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ENERGY AND ENVIRONMENT UPDATE **May 15, 2011**

Energy and Climate Debate

After the House passed two additional oil and gas exploration and drilling bills last week, the Senate is expected to spend this week considering legislation that would end tax breaks for large oil and natural gas companies. Republicans are pushing their own measure — introduced last week — that would codify a trio of pro-drilling bills passed in the last two weeks in the House.

The House passed May 11 two measures (H.R. 1229 and H.R. 1231) that would expedite offshore oil and natural gas drilling, and is on recess this week. Legislation (H.R. 1230) that directs the administration to proceed forward with three lease sales in the Gulf of Mexico and one off the coast of Virginia was approved May 5. The second bill establishes a 60-day deadline for making decisions on permit requests and limits judicial reviews and requires that the future five year offshore leasing programs consider all promising offshore areas that are believed to contain the greatest oil and natural gas resources, respectively.

Senate leadership will bring the Close Big Oil Tax Loopholes Act (S. 940) to the floor Wednesday or Thursday. The legislation, introduced last week by Senator Robert Menendez (D-NJ), would eliminate the \$21 billion in oil and gas tax subsidies given to the five largest oil companies. Unlike the outline suggested April 28 by Finance Committee Chairman Max Baucus (D-MT), savings generated under the new proposal would be used for deficit reduction instead of clean energy infrastructure and fuel efficient vehicles. All 47 Republicans and at least two Democrats, Senators Mary Landrieu (LA) and Mary Begich (AK), are expected to vote no on the legislation.

Congress

Reliability Study Requested

Republican leadership of the House Energy and Commerce Committee asked the Environmental Protection Agency, Department of Energy, and Federal Energy Regulatory Commission May 9 to provide analyses that assess the impact pending environmental regulations or power plants will have on energy reliability. The letters specifically asked how regulations for power plants, limits on air toxics emissions, the proposed interstate emissions transport rule for SO₂ and nitrogen oxides, and regulations that could treat coal ash as a hazardous waste would cumulatively affect the power agency.

Yucca Papers Sought

Representative Darrell Issa (R-CA), chairman of the House Oversight and Government Reform Committee, told the Nuclear Regulatory Commission May 6 to release documents related to the Yucca Mountain nuclear waste project no later than noon May 12 or face subpoenas for the information.

Spending Cuts Proposed

The House Appropriations Committee is proposing significant cuts to energy and environment programs for the fiscal year 2012 budget. The committee has proposed \$24.7 billion for the interior, environment, and related agencies spending bill, 12 percent below President Obama's budget request of \$31.2 billion and 7 percent below the currently enacted level of \$29.5 billion. Additionally, the proposed spending limit for energy and water development and related agencies measure is \$30.6 billion, or 16 percent below the president's request of \$36.5 billion and 3 percent below enacted levels of \$31.6 billion for fiscal year 2011. The process for determining specific funding levels for the Environmental Protection Agency and Departments of Energy and Interior will begin in June. In total, budget proposals that will move through the House Appropriations Committee this summer will reflect a \$46 billion cut in non-security program funding.

CCS Hearing Held

At a May 12 Senate Energy and Natural Resources Committee hearing on two bipartisan carbon capture and sequestration bills, witnesses spoke in support of carbon capture and storage but also called for clarification in pending legislation about the sequestration process. One bill (S. 699) would establish a program to support selected large-scale CCS projects, establish standards for regulating the sites, provide training for state-level regulators, and provide liability protection for damage arising from the operation of the supported programs. The other bill (S. 757) would establish a price for the development of technology that could remove CO₂ from diluted sources. Both bills cleared the committee in the previous Congress.

RE Permitting Hearing Held

House Republicans planning to craft legislation increasing renewable energy production said at a May 13 hearing that they are prepared to address what they see as an overly slow pace by the Obama administration in approving renewable energy projects on federal land. Congressman Doug Lamborn (R-CO), chairman of the Subcommittee on Energy and Mineral Resources, chaired a full committee oversight hearing on identifying roadblocks to wind and solar energy development on public lands and highlighted the need to reduce the regulatory uncertainty, expedite the permitting progress, and remove roadblocks in order to quickly and efficiently expand the development of renewable energy projects on public lands. A second hearing, to feature testimony by wind and solar industry executives, is scheduled for May 25.

Legislation Introduced

Senator Jeff Bingaman (D-NM) introduced legislation (S. 916) May 9 to facilitate appropriate oil and gas development on Federal land and waters and limit the U.S.' dependence on foreign oil and gas. The same day, he also introduced legislation (S. 917) to amend the Outer Continental Shelf Lands Act to reform the management of energy and mineral resources on the Outer Continental Shelf. The legislation closely resembles the measure (S. 3516) reported out of the Senate Energy Committee last Congress in the wake of the Gulf of Mexico oil spill, and would codify organizational changes at the Interior Department.

Senator Roy Blunt (R-MO) introduced legislation (S. 920) to create clean energy jobs and set efficiency standards for small-duct high-velocity air conditioning and heat pump systems.

Senator Jay Rockefeller (D-WV) introduced legislation (S. 936) May 10 to establish the American Infrastructure Investment Fund and other activities to facilitate investments in infrastructure projects that enhance the economic competitiveness of the United States by improving economic output, productivity, or competitive commercial advantage.

Senators John Barrasso (R-WY) and Joe Manchin (D-WV) introduced legislation (S. 937) to repeal certain barriers to domestic fuel production. Specifically, the bill repeals a 2007 ban on federal procurement of coal-to-liquid and other fuels and requires the Department of Energy to provide progress reports on loan guarantees for alternative fuel projects.

Senator Susan Collins (R-ME) introduced legislation (S. 938) to establish a research, development, demonstration, and commercial application program to promote research of appropriate technology for heavy duty plug-in hybrid vehicles.

Senator Robert Menendez (D-NJ) introduced legislation (S. 940) to reduce the Federal budget deficit by closing big oil tax loopholes, as outlined above.

Congressman Ed Markey (D-MA) introduced legislation (H.R. 1807) to provide for the sale of oil from the Strategic Petroleum Reserve and acquisition of refined petroleum product.

Congressman Jason Altmire (D-PA) introduced legislation (H.R. 1808) to amend the Energy Policy Act of 2005 to require the Secretary of Energy to carry out programs to develop and demonstrate two small modular nuclear reactor designs.

Congressman Eliot Engel (D-NY) introduced legislation (H.R. 1814) to amend the Internal Revenue Code of 1986 to deny certain tax benefits to persons responsible for an oil spill if such person commits certain additional violations.

Senator Tom Carper (D-DE) introduced legislation (S. 963) May 11 to reduce energy costs, improve energy efficiency, and expand the use of renewable energy by Federal agencies. The Reducing Federal Energy Dollars Act of 2011 would require federal agencies to submit standardized reports that enumerate energy and water usage as well as GHG emissions from their buildings and would establish energy efficiency standards for new federal buildings.

Senators Jeff Merkley (D-OR) and Lamar Alexander (R-TN) introduced legislation (S. 948) to establish a three-year program to promote the use of plug-in electric vehicles in model communities across the country.

Senator Mitch McConnell (R-KY) introduced legislation (S. 953) to authorize the conduct of certain lease sales in the Outer Continental Shelf and modify the requirements for oil and gas exploration.

Congressman John Carter (R-TX) introduced a three resolutions (H.J. Res. 58, H.J. Res. 60, and H.J. Res 61) disapproving rules submitted by the Environmental Protection Agency relating to "National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters," the "Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units," and "Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Sewage Sludge Incineration Units," respectively.

Senators Jeanne Shaheen (D-NH) and Rob Portman (R-OH) introduced legislation May 12 that would enact a national energy efficiency strategy. The Energy Savings and Industrial Competitiveness Act of 2011 contains a broad package of low-cost tools that would reduce barriers for business, homeowners, and consumers looking to adopt off-the-shelf, cost effective energy efficiency technologies. The Senate Energy and Natural Resources Committee will soon hold a hearing on the measure.

Senator Tom Carper (D-DE) introduced legislation to reduce diesel emissions through federal highway project funding. The Clean Construction Act of 2011 would require that as much as 1 percent of the cost of a project be devoted to retrofits or other improvements in older off-road diesel equipment to allow the equipment to meet new diesel engine emission standards.

Senator Jerry Moran (R-KS) introduced legislation (S. 989) to amend the Clean Air Act to require the exclusion of data of an exceedance or violation of a national ambient air quality standard caused by a prescribed fire in the Flint Hills Region.

Congressman Tim Murphy (R-PA) introduced legislation (H.R. 1861) to enhance America's path toward energy independence and economic and national security, to conserve energy use, to promote innovation, to achieve lower emissions, cleaner air, cleaner water, and cleaner land, and to rebuild aging roads, bridges, locks, and dams. Specifically, the Infrastructure Jobs and Energy Act would expand offshore production of oil and natural gas and use the federal money gained from that effort to programs related to renewable energy, energy efficiency, and clean coal technology.

Congressman Gerry Connolly (D-VA) introduced legislation (H.R. 1870) to safely increase domestic oil and gas production.

Congresswoman Shelley Moore Capito (R-WV) introduced legislation (H.R. 1872) to require the Administrator of the Environmental Protection Agency to consider the impact on employment levels and economic activity prior to issuing a regulation, policy statement, guidance, or other requirement, implementing any new or substantially altered program, or issuing or denying any permit.

Congressman David Cicilline (D-RI) introduced legislation (H.R. 1875) to lower gas prices by making investments in cleaner vehicle technologies and infrastructure.

Congressman Ben Ray Lujan (D-NM) introduced legislation (H.R. 1881) to require the Secretary of Energy, in coordination with the Secretary of Labor, to establish a program to provide for workforce training and education at community colleges in sustainable energy.

Congresswoman Niki Tsongas (D-MA) introduced legislation (H.R. 1890) to amend the Outer Continental Shelf Lands Act to require, as a condition and term of any exploration plan or development and production plan submitted under the Act, that the applicant for the plan must submit an oil spill containment and clean-up plan capable of handling a worst case scenario oil spill.

Congressman Mike Pompeo (R-KS) introduced a resolution (H. Res. 267) expressing the sense of the House that the United States should end all subsidies aimed at specific energy technologies or fuels.

Upcoming Hearings

The Senate Energy and Natural Resources Committee will hold a hearing May 17 on oil and gas development legislation. Specifically, the committee will examine the Lease Extension and Secure Energy Act of 2011 (S. 516), the Outer Continental Shelf Permit Processing Coordination Act (S. 843), and a bill (S. 916) to facilitate oil and gas development on federal lands and waters as well as legislation (S. 917) that would reform the management of energy and mineral resources on the Outer Continental Shelf.

The Senate Energy and Water Development Appropriations Subcommittee will hold a hearing May 18 on proposed fiscal year 2012 appropriations for the Department of Energy.

The Senate Energy and Natural Resources Committee will hold a hearing May 19 on policies to reduce oil consumption through the promotion of advanced vehicle technologies and accelerated deployment of electric drive vehicles.

The Senate Interior, Environment, and Related Agencies Appropriations Subcommittee will hold a hearing May 19 on proposed fiscal year 2012 appropriations for the Interior Department and the Environmental Protection Agency.

Administration

AK Leasing Approved

In his May 14 radio address, President Obama announced additional oil leasing in Alaska, as well as a high-level interagency working group that will speed permitting in the state. The administration will hold an annual onshore lease sale in the National Petroleum Reserve – Alaska. Additionally, the administration will extend all the Gulf leases affected by the moratorium and will hold Gulf lease sales by mid-2012 in the western and central Gulf.

US-China Dialogue Meeting Concludes

In May 9 remarks to the third meeting of the U.S.-China Strategic and Economic Dialogue, Secretary of State Hillary Clinton and Vice President Joe Biden called for advances in tackling climate change and clean energy technology in the United States and China.

Department of Defense

Navy Establishes Building Standards

Navy Secretary Ray Mabus said May 10 that the Department of the Navy and the Marine Corps will require all its new buildings to be constructed using environmentally friendly standards, specifically the LEED Gold Standard, developed by the U.S. Green Building Council beginning in fiscal year 2013. New buildings constructed prior to that time must have LEED standards as part of an option package the Navy will consider in new construction bids.

Department of Energy

\$1 Million for Efficiency Collaboration

The Department of Energy announced \$1 million in available funding for one or two US-based organizations to train energy assessors who will assist manufacturing facilities in China and India to reduce their energy use. Energy efficiency experts will work with engineers and energy managers abroad to provide technical assistance, share best practices, and create opportunities to deploy state-of-the-art US-made energy efficiency technologies and services.

Loan Guarantee Applications Frozen

Executive Director of the Energy Department's Loan Programs Office Jonathan Silver said May 10 that the agency is freezing applications in a loan guarantee program to support clean energy projects related to renewable energy, electric power transmission systems, and biofuels because the department will not have enough money to support every project request before the program ends this year. The Section 1705 program will expire September 30 and only projects that are likely to have started construction and closed their loan guarantees by then will be considered.

Efficiency Guides Released

The Department of Energy released the first in a new series of Advanced Energy Design Guides May 11. The guides will provide a practical approach to commercial buildings designed to achieve 50 percent energy savings compared to the commercial building energy code used in most of the country.

Strategic Plan Unveiled

The Department of Energy released a strategic plan May 10 in which it outlined its intentions to double domestic renewable energy generation by 2012 and help retrofit a million housing units by the end of fiscal year 2013 to make them more energy efficient. Additionally, the agency aims to support the production of batteries for 500,000 hybrid vehicles by 2015 and to bring at least five commercial scale carbon capture and sequestration projects on line by 2015.

\$90 Million for Solar Facility

The Energy Department announced a conditional \$90.6 million loan guarantee for the construction of a 30 MW solar facility in south-central Colorado May 10. The Alamosa Solar Generating Project, which is being developed by Cogentrix of Alamosa, will use high-concentration solar photovoltaic technology with a tracking system that rotates and tilts PV cells.

Department of Interior

Offshore Projects Hastened

The Department of Interior will publish a final rule May 16 to shorten the time for approving some offshore renewable energy projects. Current rules require the Bureau of Ocean Energy Management, Regulation, and Enforcement to issue a second notice soliciting interest if only one bidder responds during the commercial wind leasing process. The new rule will eliminate that requirement.

Deepwater Exploration Permitted

The Department of Interior approved May 11 a permit for Royal Dutch Shell PLC to drill for oil in five locations in the deep waters of the Gulf of Mexico. Shell's proposal is the second of its kind to be cleared since the government lifted a deepwater drilling moratorium imposed after last April's Gulf spill.

Environmental Protection Agency

"Most Efficient" Tier Established

The Environmental Protection Agency established a pilot program last week under which certain appliances will be labeled "most efficient." The program creates a higher tier within the voluntary Energy Star efficiency labeling program; to qualify, for example, refrigerator-freezers must be 30 percent more energy efficient than federal minimum energy use standards for the category.

Boiler MACT Reconsideration Requested

A coalition of 11 industry groups petitioned the Environmental Protection Agency May 9 to reconsider its emissions standards for industrial boilers and solid waste incinerators. The groups had previously asked the agency to stay implementation of the rules as it reconsiders national emissions standards for hazardous air pollutants for area source and major source boilers and process heaters and new sources performance standards for commercial and industrial solid waste incinerators. The agency intends to publish a notice detailing its reconsideration plans after May 20.

Nuclear Regulatory Commission

NRC Releases First Review

The Nuclear Regulatory Commission completed on May 13 its first review of the country's 104 commercial nuclear power plants following Japan's nuclear disaster in March 2011. The commission found that US facilities are capable of responding as designed to emergencies caused by natural disasters or terrorist attacks

Miscellaneous

77% RE by 2050

The Intergovernmental Panel on Climate Change released a report May 8 that found that the world could draw 77 percent of its energy from renewable sources by 2050. The optimistic scenario assumes a host of policy changes on governments to put a stiff price on GHG emissions and generous support for renewable generation.

India Reduces Carbon Intensity

India's Planning Commission released a report last week that concluded that the country will meet and perhaps even surpass its Copenhagen pledge to reduce carbon intensity 25 percent from 2005 levels in the next decade. The report found that if the country receives international financial assistance, it could reduce intensity by more than 35 percent by 2020.

IL Releases Energy Plan

Illinois Governor Pat Quinn (D) released an energy plan last week that would boost alternative energy and bring the state closer to reaching mandatory goals for renewable power. The governor also said that he would veto a bill moving through the Legislature that would allow utilities to automatically raise electricity rates for electrical grid improvements.

US-China Partnerships Secured

Universities, nongovernmental organizations, local governments, and energy companies in the US and China signed a partnership May 10 as part of an effort to promote progress in sustainability and energy security in the two countries. The six partnerships join seven existing partnerships between US and Chinese organizations as part of the EcoPartnerships program, part of the US-China Ten Year Framework for Cooperation on Energy and Environment.

Forest Fires Contribute to Warming

The United Nations Food and Agriculture Organization said May 10 that the growing number of large fires around the world is already having an impact on climate change because of the massive amounts of greenhouse gases they are releasing into the atmosphere. The report, Findings and Implications from a

Coarse-Scale Global Assessment of Recent Selected Mega-Fires, said that the problem is likely to grow worse because warming temperatures will make forest fires larger and more prevalent.

HFC Reduction Proposed

A joint proposal by the US, Canada, and Mexico seeks an 85 percent reduction in hydrofluorocarbon use worldwide in an effort to uphold a declaration signed by more than 90 countries in November 2010. The North American proposal calls on developed countries to initiate the phaseout in 2015, leading to an 85 percent reduction below unspecified baseline levels by 2033. Developing countries would initiate their phaseout in 2017, leading to an 85 percent reduction by 2043.

Early Introduction of Single EU ETS

The European Commission said May 10 that European Union member state registries for trading emission allocations under the EU's Emissions Trading System should be closed down one year earlier than previously planned and replaced with a single European registry. The Commission published a legislative proposal May 4 setting out the infrastructure for a union registry.

Power Plant to Close

Dominion Generation announced May 11 that they plan to cease operations at Salem Harbor Power Station by 2014 because of pending environmental regulations and market conditions. The plant is one of Massachusetts' oldest and most heavily polluting; it will cease operating two of the four units by the end of 2011.

National Academy Report Released

The National Academies released a report May 12 that suggested that the federal government should develop and implement policies that will reduce emissions, facilitate adaptation, coordinate robust research programs, and actively participate in international efforts to address climate change. The report, *America's Climate Choices*, acknowledged that there are efforts to address climate change at all levels of government, but concluded that the problem would not be adequately addressed without a national policy.

NH Senate Votes to Alter RGGI Involvement

The New Hampshire Senate declined May 11 to join the House in approving a withdrawal from the Regional Greenhouse Gas Initiative. The Senate voted (16-8) instead to amend terms of its involvement in the cap and trade program. The legislation requires amounts in excess of the threshold \$1 paid by utilities for allowance sales to be returned to ratepayers and the remaining proceeds to be returned to utilities for funding of core energy efficiency programs.

RE to Comprise 30 Percent of UK Mix

The United Kingdom's Committee on Climate Change released its Renewable Energy Review May 9. The report advised the UK to raise its share of renewable energy in its overall energy mix from 3 percent today to 30 to 45 percent by 2030. Under the European Union's Directive on Renewable Energy, Britain is required to have 15 percent of its energy come from renewable sources by 2020.

Japan to Overhaul Energy Policy

Japanese Prime Minister Naoto Kan said May 10 that as a result of the continuing nuclear emergency in the country, Japan has no choice but to overhaul its national energy policy to one that reduces its reliance on nuclear power and develops renewable energy at an accelerated pace. The country's current policy seeks to raise the ratio of nuclear power in the total electricity mix by 2030 to more than 50 percent, up from about 30 percent today, and to raise the renewable energy ratio to 20 percent, up from 1 percent today.

IN Establishes RE Goal

Indiana Governor Mitch Daniels (R) signed legislation (S.B. 251) May 10 that allows utility companies to pass on to ratepayers costs associated with investments in clean energy and establishes a voluntary renewable portfolio standard with a goal for utilities to obtain at least 10 percent of their electricity from renewable sources by the end of 2025.

US Airlines Environmentalism Questioned

The Environmental Defense Fund, the Sierra Club, and several other environmental groups sent a letter to American Airlines and United Continental Holdings Inc May 11 criticizing the US airlines for touting voluntary initiatives to reduce their carbon footprint and other environmentally friendly efforts while battling the European Union's plan to bring the industry into its carbon trading scheme.

Strict CA Vehicle Standards Promoted

California Air Resources Board Chairman Mary Nichols joined investment analysts May 11 in touting the potential economic benefits of stricter vehicle fuel economy and GHG standards. At a Ceres conference in Oakland, she said that the state's battle for the cleanest cars possible and reductions in air pollution has yielded trillions of dollars in benefits by reducing hospital stays and increasing worker productivity.

ND Incorporates Green Diesel

North Dakota enacted legislation (S.B. 2034) April 25 that incorporates green diesel into various energy income tax credits and incentives. The legislation adds green diesel production facilities to the list of facilities eligible to receive assistance from the Biofuel Partnership in Assisting Community Expansion Fund.

UNEP Warns of Resource Shortage

The United Nations Environment Program's International Resource Panel released a report May 12 that warned that the world economy is headed for a crisis over dwindling natural resources unless governments adopt new policies decoupling economic growth from resource use. The report, *Decoupling Natural Resource Use and Environmental Impacts from Economic Growth*, focused on unsustainable consumption of minerals, ores, fossil fuels, and biomass.

Operating Policies Adopted

At the 33rd Intergovernmental Panel on Climate Change Plenary session May 13, the IPCC adopted new policies aimed at addressing concerns about how the panel operates and prepares its assessment reports on climate change. Representatives adopted policies on governance, conflicts of interest, communicating about the panel's activities, non peer-reviewed literature, correction of errors, and addressing scientific uncertainty.

MI Plant Permit Contested

The Sierra Club and the Natural Resources Defense Council asked a Michigan circuit court May 11 to review the Michigan Department of Environmental Quality's issuance of an air permit for the expansion of a coal-fired power plant, alleging the permit did not comply with federal regulations requiring that modification permits address GHG emissions.

Black Carbon Action Urged

A ministerial meeting of the Arctic Council ended May 12 with a final declaration that urged unilateral action by Arctic countries to limit black carbon and other short-lived climate forcers. Members of the council include Canada, Denmark, Finland, Iceland, Norway, Sweden, Russia, and the United States.