can Build a Green Economic Future" on March 4 that includes policy recommendations that could reduce CO2 emissions by 13-22 percent by 2020 with an energy savings of as much as \$240 billion.

Federal Trade Commission

The Federal Trade Commission announced last Thursday that it is considering requiring electronic products including televisions sold in the United States to include EnergyGuide labels in order to provide

consumers with information about their energy consumption. The FTC is seeking comments through May 14.

Personnel

On Wednesday, the Senate Energy and Natural Resources Committee advanced President Obama's choices to head federal efforts to upgrade the nation's transmission grid and bring Alaska natural gas south. The committee voted out Patricia Hoffman to be Assistant Energy Secretary for Electricity Delivery and Energy Reliability and Larry Persily to be federal coordinator for Alaska's natural gas transmission projects.

The following day, the Senate Environment and Public works Committee approved several nominations. If confirmed by the full Senate, Arthur Elkins, Jr. will become the EPA's first Senate-confirmed Inspector General since 2006, and George Apostolakis, William Magwood IV, and William Ostendorff will join become commissioners for the Nuclear Regulatory Commission, making it complete for the first time since 2007.

Miscellaneous

LA Moving Forward with Carbon Surcharge

After considering a carbon surcharge of \$2.50 per month, Los Angeles Mayor Antonio Villaraigosa is moving forward with a plan to charge customers of the Department of Water and Power more to help fund more renewable energy sources. The mayor has set a goal of having 20% of the utility's electricity come from renewable sources by the end of the year.

Wal-Mart Announces GHG Review

In a February 25 press release, Wal-Mart announced that it will cut 20 million MT of greenhouse gas emissions from its global supply chain by the end of 2015. They also released an assessment conducted by the University of Arkansas that outlines the lifecycle carbon content of its products to determine which will be covered by the initiative.

EPRI Releases Smart Grid Study

The Electric Power Research Institute issued a white paper last week saying that a more elegant approach to smart grid would be to develop in home devices that respond to higher-level grid signals via an inform and motivate rather than command and control approach. The inform and motivate approach would allow the smart grid system to signal to devices about its status; devices would be designed to respond to high level signals with a range of actions appropriate to each particular device.

Coalition Forms to Restrict FERC's Transmission Planning Role

Last Monday major electric utility companies launched an advocacy group called the Coalition for Fair Transmission Policy to preserve local and regional control over the planning of new major transmission projects. The ten founding members include Alliant Energy Corp., CMS Energy Corp., Con Edison, Inc., DTE Energy Co., Indianapolis Power & Light Co., Northeast Utilities, PPL Corp., Progress Energy Inc., Public Service Enterprise Group, and Southern Company.

Green Growth a Priority in 10-Year EU Economic Strategy

European Union Commission President Jose Manuel Barroso unveiled the EU2020 Strategy last Wednesday; the strategy includes making low-carbon development a priority of the EU's economic strategy for the next decade. The new plan builds on other recent environmental initiatives, including establishing environmental targets at the end of 2008, by establishing a greenhouse gas emissions reduction goal of 20% by 2020 compared to 1990 levels and pledging to obtain 20% of its energy from renewable sources by 2020 while reducing energy consumption by 20% within the same time frame. EU leaders will meet later this month to discuss the new strategy.

China's Five Year Plan Includes Emissions Targets and an Inventory Requirement

China's National Development and Reform Commission submitted plans late February that include carbon emissions targets and inventory goals in the nation's 12th Five Year Plan. The plan, which covers 2011-2015, will place binding targets that reduce carbon intensity, eventually by 40-45% by 2020 from 2005 levels. China is also aiming to obtain 15% of its energy from renewable sources by 2020. The National People's Congress is expected to approve the plan at the March 2011 meeting, but specific goals are likely to be ironed out at this year's annual march meeting in Beijing.

Advanced Biofuel Producers Seek ITC

A group of advanced biofuel producers sent a letter to the bipartisan leadership of the Senate Finance Committee and the House Ways and Means Committee March 3 requesting that they create a technology neutral 30 percent investment tax credit for advanced biorefineries in order to jump start stagnant production within the industry. Advanced biofuels producers are currently able to apply for and accept a federal production tax credit, but the difficult economic climate has prohibited commercial production of many forms of alternative energy, including biofuels.